



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.

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:

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,



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

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 [Enhanced Border Security and Visa Entry Reform Act](#). This legislation restricted travel to the United States "from countries that are state sponsors of international terrorism" and created a vetting process so extreme that any vetting process Trump comes up with would have difficulty appearing anything but moderate by comparison. Of course, it was reasonable then and it is reasonable now. But to those looking to attack Trump's policy on this issue so critical to national security, reason is a stranger. Evidence of that can be seen in the fact that 73 Democrats who voted to pass that law in 2002 are still sitting in office and are among those decrying the supposed evils of Trump's executive order which rests as much on the legal framework of H.R. 3525 as it does on Obama's H.R. 158.

H.R.3525 is still on the books and in effect, granting the president the authority to stop the issuance of non-immigrant visas from the very countries Trump's executive order names. And as *Conservative Review* [noted](#), Trump merely applied that law in conjunction with his authority under The Immigration and Nationality Act (§ 212(f)) which grants the president plenary power to "by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants."

The next stop on our trip in the [Wayback Machine](#) is to April 7, 1980. America was in the midst of the [Iranian hostage crisis](#). Five months into the 444-day-long ordeal, President Carter responded by issuing [a series of proclamations under his executive authority](#). Here, in his own words, is the one that is germane to this issue:

Fourth, the Secretary of Treasury [State] and the Attorney General will invalidate all visas issued to Iranian citizens for future entry into the United States, effective today. We will not reissue visas, nor will we issue new visas, except for compelling and proven humanitarian reasons or where the national interest of our own country requires. This directive will be interpreted very strictly.

Now, here — in the present — three judges (appointed by presidents who not only did essentially the same thing Trump is doing, but laid the legal foundation and set the precedent for his actions) have the nerve to pretend that while it was fine and dandy when their presidents did it, it is somehow unconstitutional when Trump does it.

And there's the rub. Constitutionality is not a matter of who (or which party) holds the office and issues the directives; it is a matter of what the Constitution allows and requires. In this case, Article IV, Sec. 4



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

of that Constitution seems apropos:

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

President Trump's executive order is [a balanced attempt to secure the borders of this nation against a terrorist invasion](#) under the guise of a refugee program. The alternative is an open-door policy that allowed Iraqi terrorists to enter this country in the wake of 9/11. President Obama blocked those "refugees" then and if his actions lacked prudence it was that they did not go far enough. The salient point, though, is that no one accused him of overstepping his Constitutional boundaries in taking the action he did. Or Bush before him. Or Carter before him. Why is this any different?



Subscribe to the New American

Get exclusive digital access to the most informative,
non-partisan truthful news source for patriotic Americans!

Discover a refreshing blend of time-honored values, principles and insightful perspectives within the pages of "The New American" magazine. Delve into a world where tradition is the foundation, and exploration knows no bounds.

From politics and finance to foreign affairs, environment, culture, and technology, we bring you an unparalleled array of topics that matter most.



Subscribe

What's Included?

- 24 Issues Per Year
- Optional Print Edition
- Digital Edition Access
- Exclusive Subscriber Content
- Audio provided for all articles
- Unlimited access to past issues
- Coming Soon! Ad FREE
- 60-Day money back guarantee!
- Cancel anytime.