



Written by [R. Cort Kirkwood](#) on October 26, 2018

Trump Order Will Invite Lawsuits, But Can They Succeed?

As expected, the leftist, anti-Trump media collapsed in a conniption when they learned the president meant [what he said](#) when he told the tsunami of migrants headed through Mexico to go home.

The president is preparing, the leftist media reported, to close the border, pursuant to his authority, as [The New American reported](#) this morning. The stories about the president's order, however, predicted the obvious: Open-borders legal activists will challenge the order in court.



The question is whether they would succeed. If what is past is prologue, no.

The Lawsuit Threats

The *Washington Post*, the *New York Times*, *Politico*, and other outlets, along with open-borders activists, breathed threats and warnings of lawsuits.

If Trump shuts down the border, as the law permits him to do unilaterally, as [The New American reported](#), "such a move would probably trigger immediate challenges in U.S. courts," the [Post reported](#).

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And for several reasons, none having to do with closing the border itself:

Migrants who cross illegally would still have to be taken into U.S. custody. The administration could attempt to deny them access to U.S. courts and expedite their deportation, but those migrants would have to be returned to Central America, unless the Mexican government agreed to take them.

Any attempt to force Mexico to take the Central Americans back would risk "potentially major conflict" with its government, said one Department of Homeland Security official familiar with some of the policy proposals that have been under discussion.

The United States has the legal authority to return them "since they let them through in the first place," the person said.

True enough but once in custody, the U.S. won't hold them. Instead, [it releases them](#), partly because the courts, the [Post reported](#), "have limited the government's ability to hold children in immigration jails, so 'banning' Central Americans who enter illegally could have little practical effect. A denial of their ability to seek asylum could also matter little. Fewer than 10 percent of Central American applicants are granted asylum by U.S. immigration judges, according to the latest statistics, but many have used the process as a way to gain entry to the United States and remain in the country while their claims slowly proceed through the legal system."

In other words, the immigrants lie about being political refugees, and are, instead, as news reports have admitted about the caravan, looking for work.



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They're also looking for free education, free healthcare, and welfare goodies, but that aside, any lawsuits will challenge what's done with the migrants, not whether the president can close the border.

The result of such lawsuits, however, might make the distinction pointless because deporting the migrants after they illegally cross a closed border is what counts. If the courts block those efforts, as they have in the past, they would unconstitutionally usurp the president's authority.

Anyhow, the [Times reported](#) that "the plan is expected to prompt a swift challenge in federal courts," while [NBC reported](#) that "two sources familiar with the plans expect a lawsuit to be filed to enjoin the executive action."

[Politico quoted](#) yet another angry open-borders activist: Said Eleanor Acer of the anti-American Human Rights First, an order closing the border would be a "'Latino ban' and would not be judged constitutional in court."

Last Lawsuit Failed

Not so. The misnamed "Muslim ban" was judged constitutional.

[The Supreme Court ruled 5-4](#) against Hawaii's effort to stop Trump's order that restricted entry into the United States of nationals of specified foreign countries.

[The court held](#) that [Title 8, Chapter 12 of the U.S. Code confers](#) the authority to refuse entry to any immigrant he wishes if he determines the person is a threat.

And this teeming throng of migrants is, indeed, a threat.

Now that Associate Justice Brett Kavanaugh, a relatively firm constitutionalist, has taken his seat on the court, the court is unlikely to find that Trump does not have the broad authority over immigration he claims.

The only question, again, will be what actions authorities take with the migrants they apprehend, and those [they are catching at an alarming rate](#).

Bad as it all sounds, at least the herd of migrants is thinning. Its number, [as TNA reported](#) this morning, has dropped from a putative 14,000 to less than 4,000.





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