

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APR 21 2017

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

STATE OF HAWAII; ISMAIL
ELSHIKH,

Plaintiffs-Appellees,

ALI PLAINTIFFS; JOSEPH DOE;
JAMES DOE; EPISCOPAL DIOCESE OF
OLYMPIA,

Intervenors-Pending,

v.

DONALD J. TRUMP, in his official
capacity as President of the United States;
U.S. DEPARTMENT OF HOMELAND
SECURITY; JOHN F. KELLY, in his
official capacity as Secretary of Homeland
Security; U.S. DEPARTMENT OF
STATE; REX W. TILLERSON, in his
official capacity as Secretary of State;
UNITED STATES OF AMERICA,

Defendants-Appellants.

No. 17-15589

D.C. No.

1:17-cv-00050-DKW-KSC

District of Hawaii,
Honolulu

ORDER

The *Ali* Plaintiffs' motion to intervene, Dkt. No. 20, and the *Doe* Plaintiffs' motion to intervene, Dkt. No. 57, are denied for the purposes of this expedited appeal only. *See Bates v. Jones*, 127 F.3d 870, 873 (9th Cir. 1997) ("Intervention at the appellate stage is . . . unusual and should ordinarily be allowed only for

imperative reasons.” (internal quotation marks omitted)); Fed. R. Civ. P. 24(a)(2) (intervention as of right must be given where “disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest”); Fed. R. Civ. P. 24(b)(3). The interests of the *Ali* Plaintiffs may be pursued through their case, *Ali v. Trump*, No. 2:17-cv-00135-JLR (W.D. Wash. filed Jan. 30, 2017), and possibly on appeal to our court. The same goes for the *Doe* Plaintiffs, who may protect their interests in their case, *Doe v. Trump*, No. 2:17-cv-00178-JLR (W.D. Wash. filed Feb. 7, 2017).

Although “[t]he prospect of stare decisis may, under certain circumstances, supply the requisite practical impairment warranting intervention as of right,” *United States v. Stringfellow*, 783 F.2d 821, 826 (9th Cir. 1986), *vacated on other grounds*, 480 U.S. 370 (1987), the outcome of this appeal will not “for all practical purposes . . . foreclose” the *Ali* and *Doe* Plaintiffs’ claims, *Blake v. Pallan*, 554 F.2d 947, 954 (9th Cir. 1977). *See In re Estate of Ferdinand E. Marcos Human Rights Litig.*, 536 F.3d 980, 986 (9th Cir. 2008) (noting that a non-party’s concerns about the precedential effect of an opinion may not warrant intervention).

The *Ali* and *Doe* Plaintiffs may file briefs as amici curiae no later than Wednesday, April 26, 2017.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Omar Cubillos
Deputy Clerk
Ninth Circuit Rule 27-7