

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

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Re: Case No. 22-3272, *AZ, et al v. Joseph Biden, et al*
Originating Case No. : 3:21-cv-00314

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Sharday S. Swain for
Case Manager Robin Baker
Direct Dial No. 513-564-7014

cc: Mr. Michael F. Knapp
Ms. Sylvia May Mailman
Mr. Richard W. Nagel
Mr. Anthony R. Napolitano
Mr. Michael Shih

Enclosure

No. 22-3272

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

STATE OF ARIZONA; STATE OF MONTANA;)
STATE OF OHIO,)

Plaintiffs-Appellees,)

v.)

JOSEPH R. BIDEN, in his official capacity as)
President of the United States; U.S. DEPARTMENT)
OF HOMELAND SECURITY; UNITED STATES OF)
AMERICA; ALEJANDRO MAYORKAS, in his)
official capacity as Secretary of Department of)
Homeland Security; TROY MILLER, in his official)
capacity as Acting Commissioner of United States)
Customs and Border Protection; TAE D. JOHNSON,)
in his official capacity as Acting Director of United)
States Immigration and Customs Enforcement; UR)
JADDOU, in her official capacity as Director of U.S.)
Citizenship and Immigration Services,)

Defendants-Appellants.)

FILED
Apr 08, 2022
DEBORAH S. HUNT, Clerk

ORDER

Before: SUTTON, Chief Judge; MOORE and COLE, Circuit Judges.

On September 30, 2021, the Department of Homeland Security (DHS) issued Guidance on immigration enforcement, which became effective on November 29, 2021. R. 1-1 (Guidance at 6) (Page ID #29). Three states sued to enjoin the Guidance. R. 4 (Mot. Prelim. Inj.) (Page ID #55–97). On March 22, 2022, the district court issued an order granting the states’ motion for a preliminary injunction and denying DHS’s motion to dismiss. R. 44 (Dist. Ct. Order at 1) (Page ID #1068). DHS has filed an emergency motion to stay the preliminary injunction pending appeal,

and for an immediate administrative stay while this court resolves the stay motion. App. R. 8 (Mot. for Stay). We consider now the request for an administrative stay.

“The purpose of [an] administrative stay is to give the court sufficient opportunity to consider the merits of the motion for a stay pending appeal.” *Brady v. Nat’l Football League*, 638 F.3d 1004, 1005 (8th Cir. 2011) (order) (collecting cases). Although we have granted administrative stays in the past, *see, e.g., United States v. McGowan*, No. 20-1617, 2020 U.S. App. LEXIS 21257 (6th Cir. June 28, 2020) (order); *In re State of Ohio Bd. of Pharm.*, No. 20-3875 (6th Cir. Sept. 15, 2020) (order), there is “no prevailing standard setting forth when it is appropriate to issue such a stay” in our circuit, *Breeze Smoke, LLC v. United States Food & Drug Admin.*, No. 21-3902, 2021 U.S. App. LEXIS 32268, at *2 (6th Cir. Oct. 27, 2021) (order). Other circuits, however, have held that the “touchstone” of this analysis is whether an administrative stay is “need[ed] to preserve the status quo,” or whether the preliminary injunction already achieves this end. *Nat’l Urb. League v. Ross*, 977 F.3d 698, 702 (9th Cir. 2020) (order).

In all events, an administrative stay in this case is necessary to preserve the status quo and provide us with the opportunity to give “reasoned consideration” to DHS’s motion for stay pending appeal. *McGowan*, 2020 U.S. App. LEXIS 21257, at *1. Before the district court preliminarily enjoined the Guidance, DHS had been following it for over three months. During that time, DHS re-allocated personnel and resources to the southwest border to address security concerns there in line with the Guidance. R. 49-1 (Bible Decl. ¶ 49) (Page ID #1198–99). Those personnel and resources likely must be re-assigned again to implement the preliminary injunction while we determine whether to grant DHS’s motion for a stay pending appeal. *Id.* ¶ 49 (Page ID #1199). Due to their reliance on the Guidance in the previous months, the preliminary injunction has also left immigration officers uncertain about how to exercise their discretion in the interim. *Id.* ¶ 43 (Page ID #1195).

The need to preserve the status quo is further underscored by the diligence with which DHS has pursued a stay. After seeking both an administrative stay and stay pending appeal below, DHS filed the present motion in this court within a week of the district court denying its requests.

Accordingly, we **GRANT** the motion for an administrative stay. The district court's injunction is stayed pending our resolution of DHS's motion for a stay pending appeal of the preliminary injunction.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", written in a cursive style.

Deborah S. Hunt, Clerk