Trump team seeks to bar 24,000 refugees

Arguing that a federal appeals court is defying the Supreme Court on immigration, the Trump Administration asked the Justices on Monday to allow it to continue to bar the entry of foreign refugees who have been promised resettlement in the U.S. – a group of about 24,000 individuals from around the globe.

The new plea, however, did not seek permission to exclude U.S. residents’ foreign relatives living in six Mideast nations with Muslim-majority populations. Those foreign nationals are now being allowed entry under a prior temporary ruling by the Supreme Court, so the Administration did not renew its former request to narrow the definition of who counts as “close family.”

Last Thursday, the U.S. Court of Appeals for the Ninth Circuit ruled that the government may not presently enforce provisions of President Trump’s March 6 executive order that would exclude refugees with resettlement promises, and would bar some Mideast relatives of U.S. residents. That order, the Justices were told Monday, is to take effect shortly before noon tomorrow, so it asked for a prompt order blocking the Circuit Court’s new ruling as it applies to refugees, at least until the Justices take up on October 10 the broader question of whether the Trump presidential order is legally or constitutionally valid.

Since the Justices on July 19 turned aside the Trump team’s plea to narrow the scope of family for purposes of immigration, but allowed temporary enforcement of the refugee curb, government lawyers have been attempting in the Ninth Circuit to get permission for its approach to both issues. That effort involves only the temporary issue of enforcement authority, prior to the October 10 hearing on the executive order’s validity.

In its new plea to the Justices on Monday, the Administration said the Ninth Circuit Court “did not even attempt to reconcile” its views on the refugee question with the Supreme Court’s July 19 order permitting temporarily the enforcement of the limits on refugees’ entry.

Under federal immigration law, a refugee from another nation cannot get a visa to enter this country without first having a formal assurance by one of nine refugee-relief groups to sponsor them and to arrange for their resettlement once here. The Administration contends that the mere fact that a refugee has such a promise does not give that individual enough of a connection to the United States to allow them to enter. Thus, their exclusion under the Trump presidential order should not be allowed for the time being, the new filing argued.

When the Supreme Court agreed on June 26 to rule, at its new term starting next month, on the legality of the Trump order, it said that – in the meantime – the government could not keep out Mideast nationals or refugees from any nation if those individuals had a legitimate relationship with an individual or organization in this country. It clarified the meaning of that ruling on July 19, accepting the argument of the state of Hawaii that such a relationship does exist for more foreign relatives than were on the categories excluded by the Trump order so those family members could not be kept out, while temporary accepting the government’s argument that refugees with only a promise of resettlement can be excluded in the interim.

The case then went back to the Ninth Circuit Court for another review, resulting in the decision last week that the Administration is now challenging, in part.

The issue that is now before the Supreme Court on enforcement applies to some 24,000 refugees because, according to the government, immigration officials have received assurances from relief agencies as to that group. If the Ninth Circuit Court’s decision as to that group is not put on hold now, the new filing contended, it will “disrupt the status quo” because those individuals are currently being excluded, and will “frustrate order implementation” of the presidential order’s “refugee provisions that this court made clear months ago should take effect.”

The filing added: “The court should not permit its rulings to be frustrated in that fashion.”

If the Justices choose not to impose a simple postponement on the Circuit Court ruling as it applies to the refugee question, the new application said, the Justices may want to grant review of that question as a separate one and either strike down the Circuit Court ruling on that point or else add that issue to the review now scheduled for a hearing by the Justices on October 10. While it considers what it is going to do, the court should issue an immediate order so that the Circuit Court’s decision on refugees could not go into effect at midday tomorrow, the new filing asked.

The court has the option of acting on the new filing immediately, but is more likely to seek a response from the state of Hawaii – the main challenger to the Trump order on the refugee issue – before acting.