

Nos. 21-5517

**In the United States Court of Appeals
FOR THE SIXTH CIRCUIT**

JAKE'S BAR AND GRILL, LLC, AND ANTONIO VITOLO
PLAINTIFFS-APPELLANTS,

v.

ISABELLA CASILLAS GUZMAN,
DEFENDANT-APPELLEE.

On Appeal From The United States District Court
For The Eastern District of Tennessee
Case No. 3:21-CV-176
The Honorable Travis R. McDonough, Chief Judge

**EMERGENCY MOTION TO CONSOLIDATE APPEALS AND FOR
INJUNCTION PENDING APPEAL**

Plaintiffs-Appellants respectfully move to consolidate the appeal case numbers 21-5117 and 21-5528, and also for an injunction pending appeal. Plaintiffs-Appellants seeks this relief on an emergency basis for the reasons explained below. In support of this motion, Plaintiffs-Appellants state:

1. On May 20, 2021, Plaintiffs-Appellants filed the first case (Case No. 21-5117) appealing the District Court's denial of a motion for a temporary restraining order.

2. On that same day, Plaintiffs-Appellants filed an emergency motion for an injunction pending appeal. *See* Doc. 4 in Case No. 21-5517.

3. On May 25, 2021, Plaintiffs-Appellants then filed the second case (Case No. 21-5528) appealing the District Court's denial of a motion for a preliminary injunction. *See* District Court Doc. 32.

4. These two cases originate from the same District Court case (Case No. 3:21-CV-176), involve identical issues of law and fact, and ultimately seek the same remedy: an emergency injunction requiring Defendant-Appellant to process applications for grants from the Restaurant Revitalization Fund in the order those applications were received, without regard to the race or gender of the applicant.

5. In the interests of judicial economy, and preserving limited resources available to Plaintiffs-Appellants, the Court should grant this motion to consolidate these two appeals.

6. Furthermore, Plaintiffs-Appellants move for an injunction pending appeal for all the same reasons stated in the Emergency Motion For Injunction Pending Appeal filed on May 20, 2021. *See* Doc. 4 in Case No. 21-5517.

7. Given the dwindling size of the Restaurant Revitalization Fund and the irreparable harm that Plaintiffs will face without an injunction, Plaintiffs-Appellants respectfully request that this motion be considered on an emergency basis.

8. Yesterday, Defendant-Appellee confirmed the factual basis of the emergency by describing the status of the Restaurant Revitalization Fund as of Sunday, May 23, 2021. (Doc. 13, Case No. 21-5517). As of that date, about 40% of the Fund was gone. Critically, the disbursement on Friday, May 21, was the largest yet—nearly \$8 billion of the \$28.6 billion fund. The government has not informed the Court as to the size of the distributions, if any, made yesterday and today. Whether billions more left the fund yesterday and today is unknown, but each day that goes by makes full relief less possible.

9. Despite the government’s representation that it “is reserving authorization for one RRF grant application” for Plaintiffs-Appellants, this fact does not abate the emergency or the seriousness of this matter. Although rare, nationwide injunctions are appropriate in serious cases. *See, e.g., Washington v. Reno*, 35 F.3d 1093, 1103–04 (6th Cir. 1994); *Cent. United Life Ins. Co. v. Burwell*, 827 F.3d 70, 73, 75 (D.C. Cir. 2016)

(based on a challenge from a single insurance company, D.C. Circuit affirmed a permanent injunction invalidating ACA regulations prohibiting people from purchasing “stand-alone fixed indemnity plans”); *O’Donnell Const. Co. v. D.C.*, 762 F. Supp. 354, 356 (D.D.C. 1991) (individual plaintiff seeking an injunction “enjoining the District from using or enforcing race-based quotas and set-asides in the awarding of road construction contracts and subcontracts.”) *reversed by* 963 F.2d 420 (reversing the district court and ordering the Court to “enter a preliminary injunction”); *Wirtz v. Baldor Elec. Co.*, 337 F.2d 518, 535 (D.C. Cir. 1963) (“we conclude that if one or more of the plaintiffs-appellees is or are found to have standing to sue, the District Court should enjoin the effectiveness of the Secretary’s determination with respect to the entire industry.”)

10. Plaintiffs-Appellants therefore request, on an emergency basis, an injunction pending appeal requiring Defendant-Appellant to process all applications for grants from the Restaurant Revitalization Fund in the order those applications were received, without regard to the race or gender of the applicant.

Dated: May 25, 2021

Respectfully Submitted,

WISCONSIN INSTITUTE FOR LAW & LIBERTY

Rick Esenberg (*admission pending*)
rick@will-law.org

/s/ Daniel P. Lennington

Daniel P. Lennington
dan@will-law.org

Luke N. Berg (*admission pending*)
luke@will-law.org

330 E. Kilbourn Ave., Suite 725

Milwaukee, WI 53202

Phone: (414) 727-9455

Fax: (414)727-6385

Attorneys for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2021, I filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

Dated: May 25, 2021

/s/ Daniel P. Lennington
ATTORNEY FOR PLAINTIFFS-APPELLANTS