

Appeals court upholds injunction on Trump's anti-Muslim travel ban

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The federal Fourth Circuit Court of Appeals, which covers portions of Maryland, Virginia, West Virginia, North Carolina and South Carolina, voted 11-3 Wednesday to uphold a lower court's ruling granting an injunction against the Trump administration's executive order banning travel from six Muslim-majority nations.

The order would have suspended the US refugee program for 120 days and cut by more than half the number of refugees allowed into the country during the current fiscal year. It would also have stopped the issuance of new visas for 90 days from the following countries: Iran, Libya, Somalia, Sudan, Syria, and Yemen. Four of the six countries are wracked by brutal civil wars instigated and financed by the United States, and the remaining two, Iran and Sudan, have been targeted for sanctions and military provocations by Washington with the aim of overthrowing their governments.

The executive order was issued as a replacement for a previous order issued during Trump's first week in office, which suffered from numerous technical defects and was struck down by the courts. It also contained what amounted to explicitly discriminatory language against Muslims, declaring a preference for "religious minorities" from the Muslim-majority countries named in the order, and would have revoked already-issued visas and prevented legal US residents from returning from visits to these countries.

The second executive order, while substantially similar, was released with somewhat different language, designed to better survive legal challenges. It also dropped one of the seven countries named in the original order, Iraq, because it would have resulted in the denial of entry to the US of thousands of citizens from the country, destroyed and occupied by US

imperialism, who are on the payroll of the United States.

The majority opinion, authored by Chief Judge Roger Gregory, a George W. Bush appointee, did not mince words, declaring that the executive order "drips with religious intolerance, animus, and discrimination" and declared that the key question in the case "is whether the Constitution ... remains 'a law for rulers and people, equally in war and in peace.'"

Lawyers for the government argued before the Fourth Circuit that the president's immigration policy is not subject to judicial review. "Behind the casual assertion of consular nonreviewability lies a dangerous idea—that this Court lacks the authority to review high-level government policy of the sort here," Gregory wrote.

Government lawyers cited as precedent a 1972 Supreme Court case, *Kleindienst v. Mandel*, which reviewed the government's decision to reject a travel visa to the ex-Trotskyist Ernest Mandel, a leader of the revisionist United Secretariat. The Supreme Court ruled in favor of the government, rejecting a challenge on First Amendment grounds, proclaiming that as long as the government's reasoning in denying the visa was "facially legitimate and bona fide," the courts could not review the constitutionality of the decision.

However, the appeals court ruled that even *this* anti-democratic ruling was a legal precedent for their ruling against the government. While the court found the official national security justification of the ruling to be "facially legitimate," they found that the plaintiffs demonstrated sufficiently that the order did not meet the "bona fide" criteria.

In other words, the court found that the Trump administration's claims that the executive order was a necessary "national security" measure was a post-hoc justification designed to conceal the religious bigotry

which forms the real purpose of the order.

The majority opinion focuses on the connection between the executive order and pronouncements by Trump himself during his presidential campaign calling for a “total ban” on Muslims entering the country, rather than the language of the order itself, in order to establish the discriminatory intent of the order. They also cited remarks by former New York City mayor and Trump adviser Rudy Giuliani that Trump had sought advice on how to craft such an anti-Muslim executive order to survive legal challenges.

The appeals court, as in the lower district court’s ruling, rejected arguments from government lawyers that such statements should not be admissible as evidence. “The evidence in record, viewed from the standpoint of the reasonable observer, creates a compelling case that [the executive order’s] primary purpose is religious,” they conclude.

The court also cited the fact that the intelligence community was not consulted prior to the issuance of the first executive order, as well as government studies which found that the ban would have no appreciable impact on the likelihood of a terror attack occurring in the United States. No terrorist from any of the six countries named in the order has killed a single American in more than four decades, the court noted.

Thursday’s ruling does not settle the question of the legality of the executive order. Another case brought against it is currently pending in the appeals court for the Ninth Circuit, in San Francisco. The Trump administration has also vowed to take the case all the way to the Supreme Court if necessary, where Republicans have held a 5-4 majority since the confirmation of Neil Gorsuch in April.

Moreover, the court injunction does not affect any of the other vicious attacks and scapegoating of immigrants by the Trump administration, which has encouraged federal agencies to greatly intensify their arrests and deportation of undocumented workers, which had already reached record levels under Obama.



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