

Unpacking the federal court ruling against the New and Improved Travel Ban 3.0

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On Oct. 17, 2017, a federal court in Maryland issued a ruling **blocking implementation** of much of President Trump's third travel ban order because it discriminates against Muslims, in violation of the First Amendment. It is the beginning of what likely will be prolonged litigation over Travel Ban 3.0.

The ruling followed a week of President Trump's obsessive tweeting about kneeling football players, while apparently remaining oblivious to millions of Americans' lives that have been devastated in Puerto Rico by Hurricane Maria.

Completely failing in response to North Korea's nuclear and missile programs, **"Dotard"** Trump apparently is not even able to win the name-calling game with the little "Rocket Man," Kim Jong-un.

Nevertheless, he is keeping from American shores the hordes of North Koreans who would otherwise be invading by means of unvetted immigrant and non-immigrant visas.

(About 100 North Korean citizens entered the U.S. in 2016, most of them officials on diplomatic visas who would not be covered by the 3.0 ban in the first place. From March to June 2017, the U.S. has issued a total of 18(!) visas to North Korean businessmen and diplomats.)

However, with Travel Ban 3.0, the President ostensibly had been "working hard" in an attempt to keep us safe from the **"Chadian menace,"** as **Benjamin Wittes** of the Brookings Institution has so eloquently put it.

The ban proposed to block most citizens of Iran, Libya, Syria, Yemen, Somalia, Chad and North Korea, as well as selected groups of people from Venezuela from entering the United States.

Sudan was excluded from the new list, falling off the travel ban list issued in January 2017. The new travel ban was, in the President's words, "tougher and better!"

North Korea and Sudan unravel some of the political intentions behind the 3.0 ban. It is nearly impossible for an ordinary North Korean to receive a passport and leave the country.

Adding North Korea to the countries on the list had thus much less to do with actually banning North Koreans entering the United States in the first place, but might have had more to do with two unrelated elements:

First, it stands for the administration's thinly-veiled attempt to eradicate the claim that Travel Ban 3.0 was in fact a Muslim ban, by adding to the list two non-Muslim countries whose residents are not capable of traveling to the United States.

And second, it was a direct result of Trump's poor handling of the current tensions with Pyongyang.

According **Maya Oppenheim** of *The Independent*, Sudan getting dropped from the travel ban came after **intense lobbying** in DC by the United Arab Emirates (UAE) for Sudan in exchange for mercenary support in Yemen.

Sudan has supplied thousands of troops to support the Saudi-led (American-supported) coalition, which includes the UAE and other Middle Eastern countries, to help fight Houthi rebels in Yemen's civil war. Curiously, however, Sudan continues to be classified by the US government as a state that sponsors terrorism.

Other than Sudan, the countries affected by Trump's orders were not the countries of great concern from a counterterrorism perspective. The new ban would not have kept out the 9/11 hijackers or any terrorists since then, nor would it have prevented any terrorism deaths in decades.

In fact, as **David Bier** of the Cato Institute explains, **only 34 people** who have legally immigrated to the United States since 9/11 have been either convicted of terrorism offenses or killed during an attempted attack.

Of those, a large share arrived as children who were radicalized long after their entry. Only nine attempted to carry out an attack in the United States. That's one potential terrorist per 41 million visa approvals or entries without visas since 2001.

There is only one convicted post-9/11 terrorist who radicalized prior to entering the United States and who actually killed people: Tashfeen Malik, the Pakistani woman who participated in the San Bernardino terrorist attack in 2015. But Pakistan was not on Trump's travel ban list!

The purported threats lacked merit but the vetting rationale did, too. In contrast to the administration's previous bans, Travel Ban 3.0 was what the administration has called "condition-based," and would have been in place permanently until each country adheres to the new minimum security standards developed by the Department of Homeland Security.

While the restrictions vary by country, the standards focused on identifying and screening potential travelers and sharing investigative information with law enforcement agencies in the United States.

Under immigration law, however, the U.S. government doesn't need to seek out and obtain any information on visa applicants merely to process an application. Instead, the applicants bear the burden of proof in the vetting process. If they cannot prove their identity and eligibility, visa adjudicators can simply deny them on an individual basis.

The ban was the third attempt by the administration to initiate a more permanent restriction. It appears that Travel Ban 3.0 was just another effort to deliver on Trump's campaign promise of "a total and complete shutdown of Muslims entering the United States," which was the third leg

of Trump's xenophobic white supremacist agenda, after the wall and the deportation of 13 million undocumented people residing in the United States.

The new travel ban, while a huge nuisance for non-resident aliens and other travelers to and from these countries, mostly symbolizes the demagoguery that lies behind the rhetoric of "Making America great again!"