

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JOSEPH ARPAIO)	
)	
Plaintiff,)	
)	
v.)	Civ. Action No. 14-cv-1966 (BAH)
)	
BARACK OBAMA, ET AL.)	
)	
Defendants.)	
_____)	

NOTICE

In accordance with the Court’s December 16, 2014 Order, Defendants have no objection to the Court construing Defendants’ opposition to Plaintiff’s preliminary injunction motion as a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1).

Defendants’ time to respond to the Complaint has not yet run, and in light of that and the expedited time frame for responding to Plaintiff’s motion for a preliminary injunction, Defendants did not file a separate motion to dismiss the Complaint when they filed their opposition to the preliminary injunction motion. Defendants did note in their opposition to the preliminary injunction motion that the Supreme Court has recognized that it is appropriate to “terminate the litigation” at the preliminary injunction stage if the “Government is entitled to judgment as a matter of law.” *Munaf v. Geren*, 553 U.S. 674, 692 (2008); *see also Ark. Dairy Coop Ass’n v. U.S. Dep’t of Agric.*, 573 F.2d 815, 832-33 (D.C. Cir. 2009) (remanding for dismissal of certain claims in consideration of whether a preliminary injunction should be granted).

For the reasons explained in the opposition to Plaintiffs’ preliminary injunction motion, this case should be dismissed under Rule 12(b)(1) for lack of jurisdiction. Should the Court not

dismiss this case in the course of resolving the preliminary injunction motion, Defendants would respond in due course to Plaintiff's Complaint, which would likely involve timely filing a motion to dismiss under one or more of the bases set forth in Rule 12.

Dated: December 16, 2014

Respectfully submitted,

JOYCE R. BRANDA
Assistant Attorney General

KATHLEEN R. HARTNETT
Deputy Assistant Attorney General

DIANE KELLEHER
Assistant Branch Director

/s/ Adam D. Kirschner
ADAM D. KIRSCHNER
HECTOR G. BLADUELL
BRADLEY H. COHEN
KYLE R. FREENY
JULIE S. SALTMAN
Trial Attorneys
Civil Division, Federal Programs Branch
U.S. Department of Justice
P.O. Box 883
Washington, D.C. 20044
Tel.: (202) 353-9265
Fax: (202) 616-8470
Adam.Kirschner@usdoj.gov

Attorneys for Defendants