

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CITY AND COUNTY OF SAN
FRANCISCO,

Plaintiff-Appellee,

v.

DONALD J. TRUMP, President of the
United States; et al.,

Defendants-Appellants.

No. 17-16886

D.C. No. 3:17-cv-00485-WHO
Northern District of California,
San Francisco

COUNTY OF SANTA CLARA,

Plaintiff-Appellee,

v.

DONALD J. TRUMP, President of the
United States; et al.,

Defendants-Appellants.

No. 17-16887

D.C. No. 3:17-cv-00574-WHO
Northern District of California,
San Francisco

MOTION TO DISMISS APPEALS

Plaintiffs-Appellees the County of Santa Clara and the City and County of San Francisco (the “Counties”) respectfully move the Court for an order dismissing these consolidated appeals as moot as a matter of law, because they challenge a preliminary injunction that has since been superseded by final judgment and a permanent injunction.

These appeals seek review of a district court order preliminarily enjoining Section 9(a) of Executive Order 13768, “Enhancing Public Safety in the Interior of the United States” (the “Executive Order”). The district court granted the preliminary injunction on April 25, 2017. Defendants-Appellants moved for reconsideration and the district court denied that motion on July 20, 2017, leaving the preliminary injunction in place. Defendants-Appellants then filed these appeals on September 18, 2017. The Court set a briefing schedule, which has since been modified by the Court’s Order granting Defendants-Appellants’ unopposed motion for an extension of time to file their opening brief. *See* Case No. 17-16887, Dkt. 22.

On November 20, 2017, the district court granted the Counties’ motions for summary judgment and permanently enjoined Section 9(a) of the Executive Order. On November 22, 2017, the district court entered final judgment in favor of the County of Santa Clara. On December 7, 2017, the district court entered final judgment in favor of the City and County of San Francisco. Defendants-Appellants have now appealed from both final judgments (Case Nos. 17-17478 and 17-17480), and the Court has set briefing schedules in those appeals.

As a consequence of the district court’s entry of final judgment and a permanent injunction, the instant interlocutory appeals are moot and subject to dismissal. “Where a permanent injunction has been granted that supersedes the

original preliminary injunction, the interlocutory injunction becomes merged in the final decree and the appeal from the interlocutory preliminary order is properly dismissed.” See *In re Estate of Ferdinand Marcos Human Rights Litig.*, 94 F.3d 539, 544 (9th Cir. 1996) (internal quotation marks omitted). Accordingly, the Court should dismiss these appeals as moot.

Pursuant to Circuit Advisory Committee Note to Circuit Rule 27-1(5), the Counties contacted counsel for Defendants-Appellants to advise them of this motion and obtain their position. Defendants-Appellants stated that they oppose the motion.

Respectfully submitted,

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Dated: December 15, 2017

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion satisfies the type-volume limitation in Rule 27(d)(2)(A) because it contains 369 words. This motion was prepared using Microsoft Word in Times New Roman, 14-point font, a proportionally-spaced typeface.

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I hereby certify that I electronically filed the following:

MOTION TO DISMISS APPEALS

with the clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on December 15, 2017.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED: December 15, 2017

s/ John W. Keke
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9th Circuit Case Number(s) 17-16886, 17-16887

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