



Judges Rule Against Trump Travel Ban for Third Time

Federal judges Derrick Watson and Theodore Chuang are at it again: Apparently, neither of them can stand the idea of President Trump imposing restrictions on citizens from eight mostly Muslim countries from entering the United States.

On October 17, U.S. District Judge Derrick Watson of Hawaii granted the state of Hawaii's request to temporarily block the federal government from enforcing the Trump immigration policy that was supposed to take effect at midnight the next day.

Hawaii argued that the updated ban is a continuation of Trump's "promise to exclude Muslims from the United States."

Later that day, in Maryland, U.S. District Judge Theodore Chuang ruled that the latest version of the travel ban continues to have the same problems, and violates the same constitutional principles, as previous versions of the ban. Despite changes made by the administration, Chuang ruled that it still constituted a "Muslim ban" that violates the Constitution's protections against religious discrimination.

Watson and Chuang issued rulings last March blocking sections of Trump's March 6 executive order that banned travel to the United States by foreign nationals from six countries identified as being state sponsors of terrorism. Both judges were appointed by former president Barack Obama.

On July 13, Watson imposed his own interpretation of the Supreme Court's June 26 ruling that allowed the travel ban to go into effect, exempting only one category of foreigners from the travel ban, those "with a credible claim of a bona fide relationship with a person or entity in the United States."

The White House said on October 17 that Watson's latest ruling was "dangerously flawed" and "undercuts the president's efforts to keep the American people safe."

"These restrictions are vital to ensuring that foreign nations comply with the minimum security standards required for the integrity of our immigration system and the security of our nation," White House Press Secretary Sarah Huckabee Sanders said. "We are therefore confident that the judiciary will ultimately uphold the president's lawful and necessary action and swiftly restore its vital protections for the safety of the American people."

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Trump signed the travel ban that the two judges just blocked on September 24, just hours before his previous travel ban was set to expire. His proclamation limits the immigrant and nonimmigrant entry into the United States from the eight countries. It continues the ban on immigration from five of the six countries in the previous ban: Iran, Libya, Syria, Yemen, and Somalia, and adds three new countries to the list: Chad, North Korea, and Venezuela. The proclamation also drops one country previously named — Sudan. Furthermore, it relaxes restrictions for non-immigrant visitors from Somalia, as well as





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students and other exchange visitors from Iran.

USA Today reported that Watson, who issued a nationwide block against the travel ban, said the measure was “simultaneously overbroad and underinclusive” because it targets entire countries rather than dangerous individuals. Watson ruled the new ban fails to show that nationality alone makes a person a greater security risk to the United States.

“The categorical restrictions on entire populations of men, women and children, based upon nationality, are a poor fit for the issues regarding the sharing of ‘public-safety and terrorism-related information’ that the president identifies,” Watson wrote.

Watson’s ruling affects only the six majority-Muslim countries and does not include two other countries included in the ban, North Korea and Venezuela.

The *USA Today* report noted that Chuang, in his ruling a few hours after Watson’s, alleged that the president’s own words make clear to him that the focus is not on national security but on instituting a ban against Muslims. Chuang said the administration had “not shown that national security cannot be maintained without an unprecedented eight-country travel ban.”

However, Chuang’s ruling was more limited than Watson’s. It prohibits the administration from enforcing the ban against people who cannot prove they have a “bona fide” — or good faith — relationship with U.S. persons or entities, such as businesses or universities.

The Trump administration, in defending the ban, cited a section of federal law that allows a president to bar admission to “any aliens or of any class of alien” that he declares are “detrimental to the interests of the United States.” Administration spokesmen said the latest version of the travel ban is a carefully constructed measure implemented only after a thorough review by the departments of Homeland Security, State, Defense, and Justice.

The two judges’ rulings quickly drew critical comments from the media. An October 19 opinion piece in *The Hill* likened the latest rulings to “a bad movie sequel.” The writer of the piece, Jonathan Turley, after summarizing what he regarded as a tiring round of rulings, appeals, new orders, and new rulings, said:

The new opinions in Hawaii and Maryland offer basically the same narrative while ignoring the new factual foundation. While both judges are respected jurists and reached good-faith conclusions, the opinions work too hard to ignore material changes that undermine the earlier holdings on religious and nationality discrimination....

Watson sees the executive order as still discriminating on the basis of nationality. Yet, it is impossible to specify inadequate entry procedures without designating the responsible and high risk countries. If that is discrimination based on nationality, most procedural rules addressing the failures of individual countries would seem to fail under the test, including orders from past presidents....

In Maryland, District Court Judge Theodore Chuang notably only enjoined the order as to the Muslim countries and only as to individuals without “a bona fide relationship with an individual or entity in the United States.” As such, the court actually allowed much of the order to be executed. Yet, Chuang held that travel ban 3.0 failed to “cure” the “religious animus” behind the earlier travel ban.

Chuang seems to place a heavy burden on the administration to “prove the negative,” or, in this case



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“prove you are not anti-Muslim.”

Another writer for *National Review*, David French, made his point in the headline of his article: “Once Again, Judges Defy the Law to Defy Trump.”

French wrote that the judges’ “job is to assess whether a policy is constitutional, not whether it’s prudent or wise.”

He continued by observing:

In the last week, two federal district-court judges in two different federal circuits have issued new injunctions against the Trump administration’s latest “travel ban.” Both injunctions are wrong, but one is dangerously wrong, representing not just an extraordinary act of judicial supremacy but also a cavalier disregard for the Supreme Court of the United States.

As to how the judges were disregarding the Supreme Court, French noted that in their previous rulings against Trump’s first two executive orders banning travel from the nations in question, “In essence, judges were abandoning common standing rules, rereading binding precedent, and sometimes even ignoring controlling authority to rule against Donald Trump.” Then the Supreme Court rectified this judicial disorder. French continued:

On June 26, 2017, the Supreme Court restored a degree of judicial order. It didn’t rule on the merits of the case, but its per curiam (unanimous) decision was instructive nonetheless....

Here’s the Supreme Court: The interest in preserving national security is “an urgent objective of the highest order.”

French’s well-reasoned article is too lengthy to do justice to here, but his conclusion is worth reading:

The latest executive order may or may not be the best policy choice (I’m generally more inclined to favor it than some of my colleagues), but in this instance the threat to the constitutional order comes not from Trump but from those who seek to check him. Judges should stay in their lane. It is not their job to correct policy blunders or to rescue us from policy failures. And it is certainly not their job to second-guess the commander-in-chief’s national security assessments. Trump’s third travel ban must stand.

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