

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

THE DISTRICT OF COLUMBIA, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States and in his
individual capacity,

Defendants.

No. 8:17-cv-1596-PJM

NOTICE TO THE COURT

On March 28, 2018, this Court issued a Memorandum Opinion and Order denying in part the motion to dismiss filed by Defendant Donald J. Trump in his official capacity as President of the United States. ECF Nos. 101, 102; *see also* ECF No. 21. The President, in his official capacity, hereby notifies this Court that, at this time, he is not moving for a certification of interlocutory appeal under 28 U.S.C. § 1292(b), without prejudice to his ability to do so if this Court later denies the remainder of his motion to dismiss.

The President submits that it is premature at this time to seek interlocutory appeal of the denial of his motion-to-dismiss arguments that Plaintiffs lack standing and a cause of action, because his arguments that Plaintiffs fail to state a claim on the merits remain pending, are set for oral argument on June 11, 2018, and would, if accepted, result in a favorable final judgment. By contrast, if this Court were also to deny the merits arguments in the motion to dismiss, the Solicitor General at that point would consider seeking § 1292(b) certification for an interlocutory appeal of the orders denying the motion. Although there is no express statutory deadline for filing a § 1292(b) motion and such a motion would be premature at this time, some courts have recognized an implied timeliness requirement. Thus, the President files this notice now out of an

abundance of caution in order to preempt any possible timeliness objections to any certification motion that might be filed after his motion to dismiss is fully resolved. If, however, this Court is of the view that a motion to certify its March 28 Order must be filed before resolution of the rest of the motion to dismiss, the President respectfully requests that the Court either treat this notice as a conditional motion to certify if the remainder of the motion to dismiss is denied (and hold it in abeyance pending resolution of the motion to dismiss and full briefing on the certification issue) or inform the President that a formal motion to certify must be filed beforehand.

Dated: May 2, 2018

Respectfully Submitted:

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Acting Assistant Attorney General

BRETT A. SHUMATE
Deputy Assistant Attorney General

JENNIFER D. RICKETTS
Director, Federal Programs Branch

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/s/ Jean Lin
JEAN LIN

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*Counsel for the President of the United States
in his official capacity*

CERTIFICATE OF SERVICE

I hereby certify that May 2, 2018, I electronically filed a copy of the foregoing. Notice of this filing will be sent via email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Jean Lin
JEAN LIN