

JEFFREY B. WALL

Acting Solicitor General

CHAD A. READLER

Acting Assistant Attorney General

ELLIOT ENOKI (No. 1528)

Acting United States Attorney

EDRIC M. CHING (No. 6697)

Assistant United States Attorney

JOHN R. TYLER

Assistant Branch Director

BRAD P. ROSENBERG (DC Bar No. 467513)

MICHELLE R. BENNETT (CO Bar No. 37050)

DANIEL SCHWEI (NY Bar)

Trial Attorneys

United States Department of Justice

Civil Division, Federal Programs Branch

20 Massachusetts Avenue, N.W.

Washington, D.C. 20530

Tel: (202) 514-3374; Fax: (202) 616-8460

E-mail: brad.rosenberg@usdoj.gov

Attorneys for Defendants

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

STATE OF HAWAII and
ISMAIL ELSHIKH,

Plaintiffs,

v.

DONALD J. 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 Homeland Security;
U.S. DEPARTMENT OF STATE; REX
TILLERSON, in his official capacity as
Secretary of State; and the UNITED
STATES OF AMERICA,

Defendants.

No. 1:17-cv-00050-DKW-
KSC

**JOINT MOTION TO
STAY DISTRICT COURT
PROCEEDINGS
PENDING RESOLUTION
OF DEFENDANTS'
APPEAL**

Judge: Hon. Derrick K.
Watson

Hearing: None Requested

**JOINT MOTION TO STAY DISTRICT COURT PROCEEDINGS
PENDING RESOLUTION OF DEFENDANTS' APPEAL**

The parties hereby jointly move the Court to stay further proceedings in this case, including the obligation of the Defendants to respond to Plaintiffs' Second Amended Complaint, pending final disposition of Defendants' appeal of this Court's preliminary injunction. The basis for this motion is as follows:

1. On March 29, 2017, the Court issued its Order Granting Plaintiffs' Motion to Convert the Temporary Restraining Order to a Preliminary Injunction. *See* ECF No. 270. Defendants appealed that preliminary injunction to the Ninth Circuit on March 30, 2017. *See* Notice of Appeal, ECF No. 271.

2. There are currently two upcoming deadlines in this case. *First*, Defendants' response to Plaintiffs' Second Amended Complaint is due on April 4, 2017. *Second*, the Court has set its initial Rule 16 Scheduling Conference for April 18, 2017. *See* ECF No. 242. Several additional deadlines are associated with or dependent on the Rule 16 Scheduling Conference pursuant to Rules 16.2(b) and 26.1.

3. The parties respectfully submit that further proceedings on the merits of this case should be stayed pending final resolution of Defendants' appeal of the preliminary injunction, including through any additional appellate channels in which relief may be sought. This Court "has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706

(1997); *see also Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes of its docket with economy of time and effort for itself, for counsel, and for litigants.”); *Filtrol Corp. v. Kelleher*, 467 F.2d 242, 244 (9th Cir. 1972) (district court has discretion to stay proceedings in order to “promote economy of time and effort for itself, for counsel, and for litigants.”) (quotation and citations omitted). As set forth below, the Court should exercise that control and stay proceedings here.

4. The resolution of Defendants’ appeal is likely to affect the scope and nature of future litigation before this Court, and the Court and the parties will thus benefit from knowing the resolution of that appeal before engaging in further proceedings here. *See Ass’n of Irrigated Residents v. Fred Schakel Dairy*, 634 F. Supp. 2d 1081, 1094 (E.D. Cal. 2008) (granting stay pending resolution of interlocutory appeal). Additionally, given the overlap between the issues presented in Defendants’ appeal and the issues pending before this Court on the merits of Plaintiffs’ claims, a stay would reduce duplicative litigation of issues subject to appellate proceedings. *Cf. Apostol v. Gallion*, 870 F.2d 1335, 1337 (7th Cir. 1989) (“[S]imultaneous proceedings in multiple forums create confusion and duplication of effort.”). Accordingly, a stay would significantly advance the interests of judicial economy, reduce the expenditure of time and resources by the parties in this case

until it is clear to these parties what sorts of proceedings may be necessary, and promote an orderly disposition of the issues presented in this case.

5. The requested stay will not cause undue delay, as both parties have stated their intention to expedite the appeal. Moreover, because both parties in this case are amenable to a stay, the balance of interests weighs heavily in favor of granting a stay.

6. While Plaintiffs join in this motion for purposes of seeking a stay, they believe that the circumstances surrounding this motion are unique, and do not believe that this motion or the requested stay should serve as precedent for other cases. Plaintiffs' agreement to file this joint motion does not constitute evidence or an indication of what Plaintiffs' position would be for purposes of any other lawsuit.

7. A Proposed Order is attached hereto.

Dated: April 3, 2017

Respectfully submitted,

JEFFREY B. WALL
Acting Solicitor General

CHAD A. READLER
Acting Assistant Attorney General

ELLIOT ENOKI (No. 1528)
Acting United States Attorney
EDRIC M. CHING (No. 6697)
Assistant United States Attorney

JOHN R. TYLER
Assistant Director, Federal Programs Branch

/s/ Brad P. Rosenberg
BRAD P. ROSENBERG (DC Bar. No. 467513)
MICHELLE R. BENNETT (CO Bar. No. 37050)
DANIEL SCHWEI (NY Bar)
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W.
Washington, D.C. 20530
Tel: (202) 514-3374
Fax: (202) 616-8460
E-mail: brad.rosenberg@usdoj.gov

Attorneys for Defendants

/s/ Neal K. Katyal

DOUGLAS S. CHIN (Bar No. 6465)
Attorney General of the State of Hawai'i
CLYDE J. WADSWORTH (Bar No. 8495)
Solicitor General of the State of Hawai'i
DEIRDRE MARIE-IHA (Bar No. 7923)
DONNA H. KALAMA (Bar No. 6051)
KIMBERLY T. GUIDRY (Bar No. 7813)
ROBERT T. NAKATSUJI (Bar No. 6743)
Deputy Attorneys General
DEPARTMENT OF THE ATTORNEY
GENERAL, STATE OF HAWAI'I
425 Queen Street
Honolulu, HI 96813
Telephone: (808) 586-1500

Fax: (808) 586-1239

Attorneys for Plaintiff, State of Hawai'i

NEAL K. KATYAL*
COLLEEN ROH SINZDAK*
MITCHELL P. REICH*
ELIZABETH HAGERTY*
HOGAN LOVELLS US LLP
555 Thirteenth Street NW
Washington, DC 20004
Telephone: (202) 637-5600
Fax: (202) 637-5910
Email:
neal.katyal@hoganlovells.com

586- THOMAS P. SCHMIDT*
HOGAN LOVELLS US LLP
875 Third Avenue
New York, NY 10022
Telephone: (212) 918-3000
Fax: (212) 918-3100

SARA SOLOW*
ALEXANDER B. BOWERMAN*
HOGAN LOVELLS US LLP
1835 Market St., 29th Floor
Philadelphia, PA 19103
Telephone: (267) 675-4600
Fax: (267) 675-4601

**Admitted Pro Hac Vice*

*Attorneys for Plaintiffs, State of
Hawai'i and Ismail Elshikh*