



1221 McKinney Street, Suite 4500 | Houston, Texas 77010  
Phone 713.951.3700 | Fax 713.951.3720  
www.beckredden.com

CHAD FLORES  
BOARD CERTIFIED ♦ CIVIL APPELLATE LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION

DIRECT (713) 951-6268  
cflores@beckredden.com

April 23, 2019

United States Court of Appeals for the Third Circuit  
Office of the Clerk  
21400 U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106-1790

Re: No. 19-1729, *Defense Distributed et al. v. Grewal* (3rd. Cir.)

---

Dear Ms. Dodszuweit,

Appellee Gurbir Grewal took the liberty of filing a supplemental letter about the issue of appellate jurisdiction. Please accept this letter as the Appellants' supplement.

The Appellants' April 18 letter established that, under *Rolo v. General Development Corp.*, 949 F.2d 695 (3d Cir. 1991), the district court's stay decision constitutes an appealable order "refusing" an injunction. 28 U.S.C. § 1292(a)(1). This is true as to Defense Distributed and SAF, and is especially true as to the five plaintiffs ***that play no role whatsoever in the Texas action***: Firearms Policy Coalition, Inc., Firearms Policy Foundation, The Calguns Foundation, California Association of Federal Firearms Licensees, Inc., and Brandon Combs. *Rolo* upholds jurisdiction here.

Grewal's position about Defense Distributed and SAF is wrong for the reasons stated in the Appellant's April 18 letter. As to the other five plaintiffs, Grewal's April 23 letter doubles down with a trio of unprecedented arguments. No statute, no case, and no other authority supports these illogical arguments. They should all be rejected.

First, Grewal says that "the mere existence of new nominal plaintiffs does not serve to create appellate jurisdiction." But the law of appellate jurisdiction knows of no such thing as "nominal plaintiffs." Grewal cites zero authorities in support of the "nominal plaintiffs" exception because no such authorities exist. There is no "nominal plaintiffs" exception to Section 1292(a)(1)'s grant of appellate jurisdiction.

Even if Grewal's supposed "nominal plaintiffs" exception existed, it would not apply to these five plaintiffs because they are in no way "nominal." The complaint pleads their cases just as completely as it does those of Defense Distributed and SAF, and the motion for a preliminary injunction belongs just as much to these plaintiffs as it does to Defense Distributed and SAF. Each party here has distinct legal interests.

This case has no second-class plaintiffs and no second-class appellants. All are of equal jurisdictional rank and all are equally entitled to invoke Section 1292(a)(1)'s provision of appellate jurisdiction. So long as Grewal insists on unconstitutionally censoring all of these litigants, all have the right to demand full-fledged judicial review.

Second, Grewal's new letter tries to score points by saying that the "plaintiffs are functioning as a group, represented by the same attorneys." But once again, Grewal cites zero authorities because zero authorities support his "group" litigation penalty.

Jurisdiction does not turn on which lawyers represent which parties. Original jurisdiction does not and appellate jurisdiction does not. Congress has never made access to the judicial branch depend on identity of counsel. Instead, jurisdiction here turns on what kind of "order" the district court issues. § 1292(a). Under *Rolo*, this "order" refuses an injunction as to all of the action's plaintiffs—and especially as to the five that have no role whatsoever in the Texas litigation. It matters not that the error was preserved and the appeal perfected by one set of lawyers instead of seven.

Third, Grewal says that distinct parties are one and the same for jurisdictional purposes if they "advance the same legal theories." No law supports this idea either. It too is unprecedented and totally divorced from the jurisdictional statutes that matter.

So long as part of an "order" crosses the Section 1292(a)(1) threshold as to at least one appellant, appellate jurisdiction exists over the entire "appeal." *See, e.g., OFC Comm Baseball v. Markell*, 579 F.3d 293, 298 & n.3 (3d Cir. 2009). This order crosses the Section 1292(a)(1) threshold as to all of the appellants, and especially as to the five that play no role in the Texas action. Thus, appellate jurisdiction exists.

At bottom, Grewal's misgivings about the Texas suit are *not* matters of jurisdictional "power." *Id.* They are, at best, merely factors to consider in a discretionary decision about which issues within the appeal "may be considered in the wise administration of appellate resources." 16 Charles A. Wright & Arthur R. Miller et al., *Federal Practice & Procedure* § 3921.1 (3d ed. West 2019). Decisions about issue selection—*i.e., how* to exercise the jurisdiction Section 1292(a)(1) undoubtedly confers—should not be made until the parties have filed full briefs. *See id.*

Respectfully submitted,

Hartman & Winnicki, P.C.  
Daniel L. Schmutter  
74 Passaic Street  
Ridgewood, New Jersey 07450  
(201) 967-8040

Josh Blackman LLC  
Josh Blackman  
1303 San Jacinto Street  
Houston, Texas 77002  
(202) 294-9003

Beck Redden LLP



---

Chad Flores  
Daniel Nightingale  
Hannah Roblyer  
1221 McKinney Street, Suite 4500  
Houston, Texas 77010  
(713) 951-3700

Counsel for Appellants

### Certifications

1. At least one of the attorneys whose name appears on this filing is a member of the bar of this Court.
2. A virus detection program, BitDefender Endpoint Security Tools major version 6, has been run on the file and no virus was detected.
3. On April 23, 2019, this filing was served on the opposing party's counsel by delivering it through the Court's electronic docketing system to the following registered users of the system:

Glenn J. Moramarco  
Office of Attorney General of New Jersey  
Department of Law & Public Safety

Beck Redden LLP



---

Chad Flores  
1221 McKinney Street, Suite 4500  
Houston, Texas 77010  
(713) 951-3700

Counsel for Appellants