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Supreme Court Stays Ninth Circuit Order on Refugee Assurances

By **Peter Margulies** Tuesday, September 12, 2017, 9:30 AM

On Monday, Justice Anthony Kennedy, in his capacity as the Circuit Justice for the Ninth Circuit, stayed a key portion of the Ninth Circuit's order from last week regarding President Trump's revised Refugee Executive Order 13780 (EO). The Ninth Circuit had held that refugees with assurances of sponsorship from established agencies were *not* subject to the EO (see my analysis [here](#)). Justice Kennedy's order stayed that portion of the Ninth Circuit's order, pending receipt of a response from the opposing side and any further order by Justice Kennedy or the Supreme Court. Court observers sometimes call an order of this kind an "administrative stay," since it is typically a placeholder, intended to maintain the status quo for a short period while the other side briefs the issue and the Circuit Justice or the full Court deliberates about a longer-lasting ruling,

Justice Kennedy's latest order is the latest in a series of Supreme Court orders (see my analysis [here](#)) striving to balance the equities in the EO case prior to the Court's October 10 oral argument on the merits. Since the EO's provisions will expire either before or shortly after the Court hears argument in the case, observers have surmised that the Court is likely to find that the challenge to the EO is moot. The government's progress toward establishing new requirements for vetting of refugees and visa applicants bolsters this view (see my analysis of "extreme vetting" and other EO-related issues [here](#)). However, the Court retains the discretion to opine on the merits if it finds that similar executive action is likely to recur in the foreseeable future. Stay tuned for October!

Topics: **Travel Ban**

Peter Margulies is a professor at Roger Williams University School of Law, where he teaches Immigration Law, National Security Law and Professional Responsibility. He is the author of *Law's Detour: Justice Displaced in the Bush Administration* (New York: NYU Press, 2010).