

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 10 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LA POSTA BAND OF DIEGUENO
MISSION INDIANS OF THE LA POSTA
RESERVATION, On behalf of itself and on
behalf of its members as parens patriae,

Plaintiff-Appellant,

v.

DONALD J. TRUMP, President of the
United States, in his official capacity; et al.,

Defendants-Appellees.

No. 20-55941

D.C. No.

3:20-cv-01552-AJB-MSB

Southern District of California,
San Diego

ORDER

The appeal filed September 8, 2020 is a preliminary injunction appeal.

Accordingly, Ninth Circuit Rule 3-3 shall apply.

The mediation questionnaire is due three days after the date of this order.

If they have not already done so, within 7 calendar days after the filing date of this order, the parties shall make arrangements to obtain from the court reporter an official transcript of proceedings in the district court that will be included in the record on appeal.

The briefing schedule shall proceed as follows: the opening brief and excerpts of record are due not later than October 6, 2020; the answering brief is due November 3, 2020 or 28 days after service of the opening brief, whichever is earlier; and the optional reply brief is due within 21 days after service of the answering brief. *See* 9th Cir. R. 3-3(b).

No streamlined extensions of time will be approved. *See* 9th Cir. R. 31-2.2(a)(3). Any request for an extension of time to file a brief must be made by written motion under Ninth Circuit Rule 31-2.2(b).

Failure to file timely the opening brief shall result in the automatic dismissal of this appeal by the Clerk for failure to prosecute. *See* 9th Cir. R. 42-1.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Tina S. Price
Deputy Clerk
Ninth Circuit Rule 27-7

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LA POSTA BAND OF DIEGUEÑO
MISSION INDIANS OF THE LA
POSTA RESERVATION,

Plaintiff-Appellant,

v.

DONALD J. TRUMP, PRESIDENT
OF THE UNITED STATES, IN HIS
OFFICIAL CAPACITY, et. al.,

Defendants-Appellees.

Case No. 20-55941

**UNOPPOSED RULE 27-12 MOTION TO EXPEDITE AND MODIFY
BRIEFING SCHEDULE**

Appellant La Posta Band of Diegueño Mission Indians of the La Posta Reservation (“La Posta”) respectfully requests that the Court expedite the briefing and hearing schedule for this appeal according to the schedule below. Appellees (“Federal Defendants”) have informed La Posta that they do not oppose this motion.

Motions seeking expedited briefing and hearings “will be granted upon a showing of good cause.” Cir. R. 27-12. Good cause includes, but is not limited to, showing that “in the absence of expedited treatment, irreparable harm may occur or the appeal may become moot.” Cir. R. 27-12(3).

Good cause exists to expedite this appeal and modify the briefing schedule because, while it is pending, the Federal Defendants' unlawful construction of the border wall and associated infrastructure is permanently destroying La Posta's religious and cultural heritage. This Court has previously affirmed an injunction against Defendants' construction of a different section of the same border barrier on the basis that the funds were illegally acquired and the resulting harm to environment outweighed any harm due to the injunction. *Sierra Club v. Trump*, 963 F.3d 874 (2020). The Federal Defendants' construction of the border barrier section that is the subject of this appeal replicates the same illegal funding mechanism. Worse, the construction is excavating and pulverizing burial grounds and other geographic features that are sacred to La Posta and its citizens. The desecration will continue pending the present appeal.

La Posta therefore respectfully requests that the Court order an expedited briefing and hearing schedule as follows:

- La Posta's Opening Brief: September 17, 2020
- Federal Defendants' Response Brief: October 2, 2020
- La Posta's Reply brief: October 4, 2020
- Hearing: First available argument calendar following completion of the briefing

Federal Defendants do not oppose this proposed schedule. La Posta has received the transcript of the hearing on the preliminary injunction from the reporter and will file it within the timeframe required.

Dated: September 12, 2020

Respectfully submitted,

s/ Michelle LaPena
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