

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

FREDRIC RUSSELL MANCE, JR., et al.,	§	Case No. 4:14-CV-00539-O
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
ERIC HOLDER, et al.,	§	
	§	
Defendants.	§	

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR STAY

The rules afford federal officials double the time afforded most litigants to consider appealing from an adverse judgment. *Compare* Fed. R. App. P. 4(a)(1)(A) and 4(a)(1)(B). But federal officials are not exempt from the requirements of Fed. R. Civ. P. 62(c) and Fed. R. App. P. 8, concerning motions for a stay pending appeal.

Rule 62(c) allows for a stay pending appeal only upon the filing of an actual notice of appeal, or at least some commitment by the movant to do so. *Loving v. IRS*, 920 F. Supp. 2d 108, 110 (D.D.C. 2013). A "possible appeal" will not do. *Corpus Christi Peoples' Baptist Church, Inc. v. Texas Dep't of Human Resources*, 481 F. Supp. 1101, 1111-12 (S.D. Tex. 1979), *aff'd*, 621 F.3d 438 (5th Cir. 1980). "Both Civil Rule 62(c) and Appellate Rule 8 presuppose the existence of a valid appeal." *Century Laminating, Ltd. v. Montgomery*, 595 F.2d 563, 569 (10th Cir. 1979).

Moreover, a stay pending appeal is an "extraordinary remedy." *Belcher v. Birmingham Trust Nat'l Bank*, 395 F.2d 685, 685 (5th Cir. 1968). Appellants carry a heavy burden in seeking to have the Court set aside its considered judgment, given the strong public interest in the finality

of judgments and the ordinary administration of justice. But the Government has not even attempted to address the ordinary factors governing stays pending appeal.<sup>1</sup> Rather, it merely wishes to have a stay because it wants sixty days to decide whether to appeal the Court's judgment.

It is vanishingly rare for the Government to accede in having an act of Congress declared unconstitutional, nor would Plaintiffs have been entitled to an injunction, in the face of an adverse judgment, merely to contemplate an appeal that they might hypothetically win. The Government would be free to dismiss its appeal if, at any time within sixty days of the judgment (or even later), it might change its mind. But there is no authority for the proposition that the Government is entitled to a stay of this Court's judgments for no other reason than to contemplate an appeal.

Nor does the Government's pro-forma motion, less than one page in length, citing no authority and failing to mention the grounds for a stay pending appeal, satisfy the requirement that it seek a stay pending appeal from this Court before seeking said relief from the Fifth Circuit. *See* Fed. R. App. P. 8(a)(1)(A). The rules contemplate a robust effort. To be sure, Plaintiffs will oppose such a motion when it comes, upon the filing of a proper notice of appeal. For now, the instant motion should be denied.

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<sup>1</sup> “[T]he factors regulating the issuance of a stay are . . . (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

The Government errs in claiming that a stay would not prejudice Plaintiffs. Deprivation of fundamental rights—including Second Amendment rights—constitutes irreparable harm. *Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011). And it is “obvious” that “enforcement of an unconstitutional law is always contrary to the public interest.” *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) (citations omitted). That Plaintiffs sought relief via a motion for summary judgment, rather than a motion for preliminary injunction, is irrelevant.

Dated: February 19, 2015

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Respectfully submitted,

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Certificate of Service

On February 19, 2015, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2) or the local rules.

/s/ Alan Gura  
Alan Gura