The Extraordinary Judicial Rebukes of Trump's Travel Ban

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The extraordinary judicial rebukes of Trump’s travel ban

President Trump’s two executive orders suspending travel to the United States by refugees and foreign nationals from several Muslim-majority countries have been put on hold by a number of lower court federal judges.

Whatever might be said about the merits of these rulings, and regardless of whether they will be upheld in future appeals, they are extraordinary judicial rebukes of a sitting president.

The president’s first executive order, issued on Jan. 27, banned all refugees from entering the country for 120 days, barred Syrian refugees indefinitely and imposed a three-month moratorium on travel to the United States by the nationals of Iran, Iraq, Syria, Sudan, Libya, Yemen and Somalia.

The order also contained a provision privileging the claims of refugees who are religious minorities in their countries of origin — a provision that the president described in an interview as designed to benefit Christians.

A federal judge in Washington concluded that the order was likely unconstitutional and issued a national injunction that temporarily stopped it from going into effect.

A three-judge panel of the United States Court of Appeals for the Ninth Circuit upheld this ruling. And a federal district court judge in Virginia...
'We find ourselves in uncharted waters' on judges' travel ban rulings

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also found that the order was likely unconstitutional and issued injunctive relief.
Instead of appealing (or further appealing) these rulings, the president issued a second executive order to supersede the first.
The second order, issued on March 6, omitted Iraq from the list of countries from which travel would be temporarily banned.

These findings are remarkable.

Measures that do not contain explicitly discriminatory language — and the second executive order does not — enjoy a strong presumption of constitutionality.

To demonstrate the discriminatory nature of such a measure, the challengers must show that it was issued because of, and not merely in spite of, itsorden-some effect on Muslims.

In ordinary circumstances, this would be a nearly impossible showing to make. As an initial matter, consider the inherent nature of a court ruling that accepts such an argument. The court is implicitly saying to a coequal branch of the federal government: You — the politically accountable branches — are not accountable to the Constitution in good faith.

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