

The Honorable Ronald B. Leighton

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

STATE OF WASHINGTON,

Plaintiff,

v.

DONALD TRUMP, *et al.*,

Defendants.

NO. 2:17-cv-01510 RBL

WASHINGTON'S REPLY IN SUPPORT
OF MOTION TO STAY DISTRICT
COURT PROCEEDINGS PENDING
RESOLUTION OF APPEALS

NOTED FOR: JANUARY 5, 2018

I. INTRODUCTION

The Court should temporarily stay this litigation while the nationwide injunctions entered in identical cases brought by the States of California and Pennsylvania are appealed. A stay would avoid wasting the resources of the Court and the State of Washington while awaiting governing guidance from the Ninth Circuit on the very same issues presented here. The Federal Government does not attempt to articulate any harm to its interests from a temporary stay. Indeed, contrary to what it urges on this Court here, it has taken the precise *opposite* position in the parallel case in California, advocating a stay pending appeal there – consistent with the position it uniformly took in district courts pending its appeals in the immigration ban litigation. Under governing Ninth Circuit standards, a temporary stay should be entered.

1 **II. ARGUMENT**

2 **A. The Court Should Not Sanction the United States' Attempt To Take Contrary**
 3 **Positions Before Different Courts**

4 Remarkably, the United States is taking a position directly contrary to the one it
 5 advocates here in the same case brought by a different state in the U.S. District Court for the
 6 Northern District of California. At the same time the Justice Department is urging this Court to
 7 proceed to the merits of this case, it has advised the District Court in California that it will seek
 8 a stay of proceedings there should it decide to appeal that Court's injunction.¹ Its Opposition
 9 provides no explanation for why it is taking a contrary position in the Northern District of
 10 California.

11
 12 Equity prevents a party from "gaining an advantage by taking inconsistent positions" not
 13 only for reasons of fairness, "but also because of 'general consideration[s] of the orderly
 14 administration of justice and regard for the dignity of judicial proceedings,' and to 'protect
 15 against a litigant playing fast and loose with the courts.'" *Hamilton v. State Farm Fire & Cas.*
 16 *Co.*, 270 F.3d 778, 782 (9th Cir. 2001) (quoting *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir.
 17 1990)). This Court should do what the Federal Government has confirmed it will request from
 18 the District Court in California: stay this litigation pending the Ninth Circuit's disposition of its
 19 imminent appeal in *California v. Hargan*.
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24 ¹ See Joint Case Management Conference Statement, *California, et al. v. Hargan, et al.*, No. 4:17-cv-05783
 25 (N.D. Cal.), at 6, Exhibit A to the Declaration of Jeffrey T. Sprung in Support of Plaintiff's Reply re: Motion to
 26 Stay District Court Proceedings Pending Resolution of Appeals ("The deadline to appeal the preliminary injunction
 entered by the Court is February 19, 2018. In the event that defendants appeal the preliminary injunction, federal
 defendants would seek a stay of this case pending resolution of the appeal in the Ninth Circuit and, potentially, the
 Supreme Court.").

1 **B. The United States Fails To Address the Legal Standard Governing Motions for Stay**

2 The circumstances here squarely meet the three criteria articulated by the Ninth Circuit
3 governing motions for stay – criteria the Federal Government fails to acknowledge or address.²

4 First, the United States does not articulate any harm to its interests whatsoever that would result
5 from a stay. Nor can it: even if this Court proceeded to the merits of this case, its ruling would
6 have no practical effect while the injunctions already in effect are appealed to the Ninth and
7 Third Circuits. Second, the United States does not dispute the waste of Washington’s resources
8 that would result from proceeding here while appeal of the same issues is imminent in the
9 governing appellate court, or the confusion to insured individuals, employers, and insurance
10 companies that would result from potentially inconsistent rulings. Third, the United States does
11 not confront the fact that a stay would simplify this litigation by awaiting resolution of
12 overlapping questions of law by the Ninth and Third Circuits, avoid the waste of this Court’s
13 resources, and promote the orderly course of justice. Under the standards governing motions for
14 stay, this case should be stayed pending resolution of the appeals in *California v. Hargan* and
15 *Pennsylvania v. Trump*.
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18 **C. The United States’ Disagreement With the California and Pennsylvania Courts’
19 Injunctions is Irrelevant To Whether this Court Should Grant a Stay**

20 The Federal Government’s Opposition dwells exclusively on the merits of the underlying
21 dispute between the parties, only amplifying the wastefulness of its position. The Federal
22 Government will have ample opportunity to make these arguments in its appeals before the Ninth
23 and Third Circuits, but such arguments have no relevance to this Court’s consideration of
24 whether a stay is appropriate. Critically, the Federal Government does not dispute that this case
25

26 ² See *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).

1 raises identical issues with respect to standing and the merits of the claims. Even if, as the United
2 States strenuously argues (and Washington just as strenuously disputes), the other District Courts
3 are wrong, there is no benefit from this Court issuing its own ruling because the exact same
4 issues will soon be before a court whose decision will be binding on this Court.

5
6 **III. CONCLUSION**

7 Washington seeks a temporary stay of this litigation so long as the injunctions entered in
8 *California v. Hargan* or *Pennsylvania v. Trump* are in effect. It would waste the resources of this
9 Court and the State to plunge ahead while the key legal issues are awaiting imminent resolution
10 by the Ninth and Third Circuits. Once those injunctions are confirmed or lifted, and based on the
11 resulting appellate guidance, either party should be permitted to request resumption of this
12 litigation.³

13
14 DATED this 5th day of January, 2018.

15 ROBERT W. FERGUSON
16 Attorney General

17 /s/ Jeffrey T. Sprung
18 JEFFREY T. SPRUNG, WSBA #23607
19 ALICIA O. YOUNG, WSBA #35553
20 CYNTHIA L. ALEXANDER, WSBA #46019
21 AUDREY L. UDASHEN, WSBA #42868
22 Assistant Attorneys General
23 *Attorneys for Plaintiffs*

24
25
26 ³ Washington has submitted herewith a revised Proposed Order to confirm it to the recent filings by the United States.

DECLARATION OF SERVICE

I hereby certify that on January 5, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Elizabeth L. Kade
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue NW
Washington, DC 20530
Elizabeth.L.Kade@usdoj.gov
Attorney for Defendants

DATED this 5th day of January, 2018, at Seattle, Washington.

/s/ Jeffrey T. Sprung
JEFFREY T. SPRUNG
Assistant Attorney General

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The Honorable Ronald B. Leighton

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

STATE OF WASHINGTON,

 Plaintiff,

 v.

DONALD TRUMP, et al.,

 Defendants.

NO. 2:17-cv-01510 RBL

ORDER GRANTING PLAINTIFF’S
MOTION TO STAY DISTRICT COURT
PROCEEDINGS PENDING
RESOLUTION OF APPEALS IN
CALIFORNIA V. HARGAN AND
PENNSYLVANIA V. TRUMP

[PROPOSED]

NOTED FOR CONSIDERATION:
JANUARY 5, 2018

This matter came before the Court on Plaintiff’s Motion to Stay District Court Proceedings Pending Resolution of Appeals of *California, et al. v. Hargan, et al.*, and *Pennsylvania v. Trump, et al.* The Court considered the Motion and all filings of record in support of and opposition to the Motion.

Being fully advised in this matter, the Court hereby rules as follows:

These proceedings, including all pending and forthcoming deadlines, are hereby stayed as long as either the December 21, 2017 injunction in *California, et al. v. Hargan, et al.*, or the December 15, 2017 injunction in *Pennsylvania v. Trump, et al.*, remain in full force and effect, or until further order of this Court. Should circumstances change such that lifting the stay is

1 warranted, any party may move to lift the stay. In addition, the parties are instructed to submit a
2 joint status report to the Court within 30 days of the final appellate ruling with respect to any appeals
3 of the injunctions listed above. Because this action is now stayed, the Clerk is directed to remove
4 the pending motion (Dkt. 49) from the Court’s calendar. After the stay is lifted, the United States
5 may renote its motion for the Court’s consideration if appropriate at that time.
6

7 It is SO ORDERED.

8 DATED this _____ day of _____, 2018.
9

10 _____
11 UNITED STATES DISTRICT JUDGE

12 ROBERT W. FERGUSON
13 Attorney General

14 /s/ Jeffrey T. Sprung
15 JEFFREY T. SPRUNG, WSBA #23607
16 ALICIA O. YOUNG, WSBA #35553
17 CYNTHIA L. ALEXANDER, WSBA #46019
18 AUDREY L. UDASHEN, WSBA #42868
19 Assistant Attorneys General
20 *Attorneys for Plaintiff*
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