

THE WALL STREET JOURNAL.

TRAVEL BAN HEADED TO SUPREME COURT

Legality of Trump's order may be decided quickly by justices

By Brent Kendall
June 2, 2017

WASHINGTON – The fate of President Donald Trump's plan to temporarily ban travelers from six largely Muslim countries could be determined quickly now that the matter has landed at the Supreme Court.

Lower courts have blocked Mr. Trump from implementing his executive order, signed March 6, ruling that the president likely violated the Constitution by targeting Muslims for unfavorable treatment. The president has said the measure is needed to prevent potential terrorists from reaching U.S. soil and to give the administration time to establish more-stringent vetting procedures.

In legal filings late Thursday night, the Justice Department asked the Supreme Court to intervene on an emergency basis and stay those lower-court rulings. That would allow the administration to implement its planned ban right away, even as litigation continues on the order's underlying legality.

The Justice Department also asked the Supreme Court to give full consideration to the underlying case and settle the legal merits of the president's actions.

Those requests will proceed on two tracks.

It is possible the justices will decide in a matter of days whether to give Mr. Trump the emergency relief he is seeking. It would take the votes of five justices to do so, and the court's decision could send strong signals about whether it believes the White House is likely to win the underlying case.

The court also must consider whether Mr. Trump would be harmed unacceptably by having his executive order remain on hold during the summer.

The Justice Department says such harm is clear. "Preventing the executive from effectuating his national-security judgment will continue to cause irreparable harm to the government and the public interest," the department said in one of its Thursday-night court filings.

Challengers to the travel ban have argued there is no such harm because national security wasn't the real motivation for Mr. Trump's ban. Instead, they say the president was guided primarily by a desire to fulfill a campaign pledge to shut down Muslim entry into the U.S.

Mr. Trump's critics say the government has been slow in developing and defending its current version of the travel restrictions, and they say that belies any claim that this is an urgent national-security matter.

If the Supreme Court grants the president a stay, it could automatically give Mr. Trump the 90-day time period he initially sought in his order to prohibit travelers from the six countries – Iran, Libya, Somalia, Sudan, Syria and Yemen. That is because any full consideration of the case by the Supreme Court likely wouldn't come until October at the earliest.

However, there is reason to believe the administration will want to keep some travel restrictions in place for longer than 90 days. Administration officials have suggested that some, if not all, of the six countries may never be able to meet the standards to come off the list and that it is more likely nations would be added to the ban than taken off.

The administration wants countries to provide additional information to help the U.S. with vetting visa applicants from their nations. It is unlikely that the six countries in question would be capable of doing so, officials have said.

The justices are likely to confront several issues beyond the question of whether Mr. Trump unlawfully disfavored Muslims. The court would have to consider whether it is appropriate for judges to consider the president's past statements about Muslims or whether they instead must evaluate Mr. Trump's executive order based only on its own text, which makes no mention of religion.

The court also would have to consider whether the challengers to the travel ban had a legal right to bring their lawsuit.

The Justice Department's appeal stems primarily from a ruling by the Fourth U.S. Circuit Court of Appeals last week in a case originating in Maryland. Separately, a judge in Hawaii has also ruled against Mr. Trump. That case is still on appeal, but the department is asking the high court to go ahead and stay the Hawaii judge's decision.

Any action by the Supreme Court on the travel ban could mark the court's first landmark move since Mr. Trump placed Justice Neil Gorsuch on the bench. Justice Gorsuch, confirmed in April, restored a longstanding conservative majority on the court.

In lower-court proceedings so far, conservative judges have expressed more sympathy for the president's position.

– Laura Meckler contributed to this article.