Federal court rulings challenge Trump immigration policies

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Several federal court rulings in recent days have challenged the actions and personnel of the Trump administration's extreme anti-immigrant agenda, setting the stage for a series of cases that will likely be decided by the majority right-wing US Supreme Court.

On Sunday, Washington DC US District Judge Randolph Moss ruled that President Trump's appointment of Ken Cuccinelli as acting director of the US Citizenship and Immigration Services (USCIS) was in violation of the 1998 Federal Vacancies Reform Act (FVRA). The immediate result of the ruling is the suspension of two Cuccinelli directives implemented since his appointment last June aimed at dramatically reducing the number of migrants approved by immigration authorities for asylum in the US.

The USCIS is an agency—like Immigration and Customs Enforcement (ICE) and Customers and Border Protection (CBP)—within the Department of Homeland Security (DHS). It is responsible for processing and adjudicating applications for work visas, asylum and US citizenship. Cuccinelli, who also holds the number two position within DHS, was never formally nominated for either position due his unpopularity with both Democrats and Republicans in the Senate.

The FVRA regulates who the president can appoint to certain positions within his Cabinet. By creating a new position for Cuccinelli called "principal deputy director," the Trump administration attempted to skirt around FVRA requirements stipulating that the director of USCIS must serve in a subordinate role as "first assistant" before becoming director.

Judge Moss, an Obama administration appointee, wrote in his ruling, "Cuccinelli may have the title of Principal Deputy Director, and the Department of Homeland Security's order of succession may designate the office of the Principal Deputy Director as the first assistant to the Director. But labels—without any substance—cannot satisfy the FVRA's default rule under any plausible reading of the statute."

The ruling was in response to a lawsuit filed by immigrant advocacy groups Democracy Forward and the Catholic Legal Immigration Network on behalf of an immigration legal center and seven asylum-seekers. In their suit, the group both challenged Cuccinelli's appointment and his directives as eviscerating "protections for asylum seekers fleeing persecution" by cutting the adjudication process and prohibiting applicants from obtaining a continuance.

The right-wing Republican Cuccinelli and former attorney general for the state of Virginia made a name for himself when discussing the Trump administration's "public charge" rule on National Public Radio last August. When asked about the White House plan to give green cards and visas only to immigrants who can prove they will not use government services, Cuccinelli made up words for the bronze plaque at the Statue of Liberty, saying, "Give me your tired and your poor who can stand on their own two feet and who will not become a public charge."

In another ruling last Friday, the US Court of Appeals for the Ninth Circuit upheld an injunction against the Trump administration's poorly-named Migrant Protection Protocols (MPP) implemented in January 2019. In a 2-1 decision, the appeals court blocked the MPP that has been forcing non-Mexican asylum seekers to remain outside the US southern border while their cases move through the immigration courts.

Also known as the "Remain in Mexico" policy, the MPP has been a central part of the campaign by the Trump White House against migrants from Central America who have fled their home countries seeking

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asylum in the US. Since the MPP was implemented, 59,000 applicants for asylum have been turned back to Mexican border cities to await a decision on their claims for protection, a process that can take months or years to be completed.

Immediately following the decision against MPP, the three-judge panel stayed its own ruling and granted the Trump administration's petition for an immediate appeal. The court has given lawyers for both sides until Monday to respond to the stay.

Fraudulently adopted by DHS as a "humanitarian approach" to asylum seekers, the MPP policy states "certain foreign individuals entering or seeking admission to the US from Mexico—illegally or without proper documentation—may be returned to Mexico and wait outside of the US for the duration of their immigration proceedings."

The reality facing asylum seekers who are forced to remain in Mexican border cities is that they face violence and kidnapping while living in makeshift shelters and vast tent encampments exposed to the elements. There are also reports that Mexican drug cartels have moved in to exploit these vulnerable people, many of whom are women and children.

The Ninth Circuit's decision to stay its own ruling was made late Friday when CBP officials became alarmed as groups of migrants began gathering at international bridges expecting that they would be granted entry into the US.

In issuing its decision, the majority on the court ruled that the original nationwide injunction imposed by US District Judge Richard Seeborg in San Francisco last April, blocking the MPP from being implemented, was lawful. Seeborg's ruling was stayed by a lower court which at that time sided with Trump administration attorneys who argued that a little-known provision of a 1996 federal law allows immigration officials to return migrants to contiguous countries while their cases for US entry are being processed.

Backing Seeborg's position, the Ninth Circuit majority ruled that MPP was "invalid in its entirety" and in violation of the Immigration and Nationality Act by not providing safeguards against "refoulement" that protect refugees from threats to their life or freedom by returning them to Mexico or to their country of origin.

In a third case, the Ninth Circuit Court of Appeals also ruled 3-0 on Friday to uphold a block on the Trump administration's rule preventing migrants who cross the border between ports of entry from applying for asylum. The ruling said that the policy contradicts US immigration laws which state that "[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival ...) irrespective of such alien's status, may apply for asylum."

While the latest series of court decisions have challenged Trump's immigration policies, the administration is pressing ahead with its attacks on immigrant rights. On Friday, the Executive Office for Immigration Review, an agency within the Justice Department, announced a new fee schedule for asylum seekers that requires a $50 payment to have their case heard in court. Previously, individuals fleeing persecution could apply for asylum in the US without regard to their ability to pay.

Other proposed changes to immigration fees include a nearly ten-fold increase in the cost of challenging immigrant deportation orders in US courts to nearly $1,000, an increase of $990 for green card fees to a total of $2,750 and an increase of $445 for the naturalization of new citizens to $1,170. Clearly, everything the Trump administration is doing is aimed at reducing the number of immigrants entering into the US regardless of where they come from or how they enter the country.

The immigration policies of the White House are in violation of US and international laws and the inconsistency of the US courts—as well as the Congressional Democrats who have repeatedly voted to fund Trump's border wall—on these issues of basic democratic rights shows that no confidence can be placed in the institutions of the US government to defend migrant workers. Only the unity of American workers with their brothers and sisters in every country around the globe against the growth of nationalism and anti-immigrant laws as part of the fight for socialism can guarantee the rights of all workers.

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