

The Honorable James L. Robart

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON and
STATE OF MINNESOTA,

Plaintiffs,

v.

DONALD TRUMP, in his official
capacity as President of the United
States; U.S. DEPARTMENT OF
HOMELAND SECURITY; JOHN F.
KELLY, in his official capacity as
Secretary of the Department of
Homeland Security; TOM SHANNON,
in his official capacity as Acting
Secretary of State; and the UNITED
STATES OF AMERICA,

Defendants.

CIVIL ACTION NO. 2:17-cv-00141-JLR

JOINT STATUS REPORT

Pursuant to the Court’s February 3, 2017 Order (ECF No. 52), the parties hereby submit this joint status report, proposing a briefing schedule for Plaintiffs’ motion for preliminary injunction. The parties request that the Court enter the following briefing schedule:

Plaintiffs’ motion for preliminary injunction due by 11:59pm PST on February 9, 2017

Defendants’ opposition due by 11:59pm PST on February 15, 2017

Plaintiffs’ reply due by 11:59pm PST on February 17, 2017

1 It is Defendants' position that the Court lacks jurisdiction to decide Plaintiffs'
2 forthcoming motion for preliminary injunction until the Ninth Circuit resolves Defendants'
3 pending appeal of this Court's February 3, 2017 Order. *See* Notice of Appeal, ECF No. 53; *see*
4 *also Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) ("The filing of a notice
5 of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of
6 appeals and divests the district court of its control over those aspects of the case involved in the
7 appeal."); *Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d 867, 880 (9th
8 Cir. 2000) (explaining that a "district court lacks jurisdiction to modify an injunction once it
9 has been appealed except to maintain the status quo among the parties"); *Flynt Distrib. Co. v.*
10 *Harvey*, 734 F.2d 1389, 1392 n.1 (9th Cir. 1984) ("The district court had no jurisdiction to
11 'modify and supersede' its order after the filing of the notice of appeal."). Nevertheless,
12 pursuant to Federal Rule of Civil Procedure 62.1, the Court may defer considering Plaintiffs'
13 forthcoming motion for preliminary injunction until after the Ninth Circuit has resolves
14 Defendants' appeal or the Court may issue an indicative ruling, stating that it would deny
15 Plaintiffs' motion for preliminary injunction if the Ninth Circuit remands for that purpose. *See*
16 Fed. R. Civ. P. 62.1(a)(1), (3). Defendants, therefore, believe it is appropriate for the parties to
17 proceed with briefing on plaintiffs' motion for preliminary injunction despite Defendants'
18 pending appeal.

19 The jurisdictional position above is not shared by Plaintiffs. Plaintiffs intend to bring a
20 preliminary injunction motion pursuant to Federal Rule of Civil Procedure 65(a) and do not
21 agree that the temporary restraining order issued by the Court on February 3, 2017, is an
22 "injunction" for purposes of the cases cited above. Plaintiffs agree on the briefing schedule set
23 out above for a preliminary injunction motion.

24 For these reasons, the parties respectfully request that the Court enter the briefing
25 schedule set forth above.
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1 DATED this 6th day of February, 2017.

2 Respectfully submitted,

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Acting Assistant Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2017, I electronically filed the foregoing Opposition to Plaintiff's Motion for Temporary Restraining Order using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: February 6, 2017
/s/Colleen Melody

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