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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 STATE OF WASHINGTON, et al.,

CASE NO. C17-0141JLR

10 Plaintiffs,

ORDER

11 v.

12 DONALD J. TRUMP, et al.,

13 Defendants.

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15 **I. INTRODUCTION**

16 On February 10, 2017, the court issued a minute order directing the parties to
17 submit simultaneous memoranda concerning how this matter should proceed in the
18 district court during the pendency of Defendants' appeal of this court's February 3, 2017,
19 order to the Ninth Circuit Court of Appeals. (2/10/17 Order (Dkt. # 74).) The parties
20 timely submitted memoranda in response to the court's February 10, 2017, minute order.
21 (States Mem. (Dkt. # 75); Def. Mem. (Dkt. # 76).) In addition, the court heard the
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1 argument of counsel in a telephonic hearing on February 13, 2017. The court now
2 considers this issue.

3 **II. BACKGROUND**

4 On February 3, 2017, the court entered what it considered a temporary restraining
5 order (“TRO”) with the intention of holding a subsequent hearing and issuing a
6 subsequent more detailed order on Plaintiff State of Washington and State of Minnesota’s
7 (“the States”) anticipated motion for a preliminary injunction. (*See* TRO (Dkt. # 52).)

8 On February 4, 2017, Defendants appealed the court’s TRO. (Notice of App. (Dkt.
9 # 53).)

10 On February 6, 2017, in response to the court’s TRO, the parties filed a joint status
11 report (“JSR”) setting forth a proposed schedule for briefing on the States’ motion for
12 preliminary injunction. (JSR (Dkt. # 56).) In the JSR, Defendants stated that it was their
13 “position that the Court lacks jurisdiction to decide Plaintiff’s forthcoming motion for
14 preliminary injunction until the Ninth Circuit resolves Defendants’ pending appeal of this
15 Court’s February 3, 2017[,] Order.” (*Id.* at 2.) Nevertheless, Defendants agreed that was
16 “appropriate for the parties to proceed with briefing on [P]laintiffs’ motion for
17 preliminary injunction despite Defendants’ pending appeal.” (*Id.*) On February 7, 2017,
18 the court entered a scheduling order granting the parties’ joint request regarding a
19 briefing schedule on Plaintiffs’ motion for a preliminary injunction. (2/7/17 Order (Dkt.
20 # 57).)

21 On February 9, 2017, the Ninth Circuit denied Defendants’ emergency motion for
22 a stay of this court’s February 3, 2017, order. (*See* 1st 9th Cir. Order (Dkt. # 68).) In so

1 ruling, the Ninth Circuit characterized the court’s order as an order “possessing the
2 qualities of an appealable preliminary injunction.” (*Id.* at 7; *see also id.* at 8 (“[W]e
3 believe that . . . the TRO should be considered to have the qualities of a reviewable
4 preliminary injunction.”).) On the same day, the Ninth Circuit issued a separate order
5 setting forth a briefing schedule on the merits of Defendants’ appeal of the court’s
6 February 3, 2017, order. (2d 9th Cir. Order (Dkt. # 69) at 2.)

7 On February 9, 2017, the State of Washington filed a letter with the court stating
8 that, because the Ninth Circuit held that the court’s TRO “possesses the qualities of an
9 appealable preliminary injunction,” “the States assume the district court briefing schedule
10 is no longer applicable.” (Letter (Dkt. # 70).) Accordingly, the States did not file a
11 motion for a preliminary injunction, which under the court’s scheduling order was due
12 that day. (*See id.*; *see generally* Dkt.)

13 On February 10, 2017, in response to the States’ letter, the court issued a minute
14 order directing the parties to file a JSR concerning how this matter should proceed in the
15 district court while Defendants’ appeal of the TRO is pending. (Ord. re: Letter (Dkt.
16 # 71).) Later that day, the court revised the schedule and ordered the parties to submit
17 simultaneous memoranda on the same issue by 12:00 p.m., Pacific Standard Time, on
18 February 13, 2017. (*See* 2/10/17 Order.) The court is now in receipt of those
19 memoranda. (States Mem.; Def. Mem.) In addition, the court heard the argument of
20 counsel on that topic during a telephonic hearing on February 13, 2017.

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III. ANALYSIS

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2 The parties agree that no further briefing is required in this court on a motion for a
3 preliminary injunction, and that the court's February 3, 2017, TRO is now on appeal as a
4 preliminary injunction; however, the parties disagree about what further proceedings
5 should take place in the district court at this time. (*See* States Mem. at 5-6; Def. Mem. at
6 3.) Defendants would like to "postpone any further proceedings in the district court"
7 pending further direction from the Ninth Circuit. (Def. Mem. at 3.) The States would
8 like to "[p]roceed directly to discovery, including a prompt Rule 26(f) conference by the
9 parties." (States Mem. at 6.)

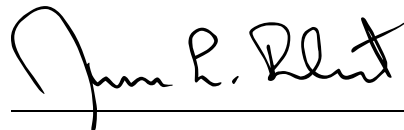
10 Based on its interpretation of the Ninth Circuit's order, the court agrees that the
11 Ninth Circuit has construed the TRO as a preliminary injunction and that further briefing
12 in this court on a motion for a preliminary injunction is not warranted or appropriate
13 while the present appeal is pending. However, the court does not see a basis for
14 postponing other aspects of the litigation and agrees with the States that the case should
15 otherwise proceed. Indeed, "it is firmly established that an appeal from an interlocutory
16 order does not divest the trial court of jurisdiction to continue with other phases of the
17 case." *Plotkin v. Pac. Tel. & Tel. Co.*, 688 F.2d 1291, 1293 (9th Cir. 1982). Thus, the
18 Ninth Circuit's jurisdiction "extends only to the 'matters inextricably bound up with the
19 injunctive order from which the appeal is taken.'" *Paige v. State of Cal.*, 102 F.3d 1035,
20 1039 (9th Cir. 1996) (quoting *Self-Realization Fellowship Church v. Ananda*, 59 F.3d
21 902, 905 (9th Cir. 1995)). If an issue or motion arises during the course of this litigation
22 that is "inextricably bound up with the injunctive order from which the appeal [was]

1 taken,” *see id.*, the court can address any such issue at the time it arises in accordance
2 with the case law discussed above. In the meantime, the court directs the parties to
3 proceed with this litigation in accordance with the Federal Rules of Civil Procedure and
4 this court’s Local Civil Rules.

5 **IV. CONCLUSION**

6 The court concludes that the Ninth Circuit has construed the court’s TRO (Dkt.
7 # 52) as an appealable preliminary injunction and that further briefing or the submission
8 of evidence concerning a preliminary injunction would not be appropriate in this court
9 during the pendency of Defendants’ appeal. However, the court **ORDERS** the parties to
10 continue with other aspects of this litigation in accordance with the Federal Rules of Civil
11 Procedure and this court’s Local Civil Rules. If issues or motions subsequently arise that
12 either party believes are “inextricably bound up with the injunctive order,” the court will
13 address those motions or issues on a case-by-case basis in accordance with the case law
14 set forth above. Finally, the court **VACATES** the briefing schedule set forth in its
15 February 7, 2017, order (Dkt. # 57).

16 Dated this 14th day of February, 2017.

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19 JAMES L. ROBART
20 United States District Judge
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