

Supreme Court reinstates Trump's ban on transgender troops

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On Tuesday, the US Supreme Court, by a 5-4 vote, issued terse orders staying two trial court injunctions that had prevented the Trump administration from reinstating a ban on transgender personnel in the United States military. No explanation was given for the ruling and no opinion was filed by any of the dissenting justices.

Usually, cases work their way through the trial and appellate courts before the Supreme Court takes any action. In this instance, however, the Supreme Court intervened at the request of the Trump administration before the intermediate appellate court, the Ninth Circuit, could rule.

Starting in the early 1960s, the US Department of Defense formally banned all transgender personnel. That changed in 2015, when President Barack Obama's secretary of defense, Ashton Carter, announced that the ban would be repealed to make the US military "as attractive as possible to the best people in our country."

After formal measures were implemented in 2016 to undo the ban, many of the estimated 4,000 active and reserve transgender members came out publicly. Multiple studies confirmed that ending the ban would have no measurable effect on the US military's ability to rain death and destruction on people and societies standing in the way of the US corporations and oligarchs whose interests it promotes.

Following a series of Trump tweets in July 2017, the ban was reinstated. As the WWSW wrote, "The move to expel transgender soldiers from the military is anti-democratic and oriented toward stoking up the most backward and fascist elements. Moreover, it has ominous implications for transgender people in other aspects of society, legitimizing discrimination in jobs, education and access to services."

One might add that irrational discrimination against

any segment of the population opens the door for discrimination against others and works against the unification of the working class.

The transgender members of the armed services who came out publicly, relying on the changed policy, have now been exposed to retaliation and expulsion.

Lawsuits were filed by affected persons and organizations representing them. Two federal district courts, both located in the western United States, issued preliminary injunctions preventing Trump from reimposing the ban. Before those rulings could be reviewed by the Ninth Circuit Court of Appeals, however, Trump administration lawyers took the unusual step of filing petitions for certiorari, asking the Supreme Court to step in immediately.

On Tuesday, the Supreme Court issued the stay on the lower court injunctions but declined to review the merits of the underlying cases, sending them back to the lower courts. The effect of these rulings is to reinstate the ban for at least one or two more years while the cases are resolved by the federal courts of appeals.

These two perfunctory and premature rulings reveal that the current five-justice majority, which includes Trump appointees Neal Gorsuch and Brett Kavanaugh, will take extraordinary measures to clamp down on independent judicial actions that restrain the Trump administration's increasingly autocratic measures.

Tuesday's rulings are a shot across the bow of lower courts inclined to rule against constitutional deprivations by the executive branch. Similar actions will no doubt occur in the future to prevent lower courts from blocking executive measures of dubious constitutionality, especially those intended to suppress the growing resistance of the working class to war and social inequality.

The lack of any explanation for the Supreme Court's action is also telling. Courts, when issuing injunctions and stays, usually analyze which side is likely to succeed on the merits, the probability that irreparable harm may result if immediate action is not taken, the balance of equities and the public interest.

When granting the lead injunction on December 11, 2017, for example, United States District Judge Marsha Pechman of Seattle, Washington found that the plaintiffs were likely to prevail because the ban violates the principle of "equal protection" by classifying individuals "based on transgender status and gender identity." Rejecting the claim that the cost of additional medical services justifies the ban, Judge Pechman explained that "the cost to discharge transgender service members is estimated to be more than 100 times greater than the cost to provide transition-related health care."

Judge Pechman also found "a likelihood of success" for those appealing the ban on the grounds that "substantive due process protects fundamental liberty interests in individual dignity, autonomy, and privacy from unwarranted government intrusion," including "the right to make decisions concerning bodily integrity and self-definition central to an individual's identity."

By issuing the stays without explanation and without accepting any of the cases for a decision on the merits, the Supreme Court is acting undemocratically and as the direct agent of the Trump administration.



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