

U.S. District Court's Order in the Venezuelan Deportees Case Was Not Extraterritorial

The following post was kindly provided by Hannah Buxbaum, Vice President for International Affairs, Professor of Law and John E. Schiller Chair, Indiana University, and is cross-posted on tlblog.org

As was widely reported yesterday, the Trump administration permitted two planes carrying Venezuelan deportees to continue on their way to El Salvador after receiving a judicial order to turn the flights back to the United States. A story in Axios quotes an administration official who explains that they were not in fact “actively defying” the judge—the order just came too late, since the planes were already out of U.S. airspace. This seems to be an extraterritoriality argument, suggesting that the judge lacks authority to order an action to take place outside U.S. borders.

The administration has this completely wrong. The judge is ordering the administration to take action *inside* the United States—that is, to instruct the planes to turn around. That instruction will in turn cause something to happen elsewhere (the pilots will change course), but that doesn’t make the order impermissibly extraterritorial. This is exactly the same the basis on which courts in garden-variety civil disputes order parties subject to their jurisdiction to procure evidence or turn over assets that are located abroad. Moreover, since the planes were reportedly over international waters at the time the order was entered, compliance would not have required any actions by a foreign actor or within the territory of another state—in other words, it wouldn’t have created a conflict of laws.

Now that the deportees are already in El Salvador, that picture is more complicated, since local authorities there might refuse to take action. Even the existence of such a conflict, though, doesn’t mean that Judge Boasberg’s order exceeds his authority. It remains to be seen whether any of the other justifications the White House offered up for ignoring that order are any more compelling, but the argument that it didn’t apply once the planes had left the United States is

certainly not.

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