

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA :
 :
V. : Civil No. WMN-05-1297
 :
JOHN BAPTIST KOTMAIR et al. :

MEMORANDUM AND ORDER

On November 29, 2006, this Court entered an order granting Plaintiff summary judgment. On that same date, the Court also entered a permanent injunction order requiring Defendants to refrain from certain activities that interfere with the enforcement of the internal revenue laws. In that permanent injunction order, the Court also required Defendants to take certain affirmative actions, including: posting the injunction order on their website, notifying their members of the outcome of this litigation, and providing the government with a listing of the "Save-A-Patriot Fellowship's" membership.

Defendants filed an appeal and on February 22, 2007, this Court granted a stay pending that appeal. On July 26, 2007, the Court of Appeals for the Fourth Circuit affirmed the decision of this Court, without modification. Defendants then moved for rehearing en banc and for that court to stay the issuance of its mandate. The Fourth Circuit denied both motions and issued its mandate on November 30, 2007. Defendants now indicate that they intend to file a petition for writ of certiorari and have asked this Court to extend or reinstitute a stay until such time as the

Supreme Court rules on its petition. Paper No. 92.

The Court must deny Defendants' motion as it is without jurisdiction to grant the relief requested. Stays during the pendency of a petition for certiorari are governed by 28 U.S.C. § 2102(f). Under that statute, "only an appellate court or a justice of the Supreme Court has jurisdiction to stay an appellate court's final judgment pending Supreme Court review of a certiorari petition." United States v. Lentz, 352 F. Supp. 2d 718 (E.D. Va. 2005); see also, Brinkman v. Dept. of Corr., 857 F. Supp. 775 (D. Kan. 1994) (noting "[r]ecent authority uniformly holds that only the court of appeals or a justice of the Supreme Court can stay the execution or enforcement of the court of appeals' judgment" and collecting cases); Gander v. FMC Corp., 733 F. Supp. 1346 (E.D. Mo. 1990) ("The power of a district court to grant a stay of judgment pending appeal terminates when the Court of Appeals issues its mandate.").¹

Accordingly, IT IS this 15th day of January, 2008, by the United States District Court for the District of Maryland,
ORDERED:

1) That Defendants' Motion to Extend or Reinstitute Stay Pending Appeal, Paper No. 92, is DENIED;

¹ The decision relied upon by Defendants, Hawaii Housing Auth. v. Midkiff, 463 U.S. 1323 (1983), does not teach otherwise. Although Justice Rehnquist, as Circuit Justice, did observe that "it is well-settled that a court retains the power to grant injunctive relief to a party to preserve the status quo during the pendency of an appeal," he did so in discussing the power of the circuit court to issue an injunction during the pendency of an appeal of its decision to the Supreme Court. 463 U.S. at 1324.

2) That Defendants shall comply with all conditions of this Court's Permanent Injunction issued November 29, 2006, within 21 days of the date of this Order;

3. That the Motion of the United States for an Order Lifting Stay Pending Appeal is DENIED as MOOT, and

4) That the Clerk of Court shall mail or transmit copies of this Memorandum and Order to Mr. Kotmair and all counsel of record.

_____/s/_____
William M. Nickerson
Senior United States District Judge