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RWU First Amendment Blog: Jared A. Goldstein's Blog: Trump's Order Violates Bedrock Principles of Roger Williams and RI 01-30-2017

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January 30, 2017

Trump's order violates bedrock principles of Roger Williams and RI

January 30th, 2017 by efitzpatrick



Jared A. Goldstein, RWU professor of law who teaches constitutional law, former U.S. Department of Justice attorney:

President Donald Trump issued an executive order on Friday, Jan. 27, that violates the bedrock principles upon which Roger Williams founded Rhode Island. I've always been proud to work at a university named for Roger Williams, whose commitment to religious liberty for all peoples formed the basis for our nation's commitment to separation of church and state and its dedication to the principle that the government should never favor or disfavor any religion. The president's order, however, prohibits the issuance of visas to anyone from one of seven specified predominately Muslim countries. The order also blocks entry by refugees from any of the seven countries. The order attempts to put into effect Trump's campaign promise to ban immigration by Muslims and to close the door to Muslim refugees.

The executive order should be ruled unconstitutional because it violates the nation's basic principles of equality and religious freedom. The policy singles out people because of their religion and denies them access to visas and refugee status because of their religion. The president has tried to justify the policy by arguing that Muslims pose

unjustified dangers to American citizens. In fact, the acts of terrorism that Trump points to — the 9/11 attacks, the San Bernardino shooting and the Orlando nightclub massacre — involved no one who immigrated from any of the countries covered by the ban. In any event, the 1.6 billion Muslims around the world should not be subjected to discrimination because of the acts of a tiny number of radicals. The United States has had the misfortune to endure many acts of terrorism by non-Muslims too: the bombing of the Murrah Building in Oklahoma City by Timothy McVeigh, the Sandy Hook Elementary School shooting and the Charleston church shooting. No one has a monopoly on terrorism.

The president's supporters have tried to defend the policy by pointing to two judicial precedents, but neither provides support for it. Like the Muslim ban, both precedents come from eras in our nation's history when prejudice and fear overcame the nation's commitment to equal treatment. First, in 1889 the U.S. Supreme Court upheld the Chinese Exclusion Act, which barred immigration by Chinese immigrants. The Chinese Exclusion policy was based on the racial stereotype that Chinese laborers brought crime, stole good Americans' jobs and could never assimilate into American society. Congress has since formally apologized for the policy. Even if the Supreme Court case upholding the policy is still valid for the proposition that the government can treat immigrants differently based on nationality, that principle has little application to President Trump's policy because it targets people based on religion, not nationality. President Trump now defends the policy by trying to say that it is targeting people based on nationality and not religion, but having campaigned for a Muslim ban he needs to own up to the fact that this is exactly what the order attempts to implement. He can't pretend otherwise because the order explicitly exempts refugees who are not Muslim, making it perfectly clear that the policy discriminates based on religion.

The second judicial precedent supporters of the Muslim ban point to is the World War II case of *Korematsu v. United States*, in which the Supreme Court upheld the policy by which the government ordered over 100,000 persons of Japanese ancestry, most of them American citizens, to be held in internment camps. The internment policy was created out of a very similar fear as Trump's Muslim ban, the fear that a particular population — Japanese-Americans then, Muslims now -- included a small but unknowable number of people who threatened national security, and the only certain protection was to round them all up. Congress later apologized for the Japanese internment policy too and paid reparations to the victims' families. *Korematsu*, the case that upheld the internment policy, is universally reviled and generally considered second only to *Dred Scott* in the hall of shame of the court's most grievous mistakes. The rationale for *Korematsu* -- that the government can discriminate against an entire people out of fear that a few of them may threaten national security -- has no place in a country dedicated to equality of treatment.

We should learn from the mistakes the nation made in the Chinese Exclusion Act and the Japanese Internment policy. We should learn the lessons taught by Roger Williams. Religious freedom and equality -- not fear and bigotry - are what makes America great.