

Federal judge halts new Trump travel ban

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A federal district court judge in Hawaii issued an order Wednesday evening freezing the new Trump travel ban on visitors from six Muslim-majority countries. The order was handed down by Judge Derrick K. Watson, halting the enforcement of the order only hours before it was to go into effect, at midnight Eastern Time.

The Trump executive order would have suspended the US refugee program for 120 days, while halting for 90 days the issuance of new visas to visitors from Iran, Libya, Somalia, Sudan, Syria and Yemen. All six countries are predominately Muslim, and four of the six are ravaged by US-instigated civil wars that have destroyed their infrastructure and sent millions into flight, either as internally displaced persons or as refugees. The other two, Iran and Sudan, have been the targets of US blockades and military provocations.

Two other federal judges were also hearing suits against the executive order, in Maryland and Washington state, and further injunctions against Trump's Muslim ban could be handed down before the night is out.

It was the second time that a Trump executive order temporarily banning visitors from majority-Muslim countries and refugees from any country was struck down by the courts. The first executive order, issued January 27, was thrown out as unconstitutional and illegal by district courts in Washington state and Virginia. The Washington state ruling was then upheld by a three-judge panel of the 9th Circuit Court of Appeals, which covers much of the western United States.

The hearing in Hawaii came after a lawsuit filed by the state's attorney general, Douglas Chin, who argued the new travel ban, like the previous version, targeted Muslims in violation of the First Amendment to the US Constitution, which protects freedom of religion, and caused damage to state universities and to the state's

tourism industry, both of them dependent on the free flow of travelers.

As in the lawsuits against the first Trump executive order, state attorneys general from 14 states filed briefs in support of Hawaii, while more than 50 technology companies, including Airbnb, Dropbox, Lyft and many other Silicon Valley firms joined in a brief opposing the travel ban.

The Hawaii state brief cited the case of Ismail Elshikh, imam of the Muslim Association of Hawaii, whose mother-in-law has applied for an immigrant visa that is still being processed, and could fall afoul of the travel ban.

Judge Watson ruled that both the state of Hawaii and Ismail Elshikh had "a strong likelihood of success on their claim" that the executive order intentionally targets Muslims and therefore violates the Constitution's guarantee against establishment of religion.

The judge cited candidate Trump's statements during the election campaign, referred to in the state brief, as "significant and un rebutted evidence of religious animus driving the promulgation of the Executive Order and its related predecessor."

He also flatly rejected the Trump administration's claim that because the executive order was limited to six Muslim-majority countries, out of dozens, no religious bias could be inferred. "The illogic of the Government's contentions is palpable," Watson wrote in his 43-page decision. "The notion that one can demonstrate animus toward any group of people only by targeting all of them at once is fundamentally flawed. The Court declines to relegate its Establishment Clause analysis to a purely mathematical exercise."

Justice Department lawyers made arguments along the same lines as those rejected by the courts last month, claiming the president had wide authority to ban visitors and refugees on the basis of his status as

commander-in-chief. Given the modifications in the executive order, which applies only to future visa seekers, not those who already have visas, they also claimed that there could be no showing of “irreparable harm,” meaning that neither the states nor individuals had standing to challenge the order in court.

Acting US Solicitor General Jeffrey Wall argued the government case in both the Maryland courtroom of US District Judge Theodore D. Chuang, and by telephone in the Hawaii courtroom.

No citizen of any of the six countries has engaged in a terrorist attack on Americans, either overseas or in the United States. Despite the claims by the White House that the ban is based on national security considerations and targets terrorist dangers, the countries from which actual terrorists have emerged, such as Saudi Arabia (15 of the 19 airplane hijackers on 9/11), are not on the Trump list.

Lawyers for the International Refugee Assistance Project, the American Civil Liberties Union (ACLU), the National Immigration Law Center and HIAS, a Jewish charity that facilitates refugee resettlement, argued against the Muslim ban in the Maryland courtroom. The Maryland case was the only one that directly challenged Trump’s order to slash total refugee intake this year from 110,000 to 50,000, arguing that this exceeded his legal authority.

The Maryland case also heard arguments about whether the judge should take into account Trump’s campaign statements about banning Muslims. “It’s asking the court to turn a blind eye to all of the evidence that’s apparent to everybody,” argued Omar Jadwat for the ACLU. “It doesn’t make sense to blind the court.”

The ACLU lawyer also rebutted government claims that the executive order was merely temporary, pointing out the provisions for extending the travel ban indefinitely based on the recommendations of the Justice Department and the Department of Homeland Security.

In each courtroom, Justice Department lawyers claimed Trump’s second order was “substantially different” from the first, and therefore the challenge to it should be considered as a new case, without the previous court decisions setting a precedent. Those opposing the ban cited statements by top White House aide Stephen Miller, who said that the second order

would reproduce the first with only minor, cosmetic differences. Some “very technical issues” would be fixed, he said, but “those basic policies are still going to be in effect.”

In Seattle, Washington, Judge James Robart, who issued an earlier ruling striking down the first Trump executive order, turned down a motion by six state attorneys general asking him to declare that his initial ruling also covered the latest version of the executive order. However, he left open the possibility that he would issue a new ruling on the second executive order.

None of these court injunctions affects in any way the vicious attacks on immigrants unleashed by other Trump executive orders, which instructed Immigration and Customs Enforcement and the Border Patrol to greatly intensify their arrests, detentions and deportations of undocumented workers. The Philadelphia ICA field office, for example, announced Monday it had seized another 248 immigrants in a four-state sweep, mainly in Pennsylvania and West Virginia.



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