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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

PEDRO VASQUEZ PERDOMO; *et al.*,

Plaintiffs,

v.

KRISTI NOEM, in her official capacity as Secretary of Homeland Security; *et al.*,

Defendants.

No. 2:25-cv-05605-MEMF-SP

DEFENDANTS' RESPONSE TO PLAINTIFFS' REQUEST TO STRIKE [ECF 112] DEFENDANTS' JURISDICTIONAL NOTICE [ECF 110]

Hon. Maame Ewusi-Mensah Frimpong
United States District Judge

Plaintiffs' attempt to strike (ECF 112) a jurisdictional clarification is not just misplaced—it reflects a misunderstanding of the most basic principle governing federal courts: jurisdiction is not optional. Federal courts are courts of limited jurisdiction. *See Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986). Accordingly, "federal courts are under an independent obligation to examine their own jurisdiction," and "they must do so even when no party raises the issue." *United States v. Hays*, 515 U.S. 737, 742 (1995). *See also Moore v. Maricopa Cty. Sheriff's Office*, 657 F.3d 890, 894 (9th Cir. 2011) ("The Court is obligated to determine sua sponte whether it has subject matter jurisdiction."). Indeed, "[c]hallenges to subject-matter jurisdiction can of course be raised at any time prior to final judgment." *Grupo Dataflux v. Atlas Global Grp.*, 541 U.S. 567, 571 (2004); *see also* Fed. R. Civ. P. 12(h)(3).

Defendants' notice simply informs the Court that it lacks jurisdiction to proceed further on issues that are the subject of that appeal. ECF 110 at 1-2. Specifically, the Court lacks jurisdiction over the Fourth and Fifth Amendment claims addressed in the Order and any potential preliminary-injunction proceedings on those issues. ECF 87 at 49-52. Any statements in the status report to the contrary were inaccurate and mistaken. As a result, the schedule for briefing a preliminary injunction that the Court lacks jurisdiction over should naturally be vacated. Such notice is entirely proper; a party need not await a formal motion to alert the Court that a jurisdictional line may have been crossed. Since the Court must assure itself of its jurisdiction regardless of what the parties do, striking the notice serves no purpose and needlessly elevates form over substance.[1]

In any event, their effort fails under the applicable legal standard. Motions to strike are strongly disfavored and "should not be granted unless the matter to be stricken clearly

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[1] Plaintiffs' reliance on Rule 60 and Local Rule 7-18 to argue that the notice is procedurally improper only underscores their misunderstanding. The Federal Rules do not require a motion—let alone a motion for reconsideration—to raise a jurisdictional issue. This is especially ironic given that their own "request" to strike is not presented in the form of a motion, did not comply with this District's meet-and-confer requirement (L.R. 7-3), failed to notice a hearing date (L.R. 6-1), and lacked a proposed order (L.R. 5-4.4).

could have no possible bearing on the subject of the litigation" or "unless prejudice would result to the moving party from denial of the motion." *Platte Anchor Bolt, Inc. v. IHI, Inc.*, 352 F.Supp.2d 1048, 1057 (N.D. Cal. 2004). "If there is any doubt whether the portion to be stricken might bear on an issue in the litigation, the court should deny the motion." *Id.* As discussed above, because subject matter jurisdiction may be raised at any time, there is nothing untimely—or improper—about Defendants' notice.

Plaintiffs' accusation that Defendants "disavow[ed]" a prior position or misled the Court is equally unfounded. The parties' joint status report (ECF 101) was filed amidst a rapidly developing post-appeal landscape, and Defendants promptly clarified their position upon further analysis. Courts have recognized that such developments may—and should—prompt refinement in a party's jurisdictional posture. See *Townley v. Miller*, 693 F.3d 1041, 1042 (9th Cir. 2012) ("The filing of a notice of appeal generally divests the district court of jurisdiction over the matters being appealed."). Defendants' notice, ECF 110, does not seek reconsideration of any order, nor does it request vacatur of any substantive ruling—only the associated briefing and hearing schedule. It raises a jurisdictional concern that the Court must consider—and one that Plaintiffs, if they believed the Court's authority were secure, should welcome rather than try to suppress.

As to the merits, Plaintiffs' request (ECF 112) fails to confront the basic principle that a notice of appeal divests the district court of jurisdiction over the subject matter of that appeal. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982); *Prudential Real Est. Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d 867, 880 (9th Cir. 2000). The Order addresses the Fourth and Fifth Amendment claims and makes clear that the show cause order for a preliminary injunction includes identical issues. ECF 87 at 49-52. The Notice of Appeal controls and it included the entire order. ECF 89 (appealing ECF 87). The fact that the Notice of Appeal referenced—in a passing parenthetical—only one of the TRO applications, does not control the appeal's breadth. Nor does the fact that Defendants only sought to stay part of the order and that Plaintiffs sought two separate injunctions matter for the scope of the appeal. The operative notice (ECF 89) appeals the

entirety of the Order (ECF 87), and the government has consistently maintained that position. *See* Defs.' Emergency Mot. to Stay TRO at 4 n.4, *Perdomo v. Noem*, No. 25-4312 (9th Cir. July 17, 2025), ECF No. 6 (noting "this motion seeks an emergency stay only as to one of those applications, due to its especially extreme consequences."); Defs.' Renewed Emergency Mot. to Stay TRO at 4 n.1, *Perdomo v. Noem*, No. 25-4312 (9th Cir. July 21, 2025) (same).[2] So the appeal divests the Court of jurisdiction over all aspects of the appealed order, not just those for which emergency relief was requested. *See Townley*, 693 F.3d at 1042.

Rather than engage with Defendants' case law, Plaintiffs jump straight to citing their own distinguishable sources. Each case concerns different procedural circumstances and does not displace the general rule against district court modification of orders under appeal. In *Mayweathers v. Newland*, 258 F.3d 930, 935-36 (9th Cir. 2001), the Ninth Circuit addressed the district court's authority to issue a second preliminary injunction on related but distinct claims while an appeal of an earlier injunction was pending. The Court noted that both injunctions had expired and that the second injunction, unlike the proposed one here, did not add requirements on Defendants. *Id.* That case also did not involve a threshold jurisdictional challenge, nor did it suggest that a court may proceed with merits rulings once subject matter jurisdiction is called into question. Indeed, *Steel Co. v. Citizens for a Better Environment* squarely rejects such reasoning, holding that federal courts must ensure jurisdiction before addressing the merits, and that this obligation is "inflexible and without exception." 523 U.S. 83, 94-95 (1998) (quotation omitted).

East Bay Sanctuary Covenant v. Trump, 354 F. Supp. 3d 1094 (N.D. Cal. 2018), is likewise inapposite. There, the court expressly deferred resolution of jurisdictional issues because it had already found a likelihood of success on the merits and addressed the jurisdictional points solely to build a fuller record for appeal. Here, by contrast, no such

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[2] The correspondence between Messrs. Tajsar and Skedzielewski reflects Defendant's consistent position that appeals the entire order but has thus far only sought a stay as to the Fourth Amendment portions of the order. ECF 112-1 Ex. 1.

merits determination has occurred post-appeal, and the jurisdictional question is front and center.

Finally, *SEIU v. National Union of Healthcare Workers*, 598 F.3d 1061, 1067-68 (9th Cir. 2010), involved a specialized injunction under § 301(a) of the Labor Management Relations Act. The court simply held that the appeal of a TRO was not moot because the district court issued a preliminary injunction that only partially overlapped with the TRO. *Id.* And unlike here, the court in SEIU was not addressing a pending appeal of a TRO implicating threshold constitutional limits on judicial authority. Nowhere does the court say a district court may issue another injunction on the same issues that are on appeal.

In short, Plaintiffs' opposition rests on the mistaken premise that jurisdictional concerns can be dismissed based on procedural form or timing. But the Court has an independent obligation to ensure it may proceed. The notice raises a jurisdictional issue that the Court must consider, and striking it would be both procedurally improper and pointless.

CONCLUSION

The Court should deny Plaintiffs' request to strike (ECF 112) Defendants' Notice of Clarification (ECF 110).

Dated: July 23, 2025

Respectfully submitted,

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