

Lawyers alone can't save us from Trump. The Supreme Court just proved it.

The travel ban order shows we need political organizing and popular mobilization to bring change.



By [Diala Shamas](#) June 27 at 7:15 AM [Follow @dialash](#)

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In the days after President Trump issued his travel ban in late January, lawyers became a bit like superheroes. I was among many attorneys working at San Francisco International Airport in the wake of the executive order that was widely known as the “Muslim ban,” and I recall the moment the crowd began cheering the attorneys on call, hailing us as saviors. While the good will was generous, it also seemed to foreshadow a dangerous tendency to rely on the courts and lawyers to act as a balance to our new administration's executive power.

The Supreme Court's decision granting a stay and *certiorari* on Monday has confirmed exactly that fear. The court reinstated significant portions of the ban after several appeals courts had blocked it. Significantly, it was also a *per curiam* decision, issued on behalf of the full court — meaning that the justices usually considered bastions of the left partook in its holding and its underlying logic.

The logic of this decision turns fundamental premises of refugee law, immigration law and the international system on their heads and enables the administration's continued path toward isolationism. Ultimately, the order confirms that the fate of the nation cannot be left in the hands of the courts, and we cannot rely solely on lawyers to resist the worst impulses of the Trump administration. While lawyers are important allies, the dangers of entrusting us with the pushback against executive overreach — as the liberal camp began to do almost instantly after Trump issued the original executive order — are now evident.

The Supreme Court reinstated significant portions of the ban but excluded its application to “foreign nationals who have a

Specific examples, the court notes that those with families, education or employment opportunities in the United States may be able to show a “bona fide” relationship and circumvent the ban. Those without such ties are subject to it.

The courts will certainly be the first place where arguments to define the contours of a “bona fide” relationship play out. For instance, many refugees arguably have requisite “ties” under this definition, through their relationships with U.S.-based refugee institutions.

But under any definition, the language reveals a move toward U.S. isolationism and unilateralism, and away from a fundamental principle of the international legal system. The premise of refugee law and asylum law is that we should be taking in precisely those people who may lack the “bona fides” laid out by the court. Those who are least connected, and therefore arguably most vulnerable: A pillar of international cooperation is the idea that people fleeing violence and persecution, and whose states have failed to protect them, can seek refuge in other states and will have their cases examined based on the danger they face and independent of any prior relationships. We expect the same in return.

As someone who has worked with refugees stranded overseas in abhorrent conditions, I find such language alarming. The fashioning of a novel distinction between “bona fide ties” and “non-bona fide ties” from the nation’s highest court reflects a disregard of the fundamentals of the refugee protection system, and at best a misunderstanding of the dreams and aspirations of those seeking relief through our immigration system. The young refugees I meet with stranded in refugee camps are not merely seeking to move to a place where they have a job or a relative. They are seeking safety, wherever they might find it. That is the sentiment that was at the heart of the “Let Them In” chants at airport terminals across the country earlier this year.

Monday’s setback in the court shows that lawyers cannot do this alone. U.S. history and other present-day struggles support skepticism of the vindication of rights solely through the judicial system. Even landmark civil rights cases — whether *Roe v. Wade* or *Brown v. Board of Education* — were preceded by significant organizing and mobilization. Victories in the Supreme Court (and in lower courts) reflected their times, cementing hard-earned popular progress only after the political ground had already begun to shift.

Liberal commentators are already finding comfort in the promise of further review by the Supreme Court, or the potential that the case might be mooted out. Such optimism, even if technically warranted, misses the broader point. We must renew popular and political interest in pushing back against the executive order — and the many iterations that could follow, including other forms of discriminatory immigration profiling — in more sustained, nonlegal ways. The glorification of lawyers and the courts that took place in the immediate aftermath of the ban was misguided. This mistaken response was prominent among protesters, academics, journalists and perhaps most predictably, lawyers. And as the struggle moved from the streets and airport terminals to the courts, politicians stopped paying attention. In enabling them to look away, we have done a disservice to those we seek to help, and more importantly to a nation whose path we seek to correct.

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