Second judge says Trump can’t ban TikTok

A federal judge has granted a preliminary injunction that should keep the US Commerce Department from banning transactions with TikTok.

The Trump administration issued an executive order on August 6th that would have blocked transactions between US companies and TikTok and WeChat’s Chinese parent companies, ByteDance and Tencent. Trump declared TikTok and WeChat a “national emergency,” citing privacy and security concerns. That order invoked the International Emergency Economic Powers Act (IEEPA), a law that allows Trump to ban transactions between the US and foreign entities.

“The government likely exceeded IEEPA’s express limitations.”
However, in his opinion accompanying today’s decision, US district judge Carl Nichols said that “the government likely exceeded IEEPA’s express limitations.” He granted TikTok’s motion for a preliminary injunction against each item the Commerce Department was attempting to prohibit.

Nichols also previously granted a preliminary injunction on September 27th that allowed people to continue downloading the app in the US. At that time, he didn’t rule on the Commerce Department’s other restrictions.

A Pennsylvania federal judge had already effectively stopped TikTok from shutting down on October 30th, in a ruling on a lawsuit brought by three TikTok creators. The Commerce Department had already conceded the matter last month, saying it wouldn’t enforce the shutdown order on November 12th.

“We’re pleased that the court agreed with us and granted a preliminary injunction against all the prohibitions of the Executive Order,” a TikTok spokesperson said in a statement. “We’re focused on continuing to build TikTok as the home that 100 million Americans, including families and small businesses, rely upon for expression, connection, economic livelihood, and true joy.”

“The court’s ruling is consistent with the nationwide preliminary injunction granted by the United States District Court for the Eastern District of Pennsylvania on October 30, 2020,” a Commerce Department spokesperson said in a statement. “The Department maintains that the E.O. is fully consistent with law and promotes legitimate national security interests. The Government will continue to comply with the injunctions and has taken immediate steps to do so, but intends to vigorously defend the E.O. and the Secretary’s implementation efforts from legal challenges.”

The Trump administration had set a December 4th deadline for ByteDance to sell or spin out TikTok’s business in the US, but the government said that day that it would not extend or enforce the deadline. President Trump has said he approves of a bid by Oracle and Walmart “in concept” that would create a US-based entity, TikTok Global, but it’s not clear how that would address some security risks, and the deal has not received final approval from China.

***Update December 7th, 10:18PM ET**: Added Commerce Department statement.*

https://www.theverge.com/2020/12/7/22160239/tiktok-ban-judge-trump-administration-us-commerce-department