

Trump likely overstepped authority with TikTok ban, judge rules

Enlarge / TikTok's US fate is up in the air, but at least you can still download and patch it.

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President Donald Trump's attempt to ban TikTok from operating inside the United States probably exceeds the authority the president has to do such things, a federal judge has ruled.

TikTok narrowly avoided being removed from app stores last night when Judge Carl Nichols of the US District Court for DC issued an injunction late yesterday requiring the government to pause on its ban. TikTok got its reprieve, but the terms of the order (PDF) were sealed until midday today.

To meet the standard for an injunction, Nichols explained, TikTok basically needed to prove four things to his satisfaction. The first factor, however, is the most important: TikTok needed to prove its case is "likely to succeed on the merits." In plain English, that means: is it going to win its lawsuit against the administration? And the answer, Nichols determined, is probably yes, because the actions the administration took "likely exceed the lawful bounds" of the law under which those actions were taken.

The executive order banning TikTok uses the International

Emergency Economic Powers Act (IEEPA) as its legal basis. The IEEPA does allow the president to enact emergency regulations relating to international commerce after declaring a national emergency, which Trump did.

However, Nichols explained, there are two limitations in IEEPA. The law does not grant the president the authority “to regulate or prohibit, directly or indirectly” either the exchange of “information or informational materials” or personal communications. TikTok argued that its content qualifies as both informational material and personal communication, and the court agreed.

“Less substantial”

“The government has provided ample evidence that China presents a significant national security threat,” Nichols found, but the “specific evidence of the threat posed by [TikTok], as well as whether the prohibitions are the only effective way to address that threat, remains less substantial.”

“There is something to [the government’s] argument, especially as foreign adversaries’ use of information and data (and the United States’ efforts to respond to and combat those efforts) becomes ever more important,” Nichols added. But having valid concerns about China doesn’t actually make the IEEPA say what the administration claims it does, he concluded.

Notably, Nichols only suspended the part of the ban scheduled to go into effect this weekend, which would have removed TikTok from app stores, prohibiting new downloads or patches of the app. He did not address the full prohibition, which is slated to take effect November 12. TikTok’s arguments regarding the November 12 ban were sound, Nichols determined, but that’s too far in the future for “truly imminent and immediate harm” to qualify as a standard.

The “national emergency” around TikTok may or may not have been resolved by November. If a proposed transaction with Oracle goes through, then it seems likely the administration will leave off on its efforts to ban the app. That deal, however, is far from certain. Although Trump gave the transaction his conditional “blessing,” the deal still needs to pass national security review and also win approval from Chinese authorities.

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