

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Adam Steele, Brittany Montrois, and Joseph
Henchman, on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

United States of America,

Defendant.

Case No. 14-cv-01523-RCL

PLAINTIFFS' SUR-REPLY IN OPPOSITION TO DEFENDANTS'
MOTION FOR A STAY PENDING APPEAL

Plaintiffs file this sur-reply to address two issues raised in the reply submitted by the United States. ECF No. 86.

1. The United States contends that it “could not have filed a Rule 62(c) motion for stay pending appeal prior to the entry of a final judgment by the Court.” *Id.* at 2. That is not correct. The United States could have filed an appeal and a Rule 62(c) motion at any time after the entry of this Court’s June 1, 2017 Memorandum and Opinion, ECF No. 79, and Order, ECF No. 80. An order granting an injunction is immediately appealable, 28 U.S.C. § 1292(a)(1), and a motion under Rule 62(c) may be made at any time “an appeal is pending from an interlocutory order . . . grant[ing] an injunction.”

2. The United States further contends that its motion to stay is timely because it was filed within the time set forth in the scheduling order. ECF No. 86 at 2-3. That is also not correct. The only reason the scheduling order contains a provision regarding a potential motion to stay

was that the United States requested such a provision and self-selected a filing date. As the joint status report states, plaintiffs “do not consent” to the United States’ request for a stay. ECF No. 80. The inclusion of the motion-to-stay provision in the scheduling order did not make the motion timely or meritorious. Nor did plaintiffs waive their right to challenge the motion to stay, either procedurally or substantively.

Respectfully submitted,

/s/ William H. Narwold

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August 16, 2017

*Counsel for Plaintiffs Adam Steele, Brittany
Montrois, Joseph Henchman, and the Class*

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2017, I filed the foregoing sur-reply through this Court's CM/ECF system, and that all parties required to be served have been thereby served.

/s/ William H. Narwold
William H. Narwold