Court Denies Trump Administration Request to Expedite Appeal of Workforce EO Decision

A three-judge panel in the U.S. Court of Appeals for the D.C. Circuit on Thursday mostly denied a request by the Trump administration to expedite its appeal of a U.S. District Court ruling overturning the key provisions of three controversial workforce executive orders.

Last month, lawyers with the Justice Department asked the court to fast-track its appeal of the August decision by U.S. District Judge Ketanji Brown Jackson invalidating the core provisions of May executive orders that sought to make it easier to fire federal employees, set time limits on collective bargaining negotiations and severely restrict union employees' ability to use official time for representational matters.

The lawyers argued that the appeal should be expedited because "[the] president is . . . disabled, with respect to the enjoined provisions, from exercising his authority under the Constitution and statute to superintend the executive branch." They also requested that the more than a dozen federal employee unions in the case be required to file a single joint brief or, absent that, that the Justice Department be given an additional month to prepare its response.

But in a legal filing earlier this month, the National Treasury Employees Union said that the government failed to show "good cause" for an expedited appeal schedule, noting that the U.S. Court of Appeals for the D.C. Circuit only grants requests for expedited consideration "very rarely."

"The president and [then-Office of Personnel Management Director Jeff] Pon's argument in favor of expedited consideration boils down to this: their appeal is 'urgent' because the district court issued rulings against them that they believe to be in error," NTEU wrote. "They raise no other argument in favor of their motion."

Additionally, the union used the government's own argument that the executive orders would not have immediate impact because the orders state that provisions should not invalidate existing collective bargaining agreements as proof that an expedited schedule is not warranted.

"During a telephonic hearing with the district court, counsel for the president and [then-]Director Pon underscored that implementing the executive orders would be a 'gradual process' . . . and even where a collective bargaining agreement would allow for implementation of the provisions, counsel for the government contended that nothing would immediately alter the status quo because 'there's still a negotiation process that has to play out and that takes time,'" they wrote.

“Thus, no urgency could exist to justify the relief that the president and Director Pon have requested.”

Since NTEU’s filing, Pon was asked to resign from his post, and he was replaced by Office of Management and Budget Deputy Director Margaret Weichert.

In its response, the Justice Department described unions’ arguments as “insubstantial,” and accused them of being hypocritical in opposing the fast-track request because they had supported an a similar process in district court.

“Plaintiffs sought expedited consideration in district court, and the government agreed to a briefing schedule on cross-motions for summary judgment under which the government’s opening brief was filed only three weeks after plaintiffs’ four opening briefs,” the government wrote. “It is only now, on appeal, that plaintiffs cast the controversy as a garden variety dispute not worthy of speedy consideration.”

Circuit Judges Judith Rogers, Sri Srinivasan and Robert Wilkins sided mostly with the federal employee unions, although they ordered that any jurisdictional arguments be added to briefs, rather than through separate motions.

“Appellants have not articulated ‘strongly compelling’ reasons why ‘delay will cause irreparable injury and that the decision under review is subject to substantial challenge,’ or why ‘the public generally, or . . . persons not before the court, have an unusual interest in prompt disposition,’ ” the judges wrote, citing the D.C. Circuit’s handbook of procedures. “Nor do appellants’ conclusory assertions of ‘good cause’ establish that the appeal should be expedited.”

But the judges asked the parties in the case to file a brief by Oct. 26 explaining why they should not be limited to filing a single joint brief.

“Whether the parties are aligned or have disparate interests, they must provide detailed justifications for any request to file separate briefs or to exceed in the aggregate the standard word allotment,” the judges wrote.