



The Ongoing Gratuitous Cruelty of Trump's Travel Ban

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Donald Trump's "travel ban" policy barring nearly all entry into the United States by citizens of several Muslim-majority nations has mostly been out of the headlines since the Supreme Court's dubious June 2018 decision upholding it. But it continues to inflict gratuitous suffering. As David Bier of the Cato Institute explains in a compelling *Washington Post* op ed, it has separated thousands of children from their families, including many who are American citizens:

While family separation at the border received significant media attention last year, a quieter family separation policy continued under the radar, and the separations have targeted *American* families. New research shows that President Trump's travel ban — first ordered two years ago last week — has already separated thousands of U.S. citizens from their spouses and minor children...

[T]he travel ban — which currently restricts entry of nationals of five majority-Muslim countries — is breaking apart nuclear families every day. New research from the Cato Institute suggests that as of this January, the policy has prevented more than 9,000 family members of U.S. citizens from entering the United States since the Supreme Court allowed the policy to take full effect in December 2017. That number includes more than 5,500 children and just short of 4,000 spouses.

If we continue this trend, the separations will hit an estimated 15,000 spouses and minor children of U.S. citizens by the end of 2019. The policy will also keep out an additional nearly 2,000 spouses and minor children of legal permanent residents by year's end...

This is despite the fact that no terrorists from the targeted countries have killed anyone in a terrorist attack in the United States in more than four decades, and no legal permanent resident from those countries has ever even tried to carry out a U.S. terrorist attack...

Case-by-case waivers for "close family members" of U.S. citizens or lawful permanent residents are available, but the president's travel ban proclamation specifically states that just being separated from your family is not sufficient for a waiver. Rather, family members must show that *they* — not their U.S. citizen family — would suffer "undue hardship" if denied.

The State Department defined this term to mean an "unusual situation" in which a delayed approval would "defeat the purpose of travel." In other words, keeping the nuclear family together is, for the Trump administration, not enough. They need to show that there'd be no point to coming at all if they didn't come *immediately*. That standard keeps these families apart.

Most of these families are waiting in silent desperation, afraid to speak up publicly against the policy lest they harm their chances at these illusive waivers.

As Bier points out, there is no plausible security rationale for these restrictions. Indeed, the same is true of the travel ban policy as a whole. The supposedly "extensive" study that purports to justify the order probably does not actually even exist. In the forty year period for which we have data, no one has ever been killed in a terrorist attack on US soil by an entrant from any of the nations covered by travel ban. Had the current version of the travel ban been in place since 9/11, it would not have prevented the entry of a single terrorist (even one who did not commit any attacks on US soil). The security risks posed by immigrants from nations covered by the travel ban are actually lower than those posed by native-born Americans. There is simply no reason to force thousands of families - including many with American-born children - to choose between separating children from their parents and living in countries where they face a future of poverty and oppression.

Even in situations where time really is of the essence and family-based waivers are thus theoretically available under the administration's policy, those waivers are often difficult or impossible to obtain. For example, it took a year-long legal battle and extensive negative publicity for the State Department to finally agree to grant a waiver to Yemeni citizen Shaima Saileh, a mother who sought simply to see her terminally ill 2 year-old American-citizen son, who was on life support in a hospital in Oakland.

The pointless cruelty of the administration's policy underscores the reality that the travel ban was never about genuine security risks, but rather an effort to make good on Donald Trump's notorious campaign promise to impose a "Muslim ban." Indeed, Trump himself repeatedly equated the two. In almost any other context besides immigration, the Supreme Court would have struck down a policy so transparently motivated by religious bigotry, and so lacking in any legitimate justification. For reasons I summarized here, and more fully in an amicus brief I coauthored on behalf of several fellow constitutional law scholars, it should not matter that the policy does not cover all of the Muslims in the world, and it is a mistake to suspend normal constitutional constraints on government power when it comes to immigration policy.

The way the travel ban policy has been implemented both before and after the Court's decision further underscores the magnitude of the Justices' mistake. I hope a future Supreme Court decision will eventually overrule or at least severely limit *Trump v. Hawaii*, so that similar abuses cannot be repeated in the future.

In the meantime, David Bier is right to suggest that Congress should take a hard look at what is going on, and pass legislation overriding at least the worst abuses of the travel ban policy. The Democrats, for their part, would do well to make rescission of the travel ban a precondition for any concessions to Trump on his border wall and other immigration-related matters.

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