

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SEP 12 2008

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

ROBERT M. NELSON; et al.,

Plaintiffs - Appellants,

v.

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION, an Agency
of the United States; et al.,

Defendants,

and

CALIFORNIA INSTITUTE OF
TECHNOLOGY,

Defendant - Appellee.

No. 08-55308

D.C. No. CV-07-05669-ODW
Central District of California,
Los Angeles

ORDER

Before: THOMPSON and WARDLAW, Circuit Judges, and REED,* District Judge.

Although the jurisdiction of the district court to have issued the January 16, 2008 Order dismissing Caltech remains in question, we lack appellate jurisdiction to entertain this interlocutory appeal under 28 U.S.C. § 1292(a)(1). *See Carson v.*

* The Honorable Edward C. Reed, Jr., Senior United States District Judge for the District of Nevada, sitting by designation.

American Brands, Inc., 450 U.S. 79, 83-84 (1981). We therefore dismiss appeal number 08-55308 without prejudice to appellants appealing on the same arguments when a final judgment is entered, *See Sierra Club v. Elec. Controls Design, Inc.*, 909 F.2d 1350, 1353 (9th Cir. 1990), or should Caltech take action that would work irreparable harm on appellants. We reserve the right to hear this appeal at the appropriate time.

IT IS SO ORDERED.