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July 27, 2021

Molly C. Dwyer  
Clerk of Court  
U.S. Court of Appeals for the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119-3939  
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**Via E Filing and email to [emergency@ca9.uscourts.gov](mailto:emergency@ca9.uscourts.gov)**

Re: *State of Arizona et al. v. U.S. Department of Homeland Security, et al.*, No. 21-16118,  
Response to Order of July 27, 2021 Staying Plaintiffs Emergency Motion for Injunction  
Pending Appeal

Dear Ms. Dwyer,

I am writing regarding your order issued at 10:55 a.m. on July 27, 2021, in which you stayed resolution of the Plaintiffs' motion for emergency injunction pending appeal until after August 2, 2021, notwithstanding that the motion is fully briefed and, since its filing on July 15, has requested relief on or before July 30.

This is an appeal from denial of a motion for preliminary injunction. It is not a final judgment appeal and Plaintiffs invoked this Court's jurisdiction only under 28 U.S.C. § 1292(a), not 28 U.S.C. § 1291. Plaintiffs have not moved in district court for reconsideration of the denial of the preliminary injunction. And the district court has made clear that it does not understand the pending motion for reconsideration as implicating the denial of the preliminary injunction, only the dismissal of the complaint. See Dkt. 10-2 Addendum to Emergency Motion for Injunction Pending Appeal at ADD-24 (Reproducing district court order stating, "[i]f Plaintiffs believe a ruling on this Motion cannot await the ruling on the Motion for Reconsideration, the Court would deny the Motion based on its previous ruling on Defendants' Motion to Dismiss, thereby allowing Plaintiffs to make the same request for an injunction pending appeal to the Ninth Circuit. See Fed. R. App. P. 8(a)(2)."). Consistent with the district court's order, Plaintiffs have *already* filed their notice with the district court disclaiming reconsideration of the denial of the request for preliminary injunction, and as indicated by the district court, the only procedural relief would be to renew a request for injunction pending appeal, not to revive the preliminary injunction. Dkt. 10-2 at ADD-25-26. However, for avoidance of any doubt, Plaintiffs are disclaiming any authority to have the district court somehow revive the denial of the preliminary injunction that is on appeal at this Court.

Moreover, the motion for reconsideration of the dismissal of the complaint was filed *after* the notice of appeal, when jurisdiction over the preliminary injunction was already transferred to

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your Court. None of the authority cited in your order appears to be on point. “[T]he filing of a notice of interlocutory appeal divests the district court of jurisdiction over the particular issues involved in that appeal.” *City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 886 (9th Cir. 2001). Moreover, in 2009 the Federal Rules of Civil Procedure were modified specifically to permit indicative rulings by the district court in situations where jurisdiction had already transferred. See Fed. R. Civ. P. 62.1.

I am writing to respectfully request that you immediately rescind your stay of resolution the emergency motion entered by the motions clerk and forward our completed briefing to the motions panel so that we may have the possibility of resolution of our briefed emergency motion by July 30, as we previously requested. Alternatively, because we have filed our response to your order today, we respectfully request that if the stay is not rescinded, you accelerate Defendants’ Response to tomorrow or at the latest July 29, two days from the filing of the response (the same number of business days for Defendants as set forth in your order).

Sincerely,

MARK BRNOVICH  
ATTORNEY GENERAL OF ARIZONA

By: Brunn (Beau) Roysden III

AUSTIN KNUDSEN  
ATTORNEY GENERAL OF MONTANA

By: David M. Dewhirst