

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 28 2021

FOR THE NINTH CIRCUIT

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

CESAR CABALLERO,

Plaintiff-Appellant,

v.

MICHAEL WILLIAMS; et al.,

Defendants-Appellees,

D-Q UNIVERSITY - CALIFORNIA,
BOARD OF TRUSTEES,

Intervenor-Pending.

No. 21-15879

D.C. No. 2:21-cv-00638-KJM-CKD

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, District Judge, Presiding

Submitted July 19, 2021**

Before: SCHROEDER, SILVERMAN, and MURGUIA, Circuit Judges.

Cesar Caballero appeals from the district court's order denying his

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

application for a temporary restraining order (“TRO”) in his action to adjudicate his rights to Indian lands and alleging harassment in violation of state law. We have jurisdiction to determine our own jurisdiction. *Havensight Capital LLC v. Nike, Inc.*, 891 F.3d 1167, 1171 (9th Cir. 2018). We dismiss for lack of jurisdiction.

We lack jurisdiction over this interlocutory appeal because the district court’s denial of a TRO was not tantamount to the denial of a preliminary injunction and did not effectively decide the merits of the case. *See Religious Tech. Ctr., Church of Scientology Int’l, Inc. v. Scott*, 869 F.2d 1306, 1308 (9th Cir. 1989) (although ordinarily not appealable, denial of a TRO may be appealed if tantamount to denial of a preliminary injunction; the court considers whether the denial followed a full adversary hearing and whether, absent review, appellant would be effectively foreclosed from pursuing further interlocutory relief); *Graham v. Teledyne-Cont’l Motors*, 805 F.2d 1386, 1388 (9th Cir. 1987) (denial of TRO may be appealed if it effectively decides the merits of the case).

All pending motions are denied as moot.

DISMISSED.