**Is the executive order legal?**

With that as background, let’s consider the claimed conflict between the president’s executive order and Congress’s statute. Mr. Bier asserts that Trump may not suspend the issuance of visas to nationals of specific countries because the 1965 immigration act “banned all discrimination against immigrants on the basis of national origin.” And, indeed, a section of that act, now codified in Section 1152(a) of Title 8, U.S. Code, states that (with exceptions not here relevant) “no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person’s race, sex, nationality, place of birth, or place of residence” (emphasis added). Even on its face, this provision is not as clearly in conflict with Trump’s executive order as Bier suggests. As he correctly points out, the purpose of the anti-discrimination provision (signed by President Lyndon Johnson in 1965) was to end the racially and ethnically discriminatory “national origins” immigration practice that was skewed in favor of Western Europe. Trump’s executive order, to the contrary, is in no way an effort to affect the racial or ethnic composition of the nation or its incoming immigrants. The directive is an effort to protect national security from a terrorist threat, which, as we shall see, Congress itself has found to have roots in specified Muslim-majority countries. Because of the national-security distinction between Trump’s 2017 order and Congress’s 1965 objective, it is not necessary to construe them as contradictory, and principles of constitutional interpretation counsel against doing so. Nevertheless, let’s concede for argument’s sake that there is conflict. At issue is a matter related to the conduct of foreign affairs – a matter of the highest order of importance since it involves foreign threats to national security. If there were a conflict here, the president’s clear constitutional authority to protect the United States would take precedence over Congress’s dubious authority to limit the president’s denial of entry to foreign nationals. But there is no conflict.

Andrew McCarthy – National Review

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