

The Washington Post

The Trump administration promises to fight for the travel ban. Why bother?

October 19, 2017

Once again, the courts have blocked President Trump's travel ban from going into effect. It is hard not to feel a sense of déjà vu as the government promises for the third time to appeal the rulings halting the latest iteration of the president's order, watered down from his original "Muslim ban" but still equally pointless.

Mr. Trump's third travel ban was set to go into effect on Wednesday, indefinitely limiting entry into the United States from Iran, Libya, Syria, Yemen, Somalia, Chad and North Korea, and denying entry to certain government officials from Venezuela. On Tuesday afternoon, a federal judge based in Hawaii stopped the ban from taking effect, with the exception of the provisions targeting Venezuela and North Korea. A federal judge in Maryland followed suit on Wednesday, blocking enforcement of the ban as applied to travelers with "bona fide" ties to the United States.

The Hawaii court found that the revised order likely exceeded the president's power to enforce immigration policy, while the Maryland court ruled that the order violated constitutional protections against religious discrimination. There's a convincing case that the president's decision to permanently limit travel usurps congressional regulations on immigration. But the Maryland judge's ruling takes an aggressive stance in denying the government the deference typically granted by courts in national security cases. Despite the administration's promises that the Department of Homeland Security crafted the third ban using objective criteria, Mr. Trump's campaign-trail promises to implement a Muslim ban continue to haunt him in court.

The Justice Department has promised to fight both decisions. It could make its case before either the circuit courts or the Supreme Court — which just dismissed a suit against the second version of the travel ban last week, and will likely do so with another challenge at the end of October when the existing ban on refugee admissions expires.

But why appeal? Just what is it that the government is battling so fiercely to defend? As both judges noted, the administration has failed to provide any evidence that nationality has anything to do with the security threat an individual poses. Analysis by David Bier of the Cato Institute shows that the list of countries included in the ban has little to do with the criteria ostensibly used by DHS to determine where increased vetting is needed. And the ban may actually have harmed security efforts by raising tensions between the United States and Chad, which withdrew hundreds of troops from the coalition battling terrorism in West Africa after reportedly being added to the ban over a lack of passport paper. The State Department is now working to patch the relationship.

The policy alienates many while achieving nothing. It is close enough to the promised Muslim ban that the courts remain hostile to it, but diluted enough that the president no longer trumpets it

as an achievement. The government might eventually eke out a victory before the Supreme Court. But at this point, what is there to salvage except for Mr. Trump's pride? The wisest move for the administration would be to let the ban fade away.