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Here Comes the Judge, There Goes Order and the Border

Most constitutional republics in the West have a government that consists of three branches: the legislative which makes the laws; the executive which enforces the laws; and the judicial which interprets the laws. Increasingly, the citizens of these republics are becoming concerned about judicial overreach and the emergence of juristocracy.

A recent case decided by [U.S. District Judge Sara Ellis](#) in Chicago is a perfect example of these two phenomena in action. In *Chicago Headline Club et al. v. Kristi Noem*, an organization representing journalists has claimed that U.S. Immigration and Customs Enforcement's (ICE) efforts to quell protests at its Broadview, Illinois detention center constitute a violation of journalists' First Amendment Rights. Until the suit can be heard, the [Chicago Headline Club](#) requested a temporary restraining order banning ICE from defending itself against protesters — because journalists may be caught in the fray. Judge Ellis granted the [restraining order](#) and took the additional step of ordering ICE officers operating at the Broadview facility to [wear body cameras](#).



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[Judicial overreach](#) occurs when a court exceeds its constitutional authority, usurping the responsibilities of the executive and legislative branches of government. It is distinct from [judicial activism](#), which “refers to the practice of judges making rulings based on their policy views rather than their honest interpretation of the current law.”

A government becomes a juristocracy when the balance of governmental power tips towards the judiciary because judges consistently engage in judicial overreach and/or judicial activism. In essence, judges arrogate all of the powers of government to themselves and begin making, enforcing, and interpreting the law. When this happens, the checks and balances that typically exist in a democratic republic disappear.

It is hard to imagine a more glaring instance of both judicial overreach and judicial activism than the decision issued by Judge Ellis in this case. To begin with, the claim advanced by the Chicago Headline Club is flimsy at best. While journalists certainly have a right to cover major events like protests, the constitutional obligations owed to them by law enforcement officers policing those events are minimal. In essence, law enforcement agencies [policing protests](#) must allow journalists to be present in public



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areas and must not arrest journalists in retaliation for negative coverage. Apart from that, the press may be treated in the exact same manner as the wider American public. And ICE is under no obligation to ignore its statutorily assigned responsibilities, or refrain from defending its agents, because doing so might inconvenience journalists.

In fact, it would not be unreasonable to infer that this lawsuit actually has little to do with First Amendment concerns and more to do with opposition to immigration enforcement of any kind by Left-leaning journalists. The Chicago Headline Club is the local chapter of the Society for Professional Journalists, the progressive press union that in 2011 passed a resolution [banning the use of](#) the term “illegal alien” by its members.

Therefore, it seems strange that Judge Ellis would grant a restraining order. But issue an order she did, and the nature of that injunction is beyond distressing. Rather than reading like a court order, it more closely resembles a set of operational instructions issued by an ICE supervisor. And it cites virtually no legal bases for its prescriptions, which is a significant problem, because any action taken by a federal judge in the United States must be based on the Constitution of the United States; a federal statute; an administrative agency regulation; or a federal precedent. Simply put, none of those sources of authority permit a federal judge to direct the street-level operations of an executive branch agency. And even under the broadest interpretation of relevant federal rules and regulations, a district court judge has no authority to order law enforcement personnel to use body cameras. Ultimately, Judge Ellis’ order is nothing but a shameless example of a federal judge presuming to make on-the-street tactical decisions for a law enforcement agency.

Moreover, rather than being based on any legitimate interpretation of the law, her orders in this case seem to be motivated by her personal views on border security and immigration enforcement. According to her Wikipedia Bio, Judge Ellis was appointed by the Obama Administration, which vocally advocated for amnesty, loose borders and increased immigration. In addition, Judge Ellis is a naturalized immigrant from Canada and — like many naturalized U.S. citizens — she appears unwilling to draw a clear line between lawful migrants and illegal aliens.

Drifting toward juristocracy is highly problematic. In a democratic republic like the United States, citizens rely on their elected representatives — in the form of the President and Congress — to make policy decisions that reflect the general will of the American people. When unelected judges overturn those decisions without a legitimate legal basis, the democratic process is completely undermined, and the will of the people is thwarted. That problem is compounded when a black-robed sage hobbles the forces of law and order while giving free rein to those who would sow chaos.

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