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Via CM/ECF

Lyle W. Cayce, Clerk of Court
United States Court of Appeals for the Fifth Circuit

Re: *Texas State LULAC et al. v. Paxton*, No. 22-50690

Dear Mr. Cayce:

On September 15, 2022, the Court directed the parties file letter briefs addressing jurisdiction given the putative Rule 59(e) motion filed by defendants in the district court. We submit this brief jointly on behalf of intervenor defendants-appellants.

The district court entered final judgment in this matter on August 2, 2022. ROA.1939-40. Appellants filed a timely notice of appeal on August 4. ROA.1941-44, and successfully obtained an administrative stay in this Court. ROA.2037-38. On August 30, after this Court exercised jurisdiction by entering that administrative stay, defendants filed a document styled a Motion for Reconsideration And/Or Clarification of the Court's August 2, 2022 Order and Judgment in the district court. ROA.2018-32.

This Court retains the power to decide this appeal notwithstanding that motion, as explained in appellants' opening brief. *First*, as plaintiffs agree (Letter at 2), defendants do not seek to "alter or amend a judgment," Fed. R. Civ. P. 59(e), but merely seek an alteration of the district court's opinion. Defendants' motion states they seek to change the district court's order, ROA.1921-26—*not* its final judgment, ROA.1939-40. It forthrightly explains the "requested relief [would] not change the substance of the ultimate relief awarded to Plaintiffs." ROA.2019. Because "appellate courts review judgments, not opinions," *U.S. v. Fletcher ex rel Fletcher*, 805 F.3d 596, 602 (5th Cir. 2015), defendants' request has no impact on this Court's jurisdiction. Though plaintiffs' letter is correct (at 2) that the district court *could* alter or amend its judgment, that is speculative as no one has requested such relief.

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Second, this Court’s decision in *Ross v. Marshall*, 426 F.3d 745 (5th Cir. 2005) is distinguishable. There, this Court held that “the timely filing of a motion listed in Rule 4(a)(4)(A)” filed by the same party who appealed “suspends or renders dormant a notice of appeal until all such motions are disposed of by the trial court . . . whether the motion was filed before or after the notice of appeal.” *Id.* at 751-52. Here defendants—who at a minimum refused to defend S.B. 1111 and opposed appellants’ request for relief below, ROA.1966—filed their putative Rule 59(e) motion only after this Court had already entered an administrative stay. It is one thing to hold a party must suffer the consequences of taking an appeal while simultaneously seeking relief in the district court. But it is another entirely to hold that parties who oppose relief may frustrate appellate review by filing a putative Rule 59(e) motion that would not affect the district court’s judgment.

Indeed, Supreme Court precedent explains that rules like Federal Rule of Appellate Procedure 4(a)(4) are claims-processing rules rather than jurisdictional rules. That is because “[o]nly Congress may determine a lower court’s subject-matter jurisdiction.” *Hamer v. Neighborhood Hous. Services of Chicago*, 138 S. Ct. 13, 17 (2017). “The only jurisdictional requirement is the need for an appeal within 30 days of the judgment or an extension.” *Walker v. Weatherspoon*, 900 F.3d 354, 356 (7th Cir. 2018) (Easterbrook, J.). By contrast, “supplemental or implementing provisions in the Rules of Appellate Procedure are not jurisdictional.” *Id.* By belatedly invoking the rules after this case has been set for oral argument, defendants have forfeited any argument based on Rule 4(a)(4). *See Hamer*, 138 S.Ct. at 16; *Walker*, 900 F.3d at 357.

Third, should this Court conclude otherwise, the appropriate remedy is to stay or abate this appeal pending the district court’s resolution of the putative 59(e) motion. *Katerinos v. U.S. Dep’t of Treasury*, 368 F.3d 733, 738 (7th Cir. 2004) (collecting authority). Here, where “significant judicial and attorney resources have been expended,” *id.*, such a resolution is particularly appropriate. And this Court should leave the administrative stay in place during the pendency of any abatement or stay because the Court had jurisdiction to order that stay when it was entered.

Finally, if the Court disagrees entirely, it should clarify that its remand is because the pending motion renders the district court’s judgment non-final and thus unenforceable. *Simmons v. Reliance Standard Life Ins. Co. of Texas*, 310 F.3d 865, 867 (5th Cir. 2002).

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Respectfully submitted.

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cc: all counsel of record (via cm/ecf)

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