



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

September 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,

In response to the Court's request for submissions about appellate jurisdiction, the parties supplied a series of letters some time ago. Please accept this letter as the Appellants' supplemental submission regarding a new jurisdictional development.

Recently, the district court below issued a new order that solidifies the Court's appellate jurisdiction. On August 28, 2019, the district court issued this "Order":

IT APPEARING that on March 7, 2019, the Court ordered that all proceedings in this action are stayed until the related action in the Western District of Texas (Civ. Dkt. No. 18-637) is resolved and no other motions for relief and/or appeals are viable (Order at 1–2, ECF No. 26),

IT IS on this 28th day of August, 2019,

ORDERED that Plaintiffs' Amended Motion for Preliminary Injunction (ECF No. 18) is DISMISSED without prejudice. Plaintiffs may refile this Motion once the stay has been lifted in this action.

Doc. 33 at 1 (attached). This order both confirms that the Appellants' prior basis for appellate jurisdiction was correct and supplies a new basis for appellate jurisdiction. If appellate jurisdiction was not definitively established already, it certainly is now.

All along, the Appellants have submitted that this appeal qualifies for 28 U.S.C. § 1292(a)(1)'s provision of appellate jurisdiction over interlocutory orders "refusing" a preliminary injunction. Under *Rolo v. General Development Corp.*, 949 F.2d 695 (3d Cir. 1991), the district court's March 7 order qualifies as such. See Appellants Letter of April 18, 2019; Appellants' Letter of April 23, 2019.

To deny Section 1292(a)(1) and *Rolo*'s applicability, Grewal argued that the district court's March 7 order neither directly nor indirectly denied the Appellants' motion for a preliminary injunction. See Appellees' Letter of April 18, 2019 ("the Stay Order is neither literally, nor functionally, a denial of Appellants' motion for a preliminary injunction"); Appellees' Letter of April 23, 2019 ("the Stay Order does not effectively deny Appellants' motion for a preliminary injunction"). That argument was invalid before and the district court's new order defeats in two additional ways.

First, the district court's August 28 order proves that the Appellants were right to construe the March 7 order as having denied the Plaintiffs' motion for a preliminary injunction. No new argument from any party caused the August 28 order. The district court issued it *sua sponte* as a codification of what the March 7 order had already done. In effect, the March 7 order and August 28 order are one and the same. The August 28 order merely does expressly what the March 7 order did impliedly. The March 7 order itself does, indeed, have the practical effect of refusing the Appellants' motion for a preliminary injunction and is appealable by virtue of Section 1292(a)(1) and *Rolo*.

Second, the district court's August 28 order makes the debate about *Rolo* unnecessary to resolve. Regardless of whether or not the March 7 "stay" order confers appellate jurisdiction in isolation, the August 28 order undoubtedly does. It constitutes a Section 1292(a)(1) order "refusing" an injunction by saying so expressly: "Plaintiffs' Amended Motion for Preliminary Injunction (ECF No. 18) is DISMISSED."¹

For these reasons, appellate jurisdiction's existence can no longer be seriously questioned. Lingering jurisdictional issues, if any, can be addressed in the forthcoming briefs and/or an oral argument; in no event would the summary dismissal that the Appellee seeks be warranted. Thus, the Appellants respectfully request that the Court (1) deny the Appellees' motion to dismiss the appeal, and (2) commence the briefing schedule immediately.

¹ Procedurally, to ensure that the instant appellate proceeding covers both the March 7 order and the August 28 order, the Appellants have timely filed a notice of appeal from the August 28 order, Doc. 34 (attached), and are in the process of ensuring that it is docketed in this appeal (or, if necessary, that consolidation occurs).

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 September 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

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Defense Distributed,
Second Amendment Foundation, Inc.,
Firearms Policy Coalition, Inc.,
Firearms Policy Foundation,
The Calguns Foundation,
California Association of Federal
Firearms Licensees, Inc., and
Brandon Combs,

Plaintiffs,

v.

Gurbir Grewal, Attorney General of the
State of New Jersey,

Defendant.

No. 3:19-cv-04753-AET-TJB

Notice of Appeal

BECK REDDEN LLP
Chad Flores
cflores@beckredde.com
Daniel Hammond
dhammond@beckredde.com
Hannah Roblyer
hroblyer@beckredde.com
1221 McKinney Street, Suite 4500
Houston, Texas 77010
(713) 951-3700

HARTMAN & WINNICKI, P.C.
Daniel L. Schmutter
dschmutter@hartmanwinnicki.com
74 Passaic Street
Ridgewood, New Jersey 07450
(201) 967-8040

Counsel for Plaintiffs

Notice of Appeal

On April 1, 2019, the Plaintiffs filed a notice of appeal to the United States Court of Appeals for the Third Circuit from the “Order” entered in this action as Document 26 on March 7, 2019. Doc. 28. That appeal is pending in the Third Circuit as case number 19-1729.

On August 28, 2019, the Court entered an “Order” as Document 33 that relates to the existing appeal. The prior notice of appeal may already give the Third Circuit appellate jurisdiction over the August 28, 2019 order. To avoid any jurisdictional doubt, the Plaintiffs hereby supplement the existing notice of appeal, Doc. 28, with this additional notice of appeal:

All Plaintiffs appeal to the United States Court of Appeals for the Third Circuit from the “Order” entered in this action as Document 33 on August 28, 2019.

For appellate docketing purposes, Plaintiffs respectfully request that matters arising from this notice of appeal be docketed in conjuncting with the existing appeal as Third Circuit case number 19-1729.

