

# TikTok Outlines Why It Thinks President Trump's US Ban Is Illegal

'By banning TikTok with no notice or opportunity to be heard (whether before or after the fact), the executive order violates the due process protections of the Fifth Amendment,' the company says.

August 25, 2020 3 min read

This story originally appeared on PCMag

Which is more important: national security or free speech? The result of President Trump's effort to ban TikTok may hinge on that question.

On Monday, TikTok filed a lawsuit challenging Trump's executive order to essentially ban the popular-video sharing app in the US. Trump says the action is necessary to prevent the Chinese government from potentially harvesting user data to profile and spy on Americans.

But according to TikTok, the same order oversteps the legal limits by banning an app used by 100 million Americans to communicate with each other. "We do not take suing the government lightly, however we feel we have no choice but to take action to protect our rights, and the rights of our community and employees," TikTok said in announcing the lawsuit, which it filed in a US district court.

To ban TikTok, Trump is exercising the International Emergency Economic Powers Act (IEEPA), which allows the president to block transactions with a foreign company if it's deemed a

national security threat. According to Trump, TikTok poses such a threat because its Chinese parent company, ByteDance, is beholden to the Chinese government.

But in the lawsuit, TikTok says the IEEPA—originally enacted in 1977—has important restrictions. Specifically, it blocks a president from using the authority to regulate the “transmission” of any informational materials, including “films, posters, phonograph records, photographs, microfilms” in addition to CD-ROM-based content.

As a result, TikTok plans to argue the White House is misusing the IEEPA to ban the video-sharing app. “President Trump seeks to use IEEPA against TikTok Inc. ... to destroy an online community where millions of Americans have come together to express themselves, share video content, and make connections with each other,” the company writes in the lawsuit.

In the same complaint, TikTok says the company deserves a fair hearing. But Trump’s executive order landed on Aug. 6 without any way for recourse. “By banning TikTok with no notice or opportunity to be heard (whether before or after the fact), the executive order violates the due process protections of the Fifth Amendment,” the company wrote.

The other problem TikTok has with Trump’s executive order is how it cites the potential for the Chinese government to use the video-sharing app for spying purposes without backing up the claim with real evidence. “These speculative assertions, made without any evidentiary foundation, do not constitute a bona fide national emergency,” the company says.

Instead, TikTok suggests the executive order may have less to do with actual national security. “The President’s actions clearly reflect a political decision to campaign on an anti-China platform,” the company claimed in the lawsuit.

So far the Trump administration has yet to respond to the

lawsuit. But the president's initial executive order gave TikTok's parent company until Sept. 20 to sell off the business or face getting blocked. In addition, Trump issued a separate order through the Committee on Foreign Investment in the United States (CFIUS) demanding ByteDance divest TikTok by Nov. 12.

The TikTok lawsuit could result in a US court invalidating the original executive order. It's also possible ByteDance could find a US buyer before the legal proceedings begin. Both Microsoft and Oracle are currently engaged in acquisition talks for TikTok.

<https://www.entrepreneur.com/article/355278>