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APPEALS COURT RULES AGAINST TRUMP'S REVISED TRAVEL BAN

Administration says it will appeal to Supreme Court

By Brent Kendall
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A federal appeals court rejected President Donald Trump's request to reinstate his [executive order on immigration](#), ruling Thursday that the president's temporary ban on travelers from six Muslim-majority countries "drips with religious intolerance, animus and discrimination."

[The sharply worded ruling](#) from the Fourth U.S. Circuit Court of Appeals in Richmond, Va., is one in a series of legal setbacks for the White House and sets the stage for the Supreme Court to resolve the matter.

Attorney General Jeff Sessions said late Thursday the administration plans to appeal to the high court. The president has said his order is necessary to help fight terrorism.

If the high court chooses to intervene, the case would mark a highly unusual test of presidential power less than a year into the new administration.

The case was considered by the full Fourth Circuit, with 13 judges participating. Ten of those judges ruled against the president, and three dissented.

The White House could try to seek emergency intervention from the Supreme Court in hopes of getting the justices to reinstate the travel restrictions quickly while the case continues. Such a request could provide an early indication of what the court thinks of the case, but the administration would have to meet a high legal burden to get such emergency relief.

Alternatively, the administration could petition the Supreme Court through the normal legal process, but the justices aren't scheduled to hear oral arguments again until October unless the court agrees to make special accommodations.

Neither the White House nor the Justice Department indicated Thursday how quickly the administration plans to move in seeking high court intervention.

The Fourth Circuit ruling affirmed [a Maryland judge's decision](#) in March that blocked the president from implementing a 90-day ban on travel for people from Iran, Libya, Somalia, Sudan, Syria and Yemen.

Mr. Trump said the restrictions, [signed March 6](#), were needed to protect the country from terrorist threats while U.S. officials reviewed vetting procedures for travelers from those countries.

"These clearly are very dangerous times, and we need every available tool at our disposal to prevent terrorists from entering the United States and committing acts of bloodshed and violence," White House spokesman Michael Short said after Thursday's ruling.

Mr. Short said the administration is confident that the order is “fully lawful and ultimately will be upheld.”

Challengers to the executive order alleged the GOP president was attempting to make good on his campaign statements supporting “a total and complete shutdown of Muslims entering the U.S.” And they said the temporary ban laid the groundwork for a longer ban down the line.

“The Constitution’s prohibition on actions disfavoring or condemning any religion is a fundamental protection for all of us, and we can all be glad that the court today rejected the government’s request to set that principle aside,” said Omar Jadwat, a lawyer with the American Civil Liberties Union who argued the case on behalf of several individuals and organizations that opposed the president’s order.

Courts evaluating Mr. Trump’s order have been grappling with how much weight, if any, to give statements he made before he was elected and since.

When the president signed his initial, [broader travel ban on Jan. 27](#) – which he later withdrew because of adverse court rulings – he read the title of the executive order, Protection of the Nation from Foreign Terrorist Entry Into the United States, and said, “We all know what that means.” That comment has been subject to different interpretations.

Rudy Giuliani, a former New York City mayor who has served as a surrogate for Mr. Trump’s campaign, publicly said that the president had been looking for a legal way to effectuate his campaign promise to ban Muslims.

Mr. Trump’s public comments have been the central focus of the litigation. Even the president’s detractors concede his executive order would be on firmer legal ground without his earlier comments about Muslims.

The majority of Fourth Circuit judges concluded they couldn’t ignore Mr. Trump’s comments and those of his associates when evaluating the White House policy. Such statements suggest the purpose of the executive order “is to effectuate the promised Muslim ban,” Chief Judge Roger Gregory wrote.

The president has broad power to deny people entry to the U.S. “but that power is not absolute. It cannot go unchecked when, as here, the president wields it through an executive edict that stands to cause irreparable harm to individuals across this nation,” the judge wrote.

Judge Gregory wrote that the president’s order “speaks with vague words of national security, but in context drips with religious intolerance, animus and discrimination.”

The Fourth Circuit moved swiftly in issuing the ruling, following a May 8 oral argument in which a majority of judges expressed concerns about the travel ban.

In recent years, the Fourth Circuit – based on judicial appointments by former President Barack Obama, a Democrat – has become a more liberal court. Most of the judges who considered the case were appointed by Democratic presidents. Three of the court’s more conservative judges, all Republican appointees, dissented.

Judge Paul Niemeyer, who was appointed by former President George H.W. Bush, wrote in Thursday's dissenting opinion that the court's ruling was particularly inappropriate on a matter of national security, adding that the president provided ample nonreligious justifications for his order. The court's decision to base its ruling largely on Mr. Trump's campaign statements "is fraught with danger and impracticability," he wrote.

In their dissent, the judges appeared to invite Supreme Court intervention, writing the Fourth Circuit's approach, unless overturned, "will become a sword for plaintiffs to challenge facially neutral government actions, particularly those affecting regions dominated by a single religion."

Thursday's ruling came in one of the two appeals on the executive order being pursued by Mr. Trump's administration. The administration is also fighting a federal judge's ruling in Hawaii that blocked the travel restrictions and halted Mr. Trump's planned suspension of the U.S. program for admitting refugees.

That case is pending at the Ninth U.S. Circuit Court of Appeals in San Francisco. But Thursday's decision ensures that the travel restrictions will remain on hold for now regardless of how the Ninth Circuit rules.

Mr. Trump's first executive order on travel [ran into trouble](#) because judges determined the president didn't accord proper due process to travelers, such as advance notice of the policy and a chance to challenge it.

The president's current, revised order sought to address those concerns, while also narrowing the restrictions so they didn't apply to people already in the U.S. legally, including green-card holders. The new version also removed an earlier provision that gave preference to Christian refugees from Muslim countries.

Court watchers thought the revisions could make it harder for courts to rule against the president, but that hasn't been the case so far.

*- Laura Meckler
contributed to this article.*