No. 18-36068, Consolidated with Nos. 18-36069, 19-35036, 19-35064, 19-35099

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

INDIGENOUS ENVIRONMENTAL NETWORK ET AL.,
Plaintiffs-Appellees-Cross-Appellants,

v.

UNITED STATES DEPARTMENT OF STATE ET AL.,
Defendants-Appellants,

and

TRANSCANADA KEYSTONE PIPELINE, LP, ET AL.,
Intervenor-Defendants-Appellants.

On Appeal from the United States District Court
for the District of Montana
Nos. 4:17-cv-00029-BMM and 4:17-cv-00031-BMM

APPELLANTS' MOTION TO DISMISS THE CONSOLIDATED APPEALS, VACATE THE DISTRICT COURT'S JUDGMENTS, VOID ITS INJUNCTION AND FINAL ORDERS, AND REMAND WITH INSTRUCTIONS TO DISMISS FOR MOOTNESS

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, TransCanada Keystone Pipeline, LP and TransCanada Corporation make the following disclosures:

TransCanada Keystone Pipeline, LP, is a Delaware limited partnership wholly owned by TransCanada Keystone Pipeline, LLC and TransCanada Keystone Pipeline GP, LLC, which are indirectly wholly owned by TransCanada Corporation.

TransCanada Corporation is a Canadian public company organized under the laws of Canada. No publicly held corporation owns 10% or more of TransCanada Corporation's stock.

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PRELIMINARY STATEMENT

Pursuant to Federal Rule of Appellate Procedure 27 and Ninth Circuit Rule 27-1, appellants TransCanada Keystone Pipeline, LP, and its parent TransCanada Corporation (jointly "TransCanada"), intervenor-defendants in the proceedings below, move this Court to dismiss these consolidated appeals, and to vacate the district court's judgments, dissolve its permanent injunction, and remand the underlying lawsuits to the district court with instructions to dismiss them. These consolidated appeals, and the underlying suits, have been rendered moot by recent actions of the President that vitiate the bases for plaintiffs' claims.

In the suits giving rise to these appeals, plaintiffs challenged a Presidential Permit, issued by the U.S. Department of State ("State"), that authorized TransCanada to construct and operate 1.2 miles of oil pipeline facilities crossing the Canada-United States border as part of the Keystone XL Pipeline Project (the "Project" or "Keystone XL"). Plaintiffs alleged that, in issuing that permit, State and various other federal governmental agencies and officials (collectively "Federal Defendants") were subject to, and had violated, the Administrative Procedure Act ("APA"), the National Environmental Policy Act ("NEPA"), and the Endangered Species Act ("ESA"). The central, dispositive issue before the district court was whether State's issuance of a Presidential Permit pursuant to an express delegation of the President's authority to grant such permits was *agency*

action, which is subject to the requirements of the foregoing statutes, or *Presidential* action, which is not subject to those requirements. The district court concluded that State had engaged in agency action, and that the Federal Defendants had violated the APA, NEPA, and the ESA in several respects. The court enjoined construction and certain pre-construction activities (*i.e.*, assembling worker camps) to ensure that "bureaucratic momentum" would not skew the additional environmental analysis the Court required State to undertake.

On March 29, 2019, the President formally revoked the permit that State had issued and, acting in his own name and under his own authority, granted a new Presidential permit authorizing TransCanada to construct the same cross-border oil pipeline facilities that had been the subject of the earlier permit. These actions render plaintiffs' claims moot. Those claims all challenged the validity of a permit that no longer exists. Accordingly, no effective relief can be granted with respect to those claims. Indeed, one of the plaintiffs has acknowledged as much, by filing a new suit in which it recognizes the validity of the President's revocation of the State-issued permit, alleges that the new permit is invalid, and seeks injunctive relief with respect to that new permit.

Accordingly, as TransCanada explains in detail below, these recent developments dictate that the consolidated appeals be dismissed as moot. In addition, the judgments below should be vacated, the district court's injunction

should be dissolved, and the cases should be remanded with instructions to dismiss for mootness. *See United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950).

TransCanada is not moving for the foregoing relief in the district court because the new Presidential Permit was issued after the appeals were filed and jurisdiction vested in this Court. TransCanada's counsel has contacted counsel for the other parties and has been advised that the Federal Defendants-Appellants support this motion; Plaintiffs-Cross-Appellants Indigenous Environmental Network ("IEN") and North Coast River Alliance take no position at this time, but reserve the right to oppose after they review this filing; and the remaining Plaintiffs-Cross-Appellants oppose this motion. The Intervenor-Appellees have not advised us of their positions.

STATEMENT OF FACTS

A. Background: Events through 2017

TransCanada proposed Keystone XL in 2008 as an expansion of an existing pipeline system. *See* State's March 23, 2017 Record of Decision/National Interest Determination ("2017 ROD/NID") (Appendix A) at 9 (Appx009). Because Keystone XL would cross the Canada-U.S. border, TransCanada needs a Presidential Permit authorizing the construction of border-crossing facilities.

For nearly 150 years, the permitting of international cross-border facilities has been understood to fall within the President's inherent constitutional power

over foreign affairs.[1] Through the 1960s, Presidents personally signed and issued permits for such facilities. *See* Whiteman, *Digest of International Law*, Vol. 9 (1968); ECF No. 44-5, at 17-21.[2] In 1968, the President delegated his authority to issue certain cross-border permits to State. Executive Order 11,423, § 1(a), 33 Fed. Reg. 11,741 (Aug. 20, 1968). A later executive order refined the process for issuing cross-boundary pipeline permits. Executive Order 13,337, 69 Fed. Reg. 25,299 (May 5, 2004). Under Executive Order 13,337, the Secretary of State was authorized to issue such permits if doing so would "serve the national interest." *Id.*

Accordingly, TransCanada applied to State in 2008 for a Presidential Permit to construct Keystone XL facilities on or near the Canada-U.S. border in Montana. 2017 ROD/NID at 9 (Appx009). In response, State coordinated a multi-year review of the Project's environmental impacts. *See id*. However, in January 2012, President Obama denied TransCanada's initial application on the ground that a

[1] *See* President Ulysses Grant's Seventh Annual Message to Congress, *reprinted in* Papers Relating to the Foreign Relations of the United States, Vol. 1, 44th Cong. 1st Sess., H.R. Doc. No. 1, Pt. 1 (Dec. 6, 1875); *Sierra Club v. Clinton*, 689 F. Supp. 2d 1147, 1163 (D. Minn. 2010); *see also*, *e.g.*, 38 U.S. Op. Att'y Gen. 163 (1935) (gas pipeline); 30 U.S. Op. Att'y Gen. 217 (1913) (electrical power); 22 U.S. Op. Att'y Gen. 514 (1899) (submarine cables).

[2] All ECF numbers cited in this motion relate to the document numbers in Case No. 4:17-cv-00029-BMM in the district court.

deadline imposed by Congress in a December 2011 law was too short to allow consideration of the impacts of a potential alternative route in Nebraska. *Id*.

TransCanada renewed its application in May 2012, *id*., and State completed its environmental analysis in January 2014. *Id* at 5, 10 (Appx005, 010). On November 6, 2015, State issued a ROD/NID in which it denied the permit. Appendix B (Appx032-063). State concluded that, although the Project would yield "meaningful" economic benefits and that TransCanada had "agreed to mitigate" many of its potential environmental and cultural impacts, approval would not be in the national interest because it would be perceived to undermine U.S. foreign policy efforts to be a global leader in attempting to combat climate change. *Id*. at 30, 31 (Appx061, 062).[3]

On January 24, 2017, President Trump issued a memorandum inviting TransCanada to re-apply for a Presidential Permit. Memorandum of January 24, 2017, *Construction of the Keystone XL Pipeline*, 82 Fed. Reg. 8,663, § 3(i) (Jan. 30, 2017). TransCanada re-applied and, in March 2017, State issued a new ROD/NID that approved TransCanada's application. 2017 ROD/NID at 3, 31

[3] In that ROD/NID, State explained that a determination as to whether cross-border pipeline facilities will "serve the national interest" is "Presidential in nature, and therefore the requirements of NEPA [and] the ESA … are inapplicable." 2015 ROD/NID at 3 (Appx034). "Nevertheless, *as a matter of policy* and in order to inform [its] determination regarding the national interest," State reviews the impacts of proposed projects "in a manner consistent, where appropriate, with these statutes." *Id.* (emphasis added).

(Appx003, Appx031). In that ROD/NID, State reiterated that its determination was "Presidential action, made through the exercise of Presidentially delegated authorities," and that therefore the requirements of NEPA, the ESA, and the APA "that do not apply to Presidential actions are also inapplicable here." *Id*. at 3 (Appx003). At the same time, State issued a Presidential Permit authorizing TransCanada to construct, connect, operate, and maintain a 1.2-mile segment of Keystone XL at the Canada-U.S. border. ECF No. 44-8.

B. Proceedings Below

Two sets of plaintiffs sued to challenge the permit and underlying ROD/NID, alleging that the Federal Defendants had violated NEPA, the APA, and the ESA. TransCanada intervened and, together with the Federal Defendants, moved to dismiss. They argued that the issuance of that Presidential Permit was Presidential action, and thus not reviewable under those laws.

The district court denied those motions, ruling that State's issuance of the Presidential Permit was agency, not Presidential, action. Appendix C (Appx064-096). Accordingly, it held that the permit was subject to review under the APA and ESA for compliance with the requirements of those laws and NEPA. *Id*. at 9-15, 28-29 (Appx072-078, 091-092).[4] The court distinguished contrary decisions by

[4] NEPA does not provide a private right of action, and thus judicial review of alleged violations of NEPA can be obtained only under the APA. *See infra* note 7.

other courts by asserting that, in his January 2017 Memorandum, the President had "waived" his right to review State's decision, thereby converting Presidential action into agency decision-making. *See id.* at 10, 12 (Appx073, 075).

After concluding that it had jurisdiction to review State's decision, the court granted partial summary judgment to the plaintiffs, and ordered State to supplement its NEPA review with an analysis of an alternative pipeline route through Nebraska. Appendix D (Appx097-109). In a subsequent decision, the court rejected many of the plaintiffs' remaining claims and accepted others. Appendix E (Appx110-163). It directed State to supplement its NEPA analysis in various respects. *Id*. at 15-23, 26-31 (Appx124-132, 135-140). The court also vacated the 2017 ROD/NID and instructed State to provide a "reasoned explanation" for the change from its 2015 national interest determination. *Id*. at 35 (Appx144). Further, it instructed State and the Fish and Wildlife Service to consider whether recent data regarding oil spills would alter prior conclusions that the Project was not likely to adversely affect avian species protected under the ESA. *Id*. at 43-44 (Appx152-153). Finally, the court enjoined the Federal Defendants and TransCanada "from engaging in any activities in furtherance of the construction or operation of Keystone and associated facilities" until State completes the supplemental review. *Id*. at 54 (Appx163). The court entered final judgment on November 15, 2018. Appendix F (Appx164-165).

The court subsequently confirmed that its injunction barred pre-construction activities such as preparing right-of-way storage and contractor yards and worker camps. Appendix G (Appx166-181). The court concluded that plaintiffs would suffer irreparable harm because the "bureaucratic momentum" created by these activities could "skew" State's further NEPA analysis. *Id*. at 10 (Appx175).

On December 21, 2018, TransCanada appealed (Nos. 18-36068 and 18-36069) and moved the district court for a stay pending appeal.[5] The district court narrowed its injunction to permit certain pre-construction activities, but refused to allow the building of worker camps or any construction of the pipeline itself. Appendix H (Appx182-212). TransCanada's subsequent motion in this Court for a stay of the injunction pending appeal was denied on March 15, 2019.

C. New Presidential Permit

On March 29, 2019, President Trump formally revoked the permit previously issued by State and, bypassing the procedures of E.O. 13,337, personally signed a new Presidential Permit authorizing TransCanada "to construct, connect, operate, and maintain pipeline facilities at the international border of the United States and Canada at Phillips County, Montana, for the import

[5] Subsequently, both sets of plaintiffs cross-appealed (Nos. 19-25036 and 19-35064), the Federal Defendants appealed (No. 19-35099), and other pipeline opponents were permitted to intervene as plaintiffs-appellees in this Court (ECF No. 34).

of oil from Canada to the United States." Appendix I (Appx213). This permit "supersedes the Presidential permit issued to [TransCanada], dated March 23, 2017," that State had issued. *Id*.

One week later, on April 5, 2019, plaintiffs IEN filed a new suit against the President, as well as various federal agencies and officers, that seeks to have the new Presidential Permit declared invalid. Appendix J (Appx218-243). The new complaint acknowledges that the President had the authority to revoke the permit that State issued, *id.* at 219-220, and thus recognizes that the permit at issue in these consolidated appeals no longer has any operative legal effect. The new complaint seeks to invalidate the new permit on theories that were not litigated in these proceedings, and seeks a new injunction that would run against, *inter alia*, the President who is not a defendant in these cases.

ARGUMENT

Because the President has revoked the Presidential Permit that State issued, the NEPA, APA, and ESA claims that were litigated below—and that would otherwise be litigated in these appeals—no longer present a case or controversy under Article III of the U.S. Constitution. Those claims all concerned the validity of a permit and the underlying ROD/NID justifying its issuance. Neither of these documents, however, has any continuing legal significance. Because plaintiffs' claims are moot, the district court's judgments should be vacated, its injunction

should be dissolved, and the cases should be remanded with instructions to dismiss.

A. Plaintiffs' Claims Are Moot.

As the Supreme Court has explained, "[t]he exercise of judicial power under Art. III of the Constitution depends on the existence of a case or controversy. . . . 'The rule in federal cases is that an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.'" *Preiser v. Newkirk*, 422 U.S. 395, 401-02 (1975) (quoting *Steffel v. Thompson*, 415 U.S. 452, 459 n.10 (1974)). *See also United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1537 (2018) ("A case that becomes moot at any point during the proceedings is 'no longer a "Case" or "Controversy" for purposes of Article III,' and is outside the jurisdiction of the federal courts") (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)).

It is clear that plaintiffs' claims challenging State's issuance of the 2017 permit are moot because those claims no longer present a "controversy as to which *effective* relief can be granted." *Outdoor Media Grp., Inc. v. City of Beaumont*, 506 F.3d 895, 900 (9th Cir. 2007) (emphasis added) (quoting *People of Vill. of Gambell v. Babbitt*, 999 F.2d 403, 406 (9th Cir. 1993)); *see also Ctr. for Biological Diversity v. Marina Point Dev. Co.*, 566 F.3d 794, 804-05 (9th Cir. 2009) (same). Plaintiffs' claims were all based on the assertion that State engaged in "agency

action" when it issued the 2017 ROD/NID and granted TransCanada's application for a Presidential Permit. The district court's agreement with that assertion provided the basis for its holding that it had authority to review the Federal Defendants' actions for compliance with the APA, NEPA, and the ESA.[6]

But the parties' dispute over whether State engaged in "agency action" when it issued the prior permit is moot. The President has revoked State's permit and issued a new Presidential permit authorizing construction and operation of the same cross-border facilities covered by State's prior permit. A decision of this Court affirming or denying the district court's "agency action" determination cannot provide legally "effective" relief, because it will have no bearing on whether TransCanada can build the pipeline facilities that plaintiffs seek to block.

For this same reason, the parties' disputes over whether State complied with NEPA, the APA or the ESA present no controversies as to which effective relief can be granted. Virtually all of the relief the district court ordered was justified by—and designed to cure—alleged defects in the 2017 ROD/NID. That document, however, has no continuing legal significance: Its sole purpose was to approve and justify a permit *that no longer exists*. Thus, a decision by this Court affirming or reversing the district court's orders (1) vacating the ROD/NID, (2) requiring State

[6] In the Ninth Circuit, the requirements of the APA are treated as jurisdictional prerequisites to suit. *See*, *e.g.*, *San Luis Unit Food Producers v. United States*, 709 F.3d 798, 801 (9th Cir. 2013).

to supplement the environmental analysis underlying that document, and (3) requiring State to provide a more complete explanation for a change in policy reflected in that document cannot provide "effective" relief, because these orders cure alleged defects in a document that itself has no legal effect.[7]

The same is true of a decision affirming or reversing the injunction entered against TransCanada. That injunction was entered to ensure the efficacy of the court's orders requiring State to comply with NEPA and the APA. *See* Appx170-176, Appx207-209 (injunction avoids the risk that construction will create "bureaucratic momentum" in favor of the project and bias State's NEPA analysis). Because, as just noted, the latter relief is legally meaningless, so too is an injunction entered in aid of that meaningless relief.

IEN's new complaint challenging the new Presidential Permit confirms that the consolidated appeals are moot. IEN concedes that the President had "the authority … to revoke the 2017 Permit." Appx219-220. That concession

[7] Requiring supplementation of the NEPA analysis underlying a legally irrelevant ROD/NID is not only meaningless, but unnecessary here. State's environmental analysis will be updated as part of the NEPA analysis that must be done in connection with the issuance of permits that TransCanada is required by statute to obtain from the Bureau of Land Management ("BLM") and the Army Corps of Engineers for certain segments of the pipeline in the United States. If plaintiffs are dissatisfied with the final environmental analysis underlying those permits, they can challenge it in suits challenging those permits, assuming there is a valid basis for such claims.

underscores that the documents at the center of the consolidated appeals—the 2017 permit and 2017 ROD/NID underlying it—have no continuing legal force or effect.

More fundamentally, TransCanada's authority to construct the Keystone XL Project derives from a different permit; that permit is being attacked on different grounds in a different suit; and plaintiffs must obtain a new injunction that would run against new defendants, most notably the President himself, to prevent construction of the Project. All of these aspects of the new lawsuit simply underscore that the 2017 permit and ROD/NID, and the parties' dispute over their validity, are now legally irrelevant, and these appeals are now moot.

B. Because Plaintiffs' Claims Are Moot, The Appeals Should Be Dismissed And The District Court's Judgments Should Be Vacated.

When an appeal becomes moot before the appellate court can hear or rule on the appeal, "[t]he established practice . . . in the federal system . . . is to reverse or vacate the judgment below and remand with a direction to dismiss." *Munsingwear,* 340 U.S. at 39; *accord Arizonans for Official English v. Arizona*, 520 U.S. 43, 71 (1997); *Ctr. for Biological Diversity*, 566 F.3d at 805 (ESA claims became moot on appeal, so "there is no further jurisdiction to proceed, and the district court's judgment under the ESA must be vacated"). "Vacatur 'clears the path for future relitigation' by eliminating a judgment the loser was stopped from opposing on direct review." *Arizonans*, 520 U.S. at 71 (quoting *Munsingwear*, 340 U.S. at 40).

Although a court may deny the equitable remedy of vacatur when "the party seeking relief from the judgment below caused the mootness by voluntary action," *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 24 (1994), this exception is inapplicable here. TransCanada "is not the party responsible for mooting the case." *Humane Soc'y of the U.S. v. Kempthorne*, 527 F.3d 181, 188 (D.C. Cir. 2008) (quoting *Wyoming v. U.S. Dep't of Agric.*, 414 F.3d 1207, 1213 (10th Cir. 2005)). The mootness was caused by the President, an independent actor who was not even a party to the cases giving rise to the consolidated appeals. Thus, vacatur is appropriate to ensure that TransCanada cannot be prejudiced in the future by judgments that it was unable to appeal due to the President's actions. *See Ctr. for Biological Diversity*, 566 F.3d at 804-05 (vacating injunction barring construction of condominium project that could harm bald eagles when plaintiffs' ESA claim became moot because "FWS delisted the bald eagle"); *cf. Wyoming v. Zinke*, 871 F.3d 1133, 1145-46 (10th Cir. 2017) (vacating judgment invalidating BLM fracking rule when BLM "rendered [the] appeals prudentially unripe" by proposing to rescind the regulation).

C. The District Court's Injunction Should Be Dissolved.

As noted, vacatur addresses the *res judicata* or claim-preclusive effects of a final judgment that a party like TransCanada is prevented from appealing. The injunction, however, governs TransCanada's rights to engage in activities now in

the real world. Because the new Presidential Permit has mooted plaintiffs' claims, the injunction issued on the basis of those moot claims should be dissolved.

As a result of that injunction, TransCanada was unable to begin assembling worker camps by March 15, 2019, and has now lost the 2019 construction season. *See* Declaration of Norrie Ramsay (Appendix K) (Appx244-247). In light of the new Presidential Permit, however, TransCanada has developed plans for a more ambitious 2020 construction season to try to make up for as much of the lost time as feasible. *Id.* at 247. Under those plans, TransCanada would begin assembling worker camps as soon as possible, but cannot do so until the now-moot injunction is dissolved. *Id.*

The President's issuance of a new permit has eliminated any basis for the continued maintenance of that injunction. The decision in *Cablevision of Tex. III, L.P. v. Oklahoma Western Telephone Co.*, 993 F.2d 208 (10th Cir. 1993), is instructive. There, a district court enjoined a defendant from operating a cable system without the necessary authorization from the Federal Communications Commission ("FCC"), but then refused to lift the injunction after the defendant obtained such authorization. The Tenth Circuit reversed, holding that, once the FCC granted the necessary approval, "the basis for the injunction evaporated," and there was no "principled basis upon which the permanent injunction could be left in place." *Id.* at 210, 211. The same is true here. The alleged defects in State's

approval of a now-revoked permit provide no principled basis for enjoining activities authorized under a new permit.

Indeed, leaving that injunction in place would not only be unjustified, it would impermissibly afford IEN interim relief in its new lawsuit. In that suit, IEN seeks both preliminary and permanent injunctive relief to prohibit the initiation of "any activities in furtherance of the Project" under the new Presidential Permit. Appx242-243. But "[a] preliminary injunction is an extraordinary remedy never awarded as of right," *Winter v. NRDC*, 555 U.S. 7, 24 (2008), and to obtain such relief, IEN "must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *Id.* at 20.

Before activities under the new Presidential Permit can be enjoined, therefore, IEN must demonstrate, among other things, that it is likely to succeed on the merits of entirely new—and quite novel—legal theories. Thus, although Presidents, exercising their inherent constitutional powers, personally issued cross-border permits for nearly a century before delegating that task to State, IEN must demonstrate that it is likely to succeed on its claims that the President's direct issuance of the new permit to TransCanada (1) violates the Property Clause of the U.S. Constitution, (2) conflicts with Congress's correlative power to regulate

foreign and interstate commerce, (3) violates Executive Order 13337, and (4) is *ultra vires* by virtue of certain unspecified provisions of the Federal Land Policy Management Act. Appx236-242. While IEN may be entitled to pursue such claims, it is not entitled to a preliminary injunction unless and until it shows it is likely to succeed on the merits and the court has jurisdiction to enter the relief plaintiffs request. If the current injunction, which rests on indisputably moot claims, is not dissolved, IEN would be impermissibly relieved of one of the burdens it must shoulder to obtain equitable relief from a federal court. Relieving IEN of that burden would be particularly impermissible here, where it seeks injunctive relief against the President himself.

RELIEF REQUESTED

For the foregoing reasons, the Court should dismiss the consolidated appeals, vacate the district court's judgments, dissolve its injunction and final orders, and remand with instructions to dismiss the plaintiffs' suits as moot.

Respectfully submitted,

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April 8, 2019

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(5), I certify that the foregoing Appellants' Motion to Dismiss the Consolidated Appeals, Vacate the District Court's Judgments and Final Orders, Void Its Injunction, and Remand with Directions to Dismiss as Moot is in 14-point proportionally spaced Times New Roman font.

I further certify that this motion contains 3,945 words, excluding the items listed in Federal Rule of Appellate Procedure 32(f), and thus meets the requirement of Circuit Rules 27-1 and 32-3(b).

/s/ Kathleen M. Mueller

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April, 2019, I served one copy of the foregoing Appellants' Motion to Dismiss the Consolidated Appeals, Vacate the District Court's Judgments, Void Its Injunction and Final Orders, and Remand with Directions to Dismiss as Moot on all registered counsel in these consolidated cases through the Court's CM/ECF system.

/s/ Kathleen M. Mueller