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U.S. Court of Appeals Declines to Stay Temporary Restraining Order in Connection with Executive Order

On Feb. 9, 2017, the U.S. Court of Appeals for the Ninth Circuit issued a ruling keeping in force the temporary restraining order (TRO) that was issued last Friday by the U.S. District Court for the Western District of Washington. The TRO was issued in connection with the lawsuit filed by State of Washington and State of Minnesota challenging the [Executive Order \(EO\) 13769](#), “[Protecting the Nation From Foreign Terrorist Entry Into the United States](#).” The TRO stopped the enforcement of some of the key provisions of the EO. Two days after hearing oral arguments, the Court of Appeals issued an [Order](#) declining to stay the TRO while the Government proceeds with its appeal of the lower court’s decision. In allowing the TRO to continue in effect, the Court noted that the States had standing to bring suit and that the Government was unable to establish that the TRO was “overbroad” or that persons identified in the TRO were not subject to Constitutional protections. In addition, the Court’s order maintained the national application of the TRO. While declining to address in detail the issue of religious discrimination, the Court noted that, in the interest of the emergent nature of the current legal proceedings, review and full consideration of these claims should be made at a later time. Finally, the Court found that keeping the TRO was in the general public interest.

As a result of the decision, the TRO remains in effect, preventing the application of the key provisions of the EO. It is likely that the Government will quickly announce their proposed next steps in this litigation. GT will continue to monitor and report on these important events.

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