

# Second appellate court rules against Trump anti-Muslim travel ban

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On Monday, a three-judge panel of the Ninth Circuit Court of Appeals, which covers lower federal courts in the western United States, unanimously upheld an injunction against President Donald Trump's second executive order to block nationals of six Muslim-majority nations from entering the United States. The decision, *Hawaii v. Trump*, affirms the order entered last March by a federal judge in Honolulu, but based on different reasoning.

Less than three weeks earlier, a 13-judge "en banc" panel of the Fourth Circuit, headquartered in Richmond, Virginia, voted 10–3 to block the bigoted travel ban, affirming a similar injunction by a federal judge in Maryland.

The Ninth Circuit opinion was issued "per curiam" by Bill Clinton appointees Michael Daly Hawkins, Ronald M. Gould and Richard A. Paez, and is therefore unsigned by any of them. The writing is notably collegial in tone and the ruling itself narrow in scope.

The decision does not address the lower's court's holding that the second order, like the first, "was issued with an intent to disfavor people of Islamic faith" and therefore violated the First Amendment's Establishment Clause. Instead, the panel ruled that Trump violated the Immigration and Nationality Act (INA) by not making the findings required under the INA and by using nationality as a criterion despite specific INA provisions that prohibit the denial of entry visas based solely on national origin.

Both of Trump's executive orders were aimed at mobilizing the most intolerant and backward elements of the population to muster their support for imperialist interventions abroad and escalating attacks against all sections of the working class at home.

Trump promised to ban Muslims repeatedly during his presidential campaign, and one week after taking

office last January, without any meaningful internal governmental review or hearings, issued an executive order entitled "Protecting the Nation From Foreign Terrorist Entry Into the United States." A federal judge in the state of Washington enjoined that order, and the Ninth Circuit refused to delay the injunction while Trump appealed.

Following those courtroom defeats, Trump issued a second executive order to supersede the first. White House lawyers then dismissed Trump's appeal of the Washington ruling.

The second order is somewhat narrower than the first, as it applies only to individuals outside of the United States without a valid visa and excludes lawful permanent residents, dual citizens and refugees already admitted. There are other minor changes, including the possibility of waivers for certain visitors and a slight modification allowing the admission of a few Syrian refugees.

The second order is just as discriminatory and irrational as the first, however. It provides for a 90-day ban on entry for nationals of all but one of the majority-Muslim countries identified in the first order. Those countries targeted are Iran, Libya, Somalia, Sudan, Syria and Yemen. As justification, the second order recites that "the risk of erroneously permitting entry of a national of one of these countries who intends to commit terrorist acts or otherwise harm the national security of the United States is unacceptably high."

"The provision bans more than 180 million people from entry based on their national origin, including nationals who may have never been physically present in those countries," the Ninth Circuit decision explains.

The order cites the terrorism convictions of two Iraqi nationals admitted as refugees and a native of Somalia brought to the United States as a child refugee, who

became a naturalized United States citizen before his arrest.

Iraq, which was included in the first order, was dropped from the second, supposedly because of its “close cooperative relationship” with the United States. The order makes no mention of any incident of domestic terrorism involving a national or immigrant from any of the five other nations (excluding Iraq and Somalia) named in the order.

One provision of the INA enacted in 1952, the high point of official anti-Communism in the United States, gives the president broad power to bar aliens from certain nations, but the Ninth Circuit ruled that Trump did not make the necessary finding that “entry of the excluded classes would be detrimental to the interests of the United States.”

“The Order does not tie these nationals in any way to terrorist organizations within the six designated countries,” the Ninth Circuit panel continued. “It does not provide any link between an individual’s nationality and their propensity to commit terrorism or their inherent dangerousness. In short, the Order does not provide a rationale explaining why permitting entry of nationals from the six designated countries under current protocols would be detrimental to the interests of the United States.”

“In conclusion,” the Ninth Circuit panel wrote, “the Order does not offer a sufficient justification to suspend the entry of more than 180 million people on the basis of nationality. National security is not a ‘talismanic incantation’ that, once invoked, can support any and all exercise of executive power” under the INA.

In 1965, at the height of post-war reform efforts, Congress amended the INA to eliminate the “national origins system as the basis for the selection of immigrants to the United States.” The INA also limits the ability of government officials to exclude refugees.

As an alternative basis for its ruling, the Ninth Circuit held that the second order “contravenes the INA by ... discriminating on the basis of nationality,” and, by arbitrarily capping the number of refugees at 50,000, “disregarding the procedures for setting annual admissions of refugees.”

Trump is seeking Supreme Court review of the appellate rulings in both the Maryland and Hawaii cases. The justices are scheduled to commence their summer recess in a few weeks, so a full high court

vetting of the recent decisions is not likely before next fall.



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