

Members of a political organization protested against US foreign policy by blocking the entrance to a military base. After several members were arrested, the organization's leader called for "even bigger demonstrations next week to halt operations at the base."

The US Attorney in the jurisdiction brought a federal civil action against the organization and its leader, seeking an injunction against protests that interfered with the base's operations. With the complaint, the US Attorney moved for a temporary restraining order (TRO) to "enjoin any blockade of the base's entrance or other disruption of base activity until the court can hear motions for a preliminary and a permanent injunction." The US Attorney attached an affidavit certifying the unsuccessful efforts she had made to locate the organization and its leader and to notify them of the motion. The court immediately held a hearing and issued the TRO in a one-sentence order that did not describe the acts to be restrained but instead incorporated by reference the allegations of the complaint and the TRO motion.

Did the court properly grant the TRO?

- A. No, because the order did not describe in reasonable detail the acts to be restrained. (51%)
- B. No, because the organization and its leader did not receive notice of the hearing. (2%)
- C. Yes, because damages would be inadequate to address the harm alleged in the complaint. (3%)
- D. Yes, because the planned demonstrations threatened imminent irreparable harm. (43%)

Correct

51% Answered correctly

01 min, 22 secs Time Spent

2023 Version

## Explanation:

### Preliminary relief

(FRCP 65)

Type		Required contents	Effect
<b>Preliminary injunction</b>	Notice of hearing	State reasons issued	Persons bound upon receiving actual notice of order:
<b>Temporary restraining order</b>		Reasonably describe acts restrained or required	parties to the case
		Specify terms	parties' officers, agents, employees & attorneys
	Ex parte	Above requirements	anyone in active concert/participation with above persons
	(no notice)	plus:	
		date & hour issued	
		why injury is irreparable	
		why issued without notice	
		promptly filed with clerk & entered into record	

**FRCP** = Federal Rule of Civil Procedure.

A **temporary restraining order** (TRO) is a court order that commands a party to do or stop doing a specified action for 14 days or until a preliminary-injunction hearing can take place, whichever occurs first. All TROs **must contain** the following:

The **reasons** why it was granted

A **reasonable description** of the **prohibited or commanded acts**, which must be made **without reference** to the **complaint or another document**

The **specific terms** (eg, persons bound, penalties for noncompliance)

Here, the US attorney moved for a TRO to enjoin the organization from blocking the base's entrance or disrupting the base's activities until the preliminary-injunction hearing occurred. The court issued a TRO that incorporated by reference the allegations in the complaint and the TRO motion but failed to describe in reasonable detail the acts to be restrained. As a result, the court did *not* properly grant the TRO.

**(Choice B)** A court may issue a TRO *without* notice of the hearing to the nonmovant (ie, ex parte) if certain requirements are met (see table above). One such requirement is that the movant's attorney certify in writing (eg, by affidavit) any efforts made to give notice and why notice should not be required—as the US Attorney did here. Nevertheless, the TRO was improperly granted as it failed to properly describe the acts to be restrained.

**(Choices C & D)** The planned demonstrations threatened the base with imminent, irreparable harm because they would have halted the base's operations. As a result, damages would have been inadequate to address the harm alleged in the complaint. Nevertheless, the TRO was improperly granted because it did not describe in reasonable detail the prohibited acts.

**Educational objective:**

A temporary restraining order must contain (1) the reasons why it was issued, (2) a reasonable description of the prohibited or commanded acts, and (3) its specific terms. The reasonable description must be made without reference to the complaint or another document.

**References**

Fed. R. Civ. P. 65(d) (describing the required contents and scope of preliminary injunction and temporary restraining order).

11A Charles Alan Wright et al., Federal Practice and Procedure § 2955 (3d ed. 2021) (explaining that a TRO must describe in reasonable detail the restrained or required acts without reference to the complaint or another document).

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