

Colleges and Universities are Key Factor in Restraining Trump Travel Ban

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Colleges and universities have been greatly concerned over immigration issues ever since the Presidential election last November. Those concerns were heightened by President Trump's Executive Order 13769, which was issued on January 27, 2017. The Executive Order instituted a 90-day suspension of entry of aliens from seven predominantly Muslim nations, and suspended the entry of all Syrian refugees indefinitely, among other things. Almost immediately, the States of Washington and Minnesota filed suit challenging the Executive Order and sought a temporary restraining order from the United States District Court for the Western District of Washington. On February 3, 2017, the District Court issued an order enjoining the Executive Order. The United States Department of Justice appealed the District Court's order to the Ninth Circuit Court of Appeals.

On February 9, a three-judge panel of the Ninth Circuit upheld the District Court and continued the restraining order against the Executive Order. A copy of the Ninth Circuit's decision can be found here:

<https://assets.documentcloud.org/documents/3457904/Read-the-9th-Circuit-s-opinion-on-the-travel-ban.pdf>.

One point will be of particular interest to all colleges and universities. The Department of Justice argued that Washington and Minnesota did not have "standing" to challenge the Executive Order, i.e. that they had not "suffered a concrete and particularized injury" that would give them the right to sue. The States argued, and the Circuit Court agreed, that the Executive Order damaged public universities, and so the states could properly bring the case. Among other points, the states argued and the Court found:

"...the teaching and research missions of their universities are harmed by the Executive Order's effect on their faculty and students who are nationals of the seven affected countries. These students and faculty cannot travel for research, academic collaboration, or for personal reasons, and their families abroad cannot visit. Some have been stranded outside the country, unable to return to the universities at all. The schools cannot consider attractive student candidates and cannot hire faculty from the seven affected countries, which they have done in the past."

These are among the many issues higher education institutions have been raising all along, of course.

We expect that the Department of Justice will continue to seek review, either before the full Ninth Circuit or the U.S. Supreme Court, or both. We'll be following developments closely and will keep you advised.

If you or your institution wants further information on this topic, please contact Thomas B. Wassel at twassel@cullenanddykman.com or at 516-357-3868, Kevin P. McDonough at kmcdonough@cullenanddykman.com

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