

Attorneys

Super Bowl All-Nighter Leads to Award-Winning Travel Ban Brief

Tom Brady and the New England Patriots weren't the only ones battling against the clock on Superbowl Sunday this year.

John Harris, and a team of attorneys from Frankfurt Kurnit Klein & Selz PC, found out at 10:45 a.m. that a friend-of-the-court brief the firm was writing on behalf of the Anti-Defamation League arguing against President Donald Trump's travel ban would be due at 3 a.m. Monday morning.

"I told my wife that it's just not possible to put together a brief in less than 24 hours on Superbowl Sunday," Harris told Bloomberg BNA.

"And she told me 'You know, if you want to be a player in that kind of litigation, you need to make some sacrifices,'" Harris said.

At 2:45 a.m., Harris and the other attorneys in his seven-member team submitted the brief to the U.S. Court of Appeals for the Ninth Circuit.

At 1 a.m., Harris was "a little dubious" they would be done in time, he admitted.

Harris credits the team's passion for its ability to prevail.

The brief has gone through very few refinements since then and is very similar to the briefs the firm has filed on behalf of the ADL with six other courts considering litigation over the travel ban since then, he said.

Frankfurt Kurnit was honored on June 20 by the ADL for their pro bono work on the matter.

Rewind About a year ago, Harris, who has been involved with the ADL "for a long time," became chair of its National Legal Affairs Committee.

The ADL's mission is to "stop the defamation of the Jewish people, and to secure justice and fair treatment to all," according to its website.

This committee is responsible for the amicus positions the ADL takes in courts around the country, Harris said.

Trump issued an executive order on January 27 indefinitely banning admission to the U.S. of people fleeing Syria and limiting entry of other refugees from seven majority-Muslim nations for 90 days.

He modified the travel ban at the beginning of March to restrict entry to the U.S. by people from six Muslim-majority countries for 90 days.

After Trump issued the first ban, "we knew the ADL would take a position," Harris said.

Although the ADL's standard practice for this kind of brief would be to enlist a large law firm, Harris said he was intrigued by the possibility that his 81-member firm could get involved.

"This was a chance to do something substantive," he said.

Harris sent a firm-wide email to gauge interest in writing the brief, and more than 20 percent of the firm's attorneys wanted to help.

"At the time, I was surprised" at the level of interest "but in hindsight, I probably shouldn't have been," he said.

"This was one of those moments where people were so animated and cared so much," Harris said.

Strategy On Jan. 31, Harris and the six other Frankfurt attorneys selected for the case met with the ADL to discuss the brief-writing strategy.

"We knew going in to this that others would take care of issues like associational standing and the standards for injunctive relief," and that the ADL wanted to do something different, Harris said.

The group wanted its brief to illustrate situations in U.S. history where minorities had been victims of discrimination but also times where the U.S. didn't intervene and there were "tragic" consequences, he said.

At the meeting, assignments were "divvied up" with the idea that attorneys would have two to three weeks to complete their sections, Harris said.

They ultimately had five days.

The timing changed after the government filed an emergency motion for a stay shortly before February 5th, Harris said.

The Ninth Circuit "declined an immediate stay of the Washington court's order, but imposed the briefing deadline," he said.

After getting the call on Superbowl Sunday, Harris emailed the other team members for their thoughts and they got back to him immediately.

"We're going to do this," is what they told me," he said.

It was definitely nerve-wracking, Harris said.

In the early morning hours, Harris worried that they wouldn't get it done in time because there was one section that hadn't been completed and some logistical issues that had to be resolved, he said.

Soon after that, however, things came together.

The Brief The brief uses U.S. history to argue that injunctive relief is necessary to prevent the alleged irreparable harm Trump's executive order would cause.

Using the birth of the U.S. and its founding by those seeking to escape religious conflicts and even immigration restrictions as a backdrop, the brief highlights in-

stances in which the U.S. acted as a sanctuary for those fleeing persecution.

This included welcoming displaced Europeans and European Jews after World War II and those fleeing Communist regimes at the onset of the Cold War.

The brief also discusses the harm that resulted when the U.S. “closed its doors” to immigrants.

President Franklin Delano Roosevelt issued Executive Order 9066 in 1942, which authorized the internment of Japanese-Americans, the brief says.

It gave those U.S. leaders to whom he delegated authority the power to exclude all persons from designated areas in order to provide security against sabotage and espionage, it says.

The order made no reference to the Japanese, just as the current executive order doesn’t reference Muslims, the brief says.

However, approximately 120,000 individuals of Japanese descent, including 70,000 citizens, were forcibly evacuated to internment camps in desolate areas of the United States for the duration of World War II, it says.

“Absent injunctive relief, there will almost certainly be irreparable harm to countless people, just as there was when the United States shamefully turned away those on the St. Louis desperately seeking safety, excluded immigrants from China and interned Japanese Americans,” the brief concludes.

In 1939, the St. Louis, a boat carrying almost 1,000 passengers—most of whom were Jewish—fleeing Nazi Germany and seeking sanctuary in the U.S., was turned away by the government and forced to return to Europe. More than 250 of those passengers were killed in the Holocaust, the petition says.

Several laws were passed in the U.S. in the late 19th Century, including the Chinese Exclusion Act of 1882,

“designed to exclude the Chinese from the United States, both physically and politically,” the brief says.

Measures taken against the Chinese included prohibiting courts from naturalizing them and preventing Chinese workers who had left the country from re-entering.

Waiting Harris and his team have filed the brief on behalf of the ADL in seven federal district and appellate courts and anticipate as least one more filing.

“We’re awaiting the U.S. Supreme Court’s decision to take the case,” Harris said.

The government appealed to the high court on June 1 after the en banc U.S. Court of Appeals for the Fourth Circuit affirmed a Maryland district court’s issuance of a nationwide preliminary injunction of the executive order.

The Supreme Court allowed supplemental briefing on the case after the Ninth Circuit’s June 12 holding that affirmed a Hawaii district court’s preliminary injunction.

The briefing at the high court will be completed June 21 and the court may make a decision whether to take the case soon after that.

The Frankfurt Kurnit attorneys who worked with Harris on the brief are Jeremy Goldman, Caren Decter, Jessica Smith, Rayna Lopyan, Lily Landsman-Roos, and Lakendra Barajas.

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