



Despite Legal Blows, Trump's Muslim Ban Is Alive And Well

Shayan Modarres

July 11, 2017

There is an old legal adage that says, "If the law is on your side, argue the law. If the facts are on your side, argue the facts. If neither is on your side, pound the table and create a diversion." When it comes to Donald Trump's Muslim ban, neither the law nor facts were ever on his side. But the ongoing litigation and recent Supreme Court decision are being used as a smoke and mirrors diversion for the actual Muslim ban that is currently being implemented behind the curtain. Civil rights groups are now following the administration's paper trail, which may trigger a new round of litigation to defeat Trump's Muslim ban.

You don't have to be a lawyer to understand that a "total and complete shutdown of Muslims entering the United States," which is exactly what Trump called for, is likely unconstitutional. After several months of litigation, the first and second attempts at a Muslim ban were stricken down by a number of U.S. District Court judges, and those decisions have been upheld by an en banc panel of judges in the Fourth Circuit Court of Appeals, as well as a three-judge panel on the Ninth Circuit Court of Appeals. And just this week, the Supreme Court decided that it will hear the Muslim ban case and disappointingly allowed key provisions of the ban to be implemented, placing the status of many Americans' families into question once again.

In a desperate search for a cheap political win, President Trump has tried to nonsensically tether his Muslim ban to national security. But the national security justifications for a Muslim ban have proven to be farcical and devoid of any basis in reality. The CATO Institute has found that not one person – including refugees – from the seven Muslim-majority countries listed in President Trump's initial Muslim ban has killed anyone in a terror attack on U.S. soil in about a half century.

During the same time, only 17 people have been convicted of participating in or attempting a terror attack. This means that an American living in the United States today has about a one in 3.6 million, or .00003 percent chance of being killed by a terror attack carried out by a foreigner.

President Trump's targeting of Muslims in this disgraceful episode in American history has – in a very literal sense – made America less safe. The Southern Poverty Law Center's annual census of hate groups in the United States found that the number of anti-Muslim hate groups tripled from 34 in 2015, to 101 last year. In 2015, Donald Trump declared his candidacy for president. FBI data for 2015 reports 257 incidents of hate crimes against Muslims, a 67 percent rise from the prior year. The right-wing extremism and demagoguery peddled by Trump has made over three million American Muslims less safe in the United States.

With neither the facts nor the law on his side, Trump is using Twitter to “pound on the table,” control the news cycle, and divert attention from the Muslim ban that has already begun. In effect, victories in court have given the American people the impression that the Muslim ban has been defeated, but in reality, visa officials have been carrying it out – administratively – for over a month.

Secretary of State Rex Tillerson sent a series of four internal cables in March to visa-issuing posts overseas. Among the directives, visa officers would subject nationals of the six Muslim-majority countries to mandatory Security Advisory Opinions (SAO), which is comparable to the inter-agency background checks that U.S. government employee undergo prior to obtaining a security clearance. In addition, visa applicants may be asked “extreme vetting” supplemental questions about their travel history – both domestic and international – for the past 15 years as well as being required to document the funding for said travel, employment and residential history, and social media identifiers and handles.

The goal? Imposing a special additional layer of scrutiny just for Muslim visa-applicants, making it extremely difficult – if not impossible – for them to get a visa.

And it appears to be working. According to Politico, visas issued to Iranians plummeted by 52 percent in April compared to the average monthly rate last year. The number of visas issued to nationals of all Muslim-majority countries dropped by about 20 percent across in the board.

Legal challenges were initially successful in blocking Part One of the Muslim ban – the executive orders – prior to the Supreme Court allowing key provisions of the ban to be implemented. Part Two – the “extreme vetting” pathway – further widens the floodgates, giving the Trump administration two viable paths to fulfilling his campaign promise of banning Muslims.

While many are fixated on the fallout from the Supreme Court’s decision to allow parts of the executive order to move forward, some groups have already begun exploring a second wave of legal challenges to the “extreme vetting” Muslim ban. The National Iranian American Council last week sent a Freedom of Information Act (FOIA) request to the U.S. Department of State seeking documents about how “extreme vetting” is being interpreted, implemented, and enforced.

The solution to blocking the backdoor Muslim ban is simple: Members of Congress could pass legislation to block both layers of the Muslim ban and forego the need for further judicial intervention and administrative uncertainty. If Congress’ failure to do its job continues, groups challenging the ban will investigate the administration’s paper trail and take the appropriate action to obstruct any Muslim ban from becoming the official policy of the United States of America.

If documents show that visa applicants from Muslim-majority countries are disproportionately being subjected to mandatory SAO processes, “extreme vetting” supplemental questions, and being denied visas based on an unconstitutional basis, a second wave of complaints will soon be filed in courts across the country seeking to permanently put an end to the Muslim ban in its entirety – in addition to the inevitable new legal challenges stemming from the Supreme Court’s newly established “bona fide relationship” standard.

As long as Congress forfeits its responsibility to preserve and protect the most fundamental American ideals, the American people will continue to serve as a barrier to demagoguery. But it would sure be nice to have a little help from our missing elected officials.