

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

STATE OF TEXAS; TEXAS HEALTH AND §
HUMAN SERVICES COMMISSION, §

Plaintiffs, §

v. §

XAVIER BECERRA, in his official capacity as §
Secretary of the United States §

Department of Health and Human §

Services; UNITED STATES DEPARTMENT §

OF HEALTH AND HUMAN SERVICES; §

CHIQUITA BROOKS-LASURE, in her official §

capacity as Administrator of the Centers §

for Medicare & Medicaid Services; §

MEENA SESHAMANI, in her official §

capacity as Deputy Administrator and §

Director of Center for Medicare; DANIEL §

TSAI, in his official capacity as Deputy §

Administrator and Director of Medicaid §

and CHIP Services; THE CENTERS FOR §

MEDICARE & MEDICAID SERVICES; §

JOSEPH R. BIDEN, in his official capacity as §

President of the United States; UNITED §

STATES OF AMERICA; §

Defendants. §

Case No. 2:21-CV-00229-Z

**PLAINTIFFS’ RESPONSE TO DEFENDANTS’ MOTION TO STAY PROCEEDINGS
IN LIGHT OF NATIONWIDE PRELIMINARY INJUNCTION**

Defendants’ motion to stay should be denied. The Court should not stay proceedings in this case but should hold the preliminary-injunction hearing tomorrow and grant Texas’s motion for preliminary injunctive relief.

Whether a court should stay proceedings “calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). “Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both.” *Id.* at 255. Those rare circumstances are not present here, and Texas deserves to be heard on its request for preliminary injunctive relief.

Courts have previously issued injunctions after a nationwide injunction has been entered by a different district court. In cases concerning the Public Charge Rule, two district courts entered nationwide injunctions on October 11, 2019. *New York v. U.S. Dep’t of Homeland Sec.*, 408 F. Supp. 3d 334, 351-52 (S.D.N.Y. 2019); *Washington v. U.S. Dep’t of Homeland Sec.*, 408 F. Supp. 3d 1191, 1223-24 (E.D. Wash. 2019). Yet a third district court entered another nationwide injunction on October 14, 2019. *Casa De Maryland, Inc. v. Trump*, 414 F. Supp. 3d 760, 787-88 (D. Md. 2019); *see also id.* at 767 n.2 (noting the pre-existing nationwide injunctions). The travel-ban cases are similar: one court issued a nationwide temporary restraining order on March 15, 2017, *Hawai’i v. Trump*, 241 F. Supp. 3d 1119, 1140 (D. Haw. 2017); a second court issued a nationwide preliminary injunction on March 16, *Int’l Refugee Assistance Project v. Trump*, 241 F. Supp. 3d 539, 565-66 (D. Md. 2017); and the first court then issued a nationwide preliminary injunction on March 29, *Hawai’i v. Trump*, 245 F. Supp. 3d 1227, 1239 (D. Haw. 2017). *See also* Suppl. Br. for the Fed. Appellants at 6, *California v. HHS*, 941 F.3d 410 (9th Cir. 2019) (No. 19-15072), 2019 WL 2271619 (arguing that a nationwide injunction does not moot an appeal of a narrower injunction of the same law).

District courts have also held that plaintiffs can establish irreparable harm, even though another court has already enjoined the same challenged action. *Texas v. Brooks-LaSure*, No. 6:21-CV-00191, 2021 WL 5154219, at *13 (E.D. Tex. Aug. 20, 2021); *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 435 (E.D.N.Y. 2018). As noted in *Batalla Vidal*, the possibility of irreparable harm remained because the defendants were vigorously contesting the pre-existing injunction and the court of appeals could lift it. 279 F. Supp. 3d at 435; *see also L&M Bus Corp. v. Bd. of Educ. of City Sch. Dist. of City of New York*, No. 18-CV-1902-NGG-SMG, 2018 WL 2390125, at *4 n.7 (E.D.N.Y. May 25, 2018) (noting that “[t]he court’s consideration of irreparable harm thus really turns on the question of whether irreparable harm would befall the [plaintiffs] if the TRO in the [other case] were lifted”). That same possibility of harm exists here. Were Defendants to appeal the Louisiana ruling and obtain a stay of the ruling, Texas would become immediately subject to the CMS Vaccine Mandate and would need immediate relief from this Court. *See Brooks-LaSure*, 2021 WL 5154219, at *4 (E.D. Tex. Aug. 20, 2021) (“A stay pending review is, by definition, temporary. It can evaporate at a moment’s notice.”).

Although Defendants assert that they are “considering” whether to appeal the Louisiana ruling and seek a stay pending appeal, Mot. 3, there is little question that Defendants will take that course. Two days ago, a district court in Missouri enjoined the CMS Vaccine Mandate in ten States. *Missouri v. Biden*, No. 4:21-CV-1329-MTS, 2021 WL 5564501 (E.D. Mo. Nov. 29, 2021). Yesterday morning, Defendants filed a notice of appeal and a motion to stay pending appeal in the Eastern District of Missouri as well as an Emergency Motion to Stay Pending Appeal in the Eighth Circuit. *See Notice of Appeal and Defs.’ Mot. to Stay Pending Appeal, Missouri v. Biden*, No. 4:21-cv-1329-MTS (E.D. Mo. Nov. 30, 2021) (Docs. 29-31); Defendants-Appellants’ Emergency

Motion for Stay Pending Appeal, *Missouri v. Biden*, No. 21-3725 (8th Cir. Nov. 30, 2021). If Defendants are seeking to stay an injunction in ten States, they will certainly seek to stay a nationwide injunction.

Moreover, it is not certain that any ruling from the Fifth Circuit would control here, as Defendants suggest. Mot. 3. Should the Fifth Circuit base its decision on specific evidence from the Louisiana lawsuit, it would not control the outcome of this lawsuit, as Texas has presented its own Texas-specific evidence. Likewise, the Fifth Circuit could choose to limit the scope of the Louisiana injunction to the plaintiffs in that case, leaving Texas unprotected without relief from this Court. This case should therefore proceed as scheduled.

For the foregoing reasons, the Court should deny Defendants' motion to stay proceedings. The Court should hold the preliminary-injunction hearing and grant Texas's request for preliminary-injunctive relief.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document and all attachments were filed via CM/ECF, causing electronic service on all counsel of record.

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