

Australia's High Court backs sweeping visa ban powers

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In a ruling with far-reaching implications for free speech, Australia's highest court this week upheld federal government powers to deny visas to political figures by asserting that their proposed visit to the country could "incite discord in the Australian community or in a segment of that community."

The seven members of the High Court unanimously rejected a constitutional challenge to the Albanese Labor government's use of this "incite discord" clause in the Migration Act's "character test" to refuse a visa to far-right US commentator Candace Owens.

While directed, in the first instance, against a provocative right-wing agitator, the case sets a precedent for wider exploitation, particularly against socialist and other left-wing visitors.

Home Affairs Minister Tony Burke originally refused Owens' visa application in October 2024, declaring that her planned national speaking tour would "incite discord" and not be in the "national interest."

In his official statement, Burke said that because of her previous statements, ranging from Nazi Holocaust denial to claims that Muslims started slavery, Owens' visit could "lead to increased hostility and violent or radical action" that would "have the potential to galvanise discord."

Owen's reactionary views—antisemitic, Islamophobic, anti-vaccination and anti-gay—made her an easy target for the Labor government to establish a broader precedent for political visa bans.

Significantly, the government also responded to lobbying from Zionist groups, which demanded the ban because Owens had criticised the Israeli genocide in Gaza from an antisemitic standpoint. One such group, the Anti-Defamation Commission, hailed Burke's ban as a "victory for truth."

Lawyers for Owens challenged the ban on two grounds. The first was that Burke had interpreted the "incite discord" power in the Migration Act too broadly. The

second was that the power itself was invalid as a violation of the implied freedom of political communication under the country's 1901 Constitution.

By dismissing these arguments, the judges gave the green light to a sweeping application of the power to refuse visas and to another gutting of the supposed freedom of political communication.

Several judges went further, declaring that "aliens," that is, non-Australian citizens, had no rights under the Constitution and that citizens had no rights to directly hear their views.

In the lead joint judgment, Chief Justice Stephen Gageler and justices Michelle Gordon and Robert Beech-Jones said the word "discord" was a "broad term" capable of carrying multiple meanings. These could range from "debate" and "disagreement" to "more serious" risks such as "war" or "strife."

They backed Burke's wide interpretation that the term at least extended to a risk that the person would "stir up dissension or strife" in the Australian community, or a segment of that community, "of a kind that involves harm to that community or segment."

"Segment" could mean any group of people that claimed to be threatened by a political visit.

The judges also insisted that "incite" in this context did not require any intention or mental element. It was possible to "incite public outrage" without intending to do so. So, the risk could be, regardless of a visa applicant's intention, that other people, or a group of people, could be outraged.

Then the judges stated: "No more precise elucidation of inciting discord is necessary to decide this case." In other words, they left the door open for arbitrary visa bans.

In making this sweeping interpretation, the judges took note of the history of the "incite discord" provision. It was originally inserted into the Migration Act in 1992 by the Keating Labor government. It replaced an earlier,

narrower regulation that permitted visas to be barred if there was a risk of “activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community.”

That amendment highlighted Labor’s role over decades, in collaboration with the Liberal-National Coalition, in seeking to fuel anti-foreigner and nationalist sentiment to increase restrictions on free speech.

Gageler, Gordon and Beech-Jones reiterated earlier judgments of the High Court that the implied constitutional freedom of political communication was not a “personal right.” It was “not unlimited and is not absolute.”

The three judges admitted that there was an “obvious and not insubstantial” restriction on political communication in preventing a person’s entry to Australia “*because* of what they will or may say on political matters.”

They conceded that the ban impeded “the freedom of members of the Australian community to communicate (an element of which is the freedom to communicate in person).”

Nevertheless, they ruled that the ban was justified because it served the “legitimate end” of seeking to protect the “Australian community” from harmful “dissension or strife on political matters.”

Moreover, the ban was compatible with and “reasonably appropriate” to the “preservation of the integrity” of the political system prescribed by the Constitution, in which the parliament has a “wide power” to determine who should be allowed into the country.

On the bench of seven judges, others were more vehement. They rejected any right of an “alien” to enter Australia and insisted that no visa ban could be a violation of the freedom of political communication, even if it restricted the liberty of citizens to hear political views.

Justice James Edelman, for example, declared: “[N]o alien has a liberty to enter Australia and no member of Australian society has a liberty to hear an alien speak *in person*, or a liberty to engage with an alien *in person*, if the alien has not been permitted entry to Australia.”

Since the Gaza genocide began, the Labor government has refused visas to several Israeli personalities, in an attempt to contain public opposition to Labor’s complicity in the mass killing, while denying or cancelling visas for Palestinians trying to flee the ethnic cleansing.

That underscores the real content of the visa bans, directed against both the victims and opponents of the

worsening imperialist barbarism in the Middle East and internationally.

The High Court ruling is a further evisceration of the implied freedom of political communication, which the court has previously gutted by allowing bans on many fronts, including protests, anti-war messages and the distribution of leaflets in public places, and backing media gags on workers and prisoners on parole.

The judiciary’s record is a warning against relying on the courts, a central institution of the capitalist state apparatus, to defend democracy.

Together with the Labor government’s visa bans, the latest ruling is part of an escalating assault on basic democratic rights, under conditions of genocide, war preparations, intensifying social inequality, climate change disaster and Labor’s deepening partnership with the militarist and dictatorial Trump regime.

Most recently, the New South Wales Court of Appeal, that state’s highest court, declared that unprecedented “contempt of court” charges—potentially carrying indefinite terms of imprisonment—could be laid against anyone who defied the court’s prohibition of a planned march to the Sydney Opera House to oppose the continuing genocide in Gaza.

Under the Albanese government, the Australian Federal Police has now set up unprecedented National Security Investigations (NSI) teams to target groups and individuals allegedly causing harm to Australia’s “social fabric” and “cohesion.”

In July, on the first business day of parliament after retaining office at the May 3 election, the Labor government introduced legislation to make permanent and significantly expand ASIO’s compulsory interrogation powers, going beyond alleged terrorism dangers to cover sabotage, “promoting communal violence,” damaging military facilities and threatening “border security.”

As this extension indicates, the Labor government is trying to suppress the opposition to its role in the Gaza genocide, its commitment to AUKUS and other US war plans against China, and its detention and removal of refugees and ex-immigration detainees to Nauru.



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