

Judge inclined to leave ruling on 'don't ask' intact

By Julie Watson
Associated Press

RIVERSIDE, Calif. — A federal judge said Monday she is inclined to deny a government request to delay her order that immediately stopped the military from enforcing its ban on openly gay service members.

U.S. District Judge Virginia Phillips said she will review the arguments from Justice Department lawyers and issue a ruling by today.

If she rejects the request, the Justice Department officials say they will appeal to what experts say are likely to be friendlier venues: the U.S. Court of Appeals for the 9th Circuit in San Francisco and, ultimately, the U.S. Supreme Court.

"The farther the decision gets from the presentation of evidence in the trial court, the more likely it is that courts will assume the military must have some critically important interest at stake," said Diane Mazur, a law professor who opposes the policy.

The military has promised to abide by the injunction against the "don't ask, don't tell" policy as long as her order remained in place.

Government attorneys had asked Phillips for the temporary halt while they appealed, saying that forcing an abrupt change of policy could damage troop morale as they fought two wars.

The judge declared the policy unconstitutional

Sept. 9, saying it violated due process rights, freedom of speech and the right to petition the government for redress of grievances guaranteed by the First Amendment.

Phillips said the policy doesn't help military readiness and instead has a "direct and deleterious effect" on the armed services by hurting recruiting and requiring the discharge of service members with critical skills and training.

At the time, she asked both sides to give her input about an injunction and, on Monday, called the government request "untimely." She said the Justice Department had plenty of opportunity to modify her injunction before she ordered it on Oct. 12.