

Supreme Court cancels travel ban arguments, leaving situation uncertain

DJ dailyjournal.com/articles/343841

UC Davis School of Law Dean Kevin R. Johnson said the US Supreme Court's cancellation of oral arguments in two travel ban cases makes sense because of mootness issues.

The U.S. Supreme Court on Monday cancelled oral arguments in two cases relating to President Trump's executive orders banning travel from certain Muslim-majority countries.

Attorneys involved and academics said the development creates uncertainty for the future of the cases and that much would hinge on briefs the court ordered both sides to file by Oct. 5.



"It isn't altogether surprising to me that the court asked for some kind briefing on the mootness issues," said Kevin Johnson, dean of the UC Davis School of Law and an expert on immigration law.

Johnson said the move made sense in light of the Trump administration releasing a proclamation on Sunday that revised the parameters of its previous executive order banning travel to the U.S. from six Muslim-majority countries and capping the number of refugees the U.S. accepts each year.

The new proclamation limits travel to the U.S. by citizens of Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela and Yemen, and is scheduled to go into effect on Oct. 18.

"This action by the Supreme Court is not surprising given the government's decision to issue a new version of the ban at the eleventh hour," wrote Omar Jadwat, director of the ACLU's Immigrants' Rights Project who is representing the plaintiffs in one of the two cases, in an emailed statement.

"The ban has been repeatedly held unconstitutional and illegal by the courts and those decisions remain in place today," he added.

"The condemnation of Muslims that the second executive order represents can't be erased just because a new executive order has come about," said Esther Sung, a staff attorney with the National Immigration Law Center in Houston, Texas who is representing the plaintiffs in one of the cases and whose organization have filed friend-of-court briefs in the challenge to the executive order filed in March. *Trump v. International Refugee Assistance Project*, 16-1436; *Trump v. Hawaii*, 16-1540.

Sung said that while her team was still drafting the requested briefs, there were a number of outcomes she would be happy with.

"The court could dismiss the petition for [certiorari] as improvidently granted and that leaves in place the lower court's opinions, the 4th and 9th Circuit injunctions, and so we'd be happy with that," Sung said of previous rulings against the ban. She added that even if the court decided the case was moot, it could leave the lower court rulings in the case in place.

"If the court decided to hear our case eventually on the merits, finding that it's not moot, we would welcome that

opportunity to explain to the court why the second executive order is and was unconstitutional and continues to harm our clients,” Sung added, noting that it could be a long time before the case was before the Supreme Court again ready to be considered on the merits.

Johnson also raised the possibility that the Supreme Court was specifically avoiding hearing the case.

“Justiciability doctrines offer the court at times an out to deciding really complex muddy legal issues,” Johnson said. “These kind of doctrines can allow the court to sidestep, some would say evade, others might just say not decide some complex questions.”

“There’s still no question that the new proclamation harms our plaintiffs,” Sung said of the potential for future legal challenges should her current case be ruled moot.

“Whether that means challenging the new executive order in our existing lawsuit by amending the complaint or by filing a new complaint, we’re planning to look into all of those options because we want to keep fighting the Trump administration on this,” she added.

#343841

Chase DiFelicianantonio

Daily Journal Staff Writer

chase_difelicianantonio@dailyjournal.com