



Written by [Warren Mass](#) on June 5, 2017

## Trump's DOJ Submitted "Watered Down" Version of His Travel Ban to Supreme Court

In a series of tweets early in the morning of June 5, President Trump urged the Justice Department to "seek an expedited hearing of the watered down Travel Ban before the Supreme Court" while working on a "much tougher version in the meantime."

"The Justice Dept. should have stayed with the original Travel Ban, not the watered down, politically correct version they submitted to S.C.," the president wrote on Twitter.



With an eye toward not giving the courts reason to rule against the administration, U.S. government lawyers have, during court arguments, gone out of their way to not use the term "travel ban" — instead calling it a "temporary pause" on entry into the United States from the countries covered in the executive order being challenged. This was the same phrase used by Attorney General Jeff Sessions and Homeland Security Secretary John Kelly in their March 6 letter to the president.

Despite the aversion of many in his administration to using the term "travel ban," in his June 5 tweets, Trump defended his terminology: "People, the lawyers and the courts can call it whatever they want, but I am calling it what we need and what it is, a TRAVEL BAN!" Trump tweeted.

A report in *The Hill* quoted an opinion from Carl Tobias, a professor at the University of Richmond School of Law, who considers Trump's choice of words unwise: "President Trump could be undercutting his case by admitting that the order is a travel ban, by saying the revised order waters down the first order and by accusing the courts of taking away the people's rights, whatever that means," said Tobias.

During a June 2 White House press briefing, a reporter asked Press Secretary Sean Spicer if one of the reasons the president wants to keep the administration's appeal of a lower court's blocking of his March 6 executive order is that we now have a full Court impaneled, but also "because it gives the White House perhaps a chance to build on some momentum, especially if you look back at [the June 1 terrorist attack in Manila].

Spicer replied:

I think that what we've said with respect to the executive order in question has been fairly consistent since its implementation and the first court action. So last night [June 1], we asked the Supreme Court to hear this important case and are confident that the President's executive order is well within his lawful authority to keep the nation safe and protect our communities from terrorism.

The executive order in question, entitled "Protecting the Nation From Foreign Terrorists' Entry Into the United States," issued on March 6, was Trump's second attempt to ban foreign nationals from six countries identified as being state sponsors of terrorism or havens for terrorists, the first having been issued on January 27. That order imposed a 90-day ban on entry into the United States from the same seven countries (Iraq, Libya, Somalia, Sudan, Syria, Yemen, and Iran) named in the Terrorist Travel



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Prevention Act of 2015, which was signed by former President Obama. After a federal judge issued a ruling stopping the original executive order, Trump replaced it with the revised one.

The revised order was scheduled to take effect on 16, but only hours before then, Judge Derrick K. Watson, of Federal District Court in Honolulu, granted a temporary restraining order enjoining the Trump administration executive branch from enforcing or implementing two key sections of the order across the nation. Within hours of Watson's ruling, U.S. District Judge Theodore D. Chuang in Maryland, issued a nationwide injunction that blocked the administration from enforcing "the travel ban for citizens of the six Designated Countries in Section 2(c) of the Second Executive Order."

Both judges asserted that the executive order amounted to religious discrimination against Muslims.

On May 15, the Ninth Circuit Court of Appeals in Seattle heard arguments from attorneys for the Trump administration and the state of Hawaii, after the administration asked the appeals court to reverse Watson's March 16 order. Following Chuang's ruling the administration also brought an appeal to the Fourth U.S. Circuit Court of Appeals (which covers appeals from district courts in Maryland, Virginia, West Virginia, and the Carolinas).

CNN reported on May 15 that in the event the Fourth and Ninth appellate courts arrive at different results, the Trump travel ban will not go back into effect as long as one court's nationwide injunction remains in effect. CNN cited the opinion of legal experts who say such a scenario would undoubtedly result in the case being reviewed by the Supreme Court.

"No matter how the two courts rule, I predict this case will go to the Supreme Court," CNN quoted Cornell Law School professor Stephen Yale-Loehr. "The issue is too important for the Supreme Court to pass up."

Trump apparently agrees and is hoping to speed up that process by urging the Justice Department to seek an expedited hearing of what he describes as "the watered down Travel Ban" before the High Court. Furthermore, he is not stratified with that version and so has asked his Justice Department to continue working on a "much tougher version in the meantime."

As C. Mitchell Shaw observed in [his article on June 2](#):

In asking the Supreme Court to hear the case, the Trump administration hopes to settle the matter and begin enforcing a balanced and reasonable policy of protecting the United States from those who pose a real danger.

Photo of President Donald Trump: [WhiteHouse.gov](http://WhiteHouse.gov)

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