



Trump Travel Ban Unconstitutional? But Obama, Bush, Carter Travel Bans Constitutional?

Other presidents have suspended immigration without having their orders derailed by the courts. Why is Trump's executive order being treated differently?



On Thursday, the 9th Circuit Court of Appeals kept to its activist ways by refusing to allow President Trump's executive order suspending the controversial U.S. refugee program to be in effect as it continues to wind its way through the courts. The three-judge panel that denied the administration's request to lift the temporary restraining order on the executive order was unanimous in its decision.

The judges — William Canby Jr., a Jimmy Carter appointee; Richard Clifton, a George W. Bush appointee; and Michelle Friedland, a Barack Obama appointee — wrote in their decision that the executive order likely violates “what due process requires, such as notice and a hearing prior to restricting an individual's ability to travel.” The decision also says the “it is the Government's burden to make ‘a strong showing that [it] is likely to’ prevail against the States' procedural due process claims” and that the court is “not persuaded that the Government has carried its burden for a staying appeal.”

In plain English, that means that the three-judge panel decided that the restraining order against Trump's executive order is unlikely to be overturned by a higher court, so it sees no reason to lift the restraining order as this case works its way through the labyrinth of legal red tape it faces.

Of course, the point that is largely overlooked in all of this is that each of these judges was appointed by presidents who also had policies “restricting an individual's ability to travel.” Let's just spend a few minutes unpacking that as we work our way backward through the timeline.

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As *The New American* [reported](#) in a previous article:

In 2015, Obama signed H.R. 158, the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015. That bill clarified “the grounds for ineligibility for travel to the United States regarding terrorism risk, to expand the criteria by which a country may be removed from the Visa Waiver Program, to require the Secretary of Homeland Security to submit a report on strengthening the Electronic System for Travel Authorization to better secure the international borders of the United States and prevent terrorists and instruments of terrorism from entering the United States, and for other purposes.”

The *Huffington Post* [reported](#) at the time of that bill's passage:



Written by [C. Mitchell Shaw](#) on February 10, 2017

In what could be a sign the administration is moving away from a policy seen as discriminatory, the Obama administration announced Thursday that it is restricting visa-free travel to the U.S. for recent visitors to three additional countries — but not for dual nationals with those passports.

Under the new restrictions, citizens of the 38 countries that are part of the reciprocal visa-waiver program will lose their visa-free travel status if they have traveled to Libya, Somalia or Yemen within the past five years. Thursday's announcement is an expansion of a law passed late last year, which revoked the visa-waiver status of people who had recently traveled to Iraq, Syria, Iran or Sudan, and who hold dual citizenship with any of those four countries.

Interestingly, not only did the liberal mainstream media celebrate those restrictions (as the example from the *Huffington Post* shows), but there were no legal challenges brought against H.R. 158, either. Also, to put in the for-what-its-worth-column, that bill — signed into law by Obama and allowed to stand without being issued a restraining order — is one part of the legal framework on which President Trump's executive order rests.

Before that, though, in 2011, Obama's State Department quietly [halted all refugees from Iraq for a period of six months](#) after it was discovered (to the surprise of no one paying attention) that terrorists who had actually fought against U.S. soldiers in Iraq had gained entry in the United States as "refugees" and were planning attacks here. It seemed that reason dictated a more stringent vetting process. Now where has this writer heard that recently?

Going a little further back, in 2002 — in the wake of [9/11](#) — both houses of Congress unanimously passed, and President Bush signed — H.R. 3525, the