



IS BEING ANTI-TRUMP A NEW GROUND OF INADMISSIBILITY?

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Over the weekend, a Canadian student of McGill University, Joseph Decunah, who was seeking to be admitted to protest at the Women's March the day after President Trump's inauguration was [refused admission](#). He was in the company of two US citizens who were allowed to cross. Decunah was point blank asked "Are you anti or pro-Trump?"

After Decunah indicated he was anti-Trump as he had nothing to hide, the CBP officer engaged in further questioning about why he opposed Trump, and the Canadian entrant spoke about the Affordable Care Act and some of the outrageous statements that Trump has made towards minorities. Then from there, the questioning moved on, according to Decunah, to determine if he and the two others in his group were extremists or not. He was asked about where he had been, and if he has ever been to the Middle East. The CBP officer then asked him about his political engagements, to which Dacunah responded that he had been a member of the NDP ([New Democratic Party](#)) in the past.

The CBP officer then alleged that Decunah would engage in "silent disruption" as a protestor in the march. He said, according to Decunah, "Would you agree that by standing in these crowds, that even though you may be a pacifist, that you would be disrupting events?" Decunah's partner Ruth mentioned that the Women's March had permits from the Metropolitan Police Department and the National Park Service. "It's not like we're participating in anything illegal. I dropped the term "silent disruption" a few more times and then tried to explain that there were a series of bins Canadians have to fall into when they're entering the United States," according to Decunah." One of those things can be tourism, one of those things can be for work or whatever it may be in that attending a march of any sort wouldn't fall into one of those bins."

We hope that this was an isolated incident, and not part of a growing disturbing trend under a Trump presidency. However, there have been [other similar reported incidents](#) of Canadians being blocked entry into the United States on the day of the protest. While there is no specific mention in the Foreign Affairs Manual about whether coming to the United States to be part of a peaceful protest is a legitimate activity as a visitor for pleasure, it clearly ought to be. Under 22 CFR 41.31(b)(2) pleasure is defined as “Legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives, rest, medical treatment and activities of a fraternal, social or service nature.” Clearly, being part of a peaceful protest with like-minded people could constitute activities of a “fraternal” or “social” nature. 9 FAMe 402.2-4(A)(3) also contemplates as visitors for pleasure “participants in conventions of social organizations.”

Of course, the CBP officer can rely on other grounds of inadmissibility under the INA. One potential ground is under INA 212(a)(3)(A)(i), which allows a consular or border officer to find inadmissible one, if there are reasonable grounds to believe that he or she seeks to enter the United States to engage principally or incidentally in “any other unlawful activity.” It is purely speculative and a stretch for a CBP officer to assume that an anti- Trump protestor, as opposed to a pro-Trump supporter, may more likely engage in a form of civil disobedience, resulting in unlawful activities such as blocking traffic. It is even more absurd to refuse entry to one who will engage in “silent disruption.” The First Amendment of the US Constitution ought to preclude the assumption that exercise of the right to peaceably assemble is likely to involve the violation of law.

Trump, who is likely to continue being a controversial President, will generate more protests in the future. It would undermine America’s image as a free country if visitors from abroad are barred if they are specifically coming to participate in a peaceful anti-Trump protest. Immigration policy does not operate in a vacuum. There have already been troubling signs of Trump repeatedly attacking the press as being dishonest, thus undermining the First Amendment. Consuls and border officers should not feel emboldened as a result by allowing their personal prejudices to cloud their objectivity in determining who is a bona fide visitor. Otherwise, and most unfortunately, being anti-Trump might de facto become a new ground of inadmissibility. This is because there are [very limited grounds to challenge](#) the decision of a border

officer. Similarly, under the recent Supreme Court decision in [Kerry v. Din](#), a consular officer's decision is virtually unreviewable if the applicant was simply informed about the section number in the INA as the basis for the denial. These officers are bestowed with great power and must use their power wisely. While they are obligated to ensure that those who potentially threaten to harm the United States do not come in, they should allow peaceful protestors who wish to exercise and celebrate the rights that are enshrined in the First Amendment.