

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY AND COUNTY OF SAN
FRANCISCO,

Plaintiff-Appellee,

v.

DONALD J. TRUMP, et al.,

Defendants-Appellants.

Nos. 17-16886,
17-17478

COUNTY OF SANTA CLARA,

Plaintiff-Appellee,

v.

DONALD J. TRUMP, et al.,

Defendants-Appellants.

Nos. 17-16887,
17-17480

**MOTION TO CONSOLIDATE APPEALS
AND RETAIN EXISTING BRIEFING SCHEDULE**

These appeals all arise from a preliminary injunction, subsequently converted to a permanent injunction, against a provision of an Executive Order. The government hereby seeks to consolidate new appeals of the permanent injunction with pending appeals from a preliminary injunction

that had been entered against the same provision for the same reasons, and to retain the briefing schedule that has been set for the original appeals.

Plaintiffs have informed us that they oppose this motion.

1. In a single order entered in two cases, the district court issued a nationwide preliminary injunction against a portion of an Executive Order, and then, in another order entered in both cases, the district court denied the government's motion for reconsideration. The government filed notices of appeal in both cases, and this Court consolidated the appeals (Nos. 17-16886 and 17-16887). The government's opening brief is due December 18, 2017.

The district court has now granted summary judgment and entered a permanent injunction, again in a single order entered in both cases. The court declared that its summary judgment order "plows no ground" and that summary judgment was warranted for reasons "summarized" in the summary-judgment order and "further described" in the court's earlier orders that are currently on appeal to this Court. SJ Order 2 (Nov. 20, 2017). The court then entered final judgment in each case, and the government has filed new notices of appeal (Nos. 17-17478 and 17-17480).

2. Because these appeals all concern the same district-court reasoning, they should all be treated together to avoid duplicative briefing or unnecessary filings. Accordingly, the government respectfully requests that the appeals be consolidated. The government also respectfully requests that the briefing schedule for the original appeals be retained, and that the case continue to be treated as a Preliminary Injunction Appeal pursuant to Circuit Rule 3.3, so that this Court's review of the injunction is not unnecessarily delayed. Consistent with that schedule, the government plans to file a single opening brief on December 18, 2017.

3. We have consulted with counsel for plaintiffs, who informed us that they oppose this motion. Plaintiffs' counsel also informed us that they intended to file a motion to dismiss the preliminary-injunction appeals as moot. The government responded that the government defers to the Court on whether all the appeals should be consolidated, or the original appeals dismissed and the new appeals substituted, so long as the new appeals proceed in accordance with the existing schedule for the original appeals under Circuit Rule 3.3.

Respectfully submitted,

MARK B. STERN

s/ Daniel Tenny

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DECEMBER 2017

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion satisfies the type-volume limitation in Rule 27(d)(2)(A) because it contains 455 words. This motion was prepared using Microsoft Word 2013 in Book Antiqua, 14-point font, a proportionally-spaced typeface.

s/ Daniel Tenny

Daniel Tenny

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2017, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/ Daniel Tenny

Daniel Tenny