

Human rights lawyers sue Trump administration for 'silencing' them

In June Donald Trump signed an order threatening 'serious consequences' for anyone giving support to the ICC

Julian Borger

Prominent US human rights lawyers are suing the Trump administration over an executive order they say has gagged them and halted their work pursuing justice on behalf of war crimes victims around the world.

As a result of the order in June threatening “serious consequences” for anyone giving support to the work of the international criminal court (ICC) in The Hague, the lawyers say they have had to cancel speeches and presentations, end research, abandon writing ICC-related articles and dispensing advice and assistance to victims of atrocities.

The effect, according to the plaintiffs, has been an unprecedented infringement of their constitutional right to free speech and a chill that has pervaded the world of international humanitarian law.

“This is just a wallop, a gut punch, silencing the activities that really have been my life’s work,” said Diane Marie Amann, professor of international law at the University of Georgia and one of the plaintiffs.

She argued Donald Trump’s order was a betrayal of an American tradition of global leadership on human rights, including the creation of the Nuremberg Tribunal and a leading role in the establishment of the ICC.

“It is so sad to think that the country in which I was born, in a city called Libertyville, Illinois, is prohibiting me from doing that work,” Amann said.

The executive order was followed in September by the imposition of sanctions – originally designed to be used for drug traffickers and terrorists – against the ICC chief prosecutor, Fatou Bensouda, and another senior ICC official.

Amann has served as an unpaid special adviser to Bensouda on children in conflict since 2012.

“I work on behalf of children who are affected by armed conflict, who are killed, tortured, sexually abused, forced to become child soldiers, and trafficked,” Amann said, adding that

she has had to curtail her work as a result of the US targeting of Bensouda, or face the risk of personal sanctions possibly including the seizure of her family's assets.

“Since the designation of Prosecutor Bensouda, I have refrained from giving her any advice,” Amann said. “I have withdrawn from public presentations to which I had already committed, out of fear that public discussion of the work of the ICC might be construed to violate the sanctions regime. I have refrained from engaging student research assistants to assist me in work in the subject area, out of fear of exposing them in some way.”

The lawsuit was filed on Wednesday morning in a federal court in New York by Amann, three other US-based law professors, all acting in their private capacities, and the Open Society Justice Initiative (OSJI). It is directed against Trump, secretary of state Mike Pompeo, treasury secretary Steven Mnuchin, attorney general William Barr, the director of the office of foreign assets control, Andrea Gacki, and their respective departments.

It calls for the enforcement of the executive order to be halted while the court considers its constitutionality.

The administration has presented the sanctions against the ICC as a response to the court's decision to investigate suspected war crimes by all parties in Afghanistan, including US forces. Pompeo also assailed the ICC for investigating Israel for its actions in the Palestinian territories.

“This is a targeted sanctions authority directed at persons determined to have engaged in specific activity that threatens the foreign policy and national security of the United States or to have materially supported such persons,” a state department spokesperson said.

The sanctions, the spokesperson added, “apply to individuals who have directly engaged in ICC efforts to investigate US personnel without the consent of the United States, or have materially supported individuals who are designated for such actions”.

The lawsuit argues that the executive order is so vaguely worded that it threatens a far broader range of cooperation with the ICC by lawyers, human rights groups and the others. The OSJI argued that it could affect a casual giver of advice or even the airline transporting sanctioned ICC officials, or the hotels where they stay.

“We spend lots of time in many places around the world meeting with victims to help them understand how the court works ... how they can provide evidence to the court,” James Goldston, OSJI's executive director, said.

“And all of that is essentially put on hold now because it may well be prohibited by this order. That's the fear, and it's such a broad order, that it's hard to tell.”

The four law professors suing the administration are all dual nationals, which they say makes them more vulnerable to the executive order, but say it could be used against any Americans.

Andrew Loewenstein, one of the lawyers representing the plaintiffs, described the Trump executive order as “entirely exceptional”.

“Historically, the powers vested in the president to issue economic sanctions of this type have been used in relation to terrorist groups or drug kingpins or in relation to serious violations of human rights.” Loewenstein, an attorney at the firm Foley Hoag, said.

“It’s never been used in a circumstance like this, where the ultimate target of the sanctions are the prosecutor and others of senior officials of the international criminal court, who are engaged in wide-ranging efforts to prosecute and investigate international crimes including crimes against humanity, war crimes, and genocide.”

The plaintiffs say the order will have repercussions around the world, inhibiting non-US human rights lawyers and activists who fear being barred entry or having US assets confiscated.

Goldston said: “It is I think a threat to the notion that the United States stands for human rights, and on ability to say anything to anybody about human rights in the world.”