

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 23-1205

C. HOLMES, M.D. a/k/a C. Holmes, a/k/a Cynthia Holmes, a/k/a Cynthia Collie Holmes,

Plaintiff - Appellant,

v.

ANNE MILGRAM, Administrator of DEA,

Defendant - Appellee.

No. 23-1591

C. HOLMES, M.D. a/k/a C Holmes, a/k/a Cynthia Holmes, a/k/a Cynthia Collie Holmes,

Plaintiff - Appellant,

v.

ANNE MILGRAM, Administrator of DEA,

Defendant - Appellee.

No. 23-1749

C. HOLMES, a/k/a C. Holmes, a/k/a Cynthia Holmes, a/k/a Cynthia Collie Holmes,
M.D.

Plaintiff - Appellant,

v.

ANNE MILGRAM, Administrator of DEA,

Defendant - Appellee.

Appeals from the United States District Court for the District of South Carolina, at
Charleston. Bruce H. Hendricks, District Judge; Molly Hughes Cherry, Magistrate Judge.
(2:22-cv-03758-BHH-MHC)

Submitted: October 20, 2023

Decided: November 6, 2023

Before GREGORY and AGEE, Circuit Judges, and KEENAN, Senior Circuit Judge.

Nos. 23-1205 and 23-1749, dismissed; No. 23-1591, dismissed in part and affirmed in part
by unpublished per curiam opinion.

C. Holmes, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In Appeal No. 23-1205, C. Holmes seeks to appeal the district court's order denying her motion to appeal the magistrate judge's report and recommendation and for a stay pending appeal. In Appeal No. 23-1591, Holmes seeks to appeal (1) the district court's order adopting the magistrate judge's recommendation and denying her motion for a temporary restraining order and a preliminary injunction, and (2) the magistrate judge's order providing Holmes with the notice required by *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975).^{*} We dismiss in part and affirm in part.

This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291, and certain interlocutory and collateral orders, 28 U.S.C. § 1292; Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). The district court's order denying leave to appeal and denying a stay pending appeal is neither a final order nor an appealable interlocutory or collateral order. Accordingly, we dismiss Appeal No. 23-1205 for lack of jurisdiction. The magistrate judge's *Roseboro* notice order is also not a final order or an appealable interlocutory or collateral order. We therefore dismiss for lack of jurisdiction the portion of Appeal No. 23-1591 that seeks to challenge the *Roseboro* order.

^{*} Holmes' appeal from this order was inadvertently docketed as a separate appeal, No. 23-1749. However, our review of the record shows that Holmes intended to amend her notice of appeal filed in No. 23-1591 to include her challenge to the *Roseboro* order. We therefore dismiss Appeal No. 23-1749 and consider Holmes' challenge to the *Roseboro* order as part of Appeal No. 23-1591. We deny as moot Holmes' motion to consolidate the filing fee for these appeals.

Holmes also contests the district court's order accepting the recommendation of the magistrate judge and denying her motion for a temporary restraining order and a preliminary injunction. Absent exceptional circumstances, the denial of a motion for a temporary restraining order is considered interlocutory and is not appealable. *Office of Personnel Mgmt. v. Am. Fed'n of Gov't Emps.*, 473 U.S. 1301, 1303-04 (1985). Exceptional circumstances exist where the denial effectively decides the merits of the case. *See Virginia v. Tenneco, Inc.*, 538 F.2d 1026, 1029-30 (4th Cir. 1976). Upon review of the record, we conclude that no such exceptional circumstances are present in this case. Therefore, we dismiss for lack of jurisdiction the portion of Appeal No. 23-1591 in which Holmes contests the denial of her motion for a temporary restraining order.

An order denying a preliminary injunction, however, is an immediately appealable interlocutory order. *See* 28 U.S.C. § 1292(a)(1). We have reviewed the record and conclude that the district court did not abuse its discretion by denying Holmes' motion for a preliminary injunction. *See Grimmitt v. Freeman*, 59 F.4th 689, 692 (4th Cir. 2023) (providing standard). Accordingly, we affirm the district court's order denying Holmes' motion for a preliminary injunction. *Holmes v. Milgram*, No. 2:22-cv-03758-BHH-MHC (D.S.C. May 22, 2023).

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*Nos. 23-1205 & 23-1749, DISMISSED;
No. 23-1591, DISMISSED IN PART,
AFFIRMED IN PART*

FILED: November 6, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUITNo. 23-1205 (L), C. Holmes v. Anne Milgram
2:22-cv-03758-BHH-MHC

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; www.supremecourt.gov.

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL:

Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN

BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

U.S. COURT OF APPEAL FOR THE FOURTH CIRCUIT BILL OF COSTS FORM
(Civil Cases)

Directions: Under FRAP 39(a), the costs of appeal in a civil action are generally taxed against appellant if a judgment is affirmed or the appeal is dismissed. Costs are generally taxed against appellee if a judgment is reversed. If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed as the court orders. A party who wants costs taxed must, within 14 days after entry of judgment, file an itemized and verified bill of costs, as follows:

- Itemize any fee paid for docketing the appeal. The fee for docketing a case in the court of appeals is \$500 (effective 12/1/2013). The \$5 fee for filing a notice of appeal is recoverable as a cost in the district court.
- Itemize the costs (not to exceed \$.15 per page) for copying the necessary number of formal briefs and appendices. (Effective 10/1/2015, the court requires 1 copy when filed; 3 more copies when tentatively calendared; 0 copies for service unless brief/appendix is sealed.). The court bases the cost award on the page count of the electronic brief/appendix. Costs for briefs filed under an informal briefing order are not recoverable.
- Cite the statutory authority for an award of costs if costs are sought for or against the United States. See 28 U.S.C. § 2412 (limiting costs to civil actions); 28 U.S.C. § 1915(f)(1) (prohibiting award of costs against the United States in cases proceeding without prepayment of fees).

Any objections to the bill of costs must be filed within 14 days of service of the bill of costs. Costs are paid directly to the prevailing party or counsel, not to the clerk's office.

Case Number & Caption: _____

Prevailing Party Requesting Taxation of Costs: _____

Appellate Docketing Fee (prevailing appellants):			Amount Requested: _____			Amount Allowed: _____	
Document	No. of Pages		No. of Copies		Page Cost (≤\$.15)	Total Cost	
	Requested	Allowed (court use only)	Requested	Allowed (court use only)		Requested	Allowed (court use only)
TOTAL BILL OF COSTS:						\$0.00	\$0.00

1. If copying was done commercially, I have attached itemized bills. If copying was done in-house, I certify that my standard billing amount is not less than \$.15 per copy or, if less, I have reduced the amount charged to the lesser rate.
2. If costs are sought for or against the United States, I further certify that 28 U.S.C. § 2412 permits an award of costs.
3. I declare under penalty of perjury that these costs are true and correct and were necessarily incurred in this action.

Signature: _____ Date: _____

Certificate of Service

I certify that on this date I served this document as follows:

Signature: _____ Date: _____

FILED: November 6, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1205 (L)
(2:22-cv-03758-BHH-MHC)

C. HOLMES, M.D. a/k/a C. Holmes, a/k/a Cynthia Holmes, a/k/a Cynthia Collie
Holmes

Plaintiff - Appellant

v.

ANNE MILGRAM, Administrator of DEA

Defendant - Appellee

No. 23-1591
(2:22-cv-03758-BHH-MHC)

C. HOLMES, M.D. a/k/a C Holmes, a/k/a Cynthia Holmes, a/k/a Cynthia Collie
Holmes

Plaintiff - Appellant

v.

ANNE MILGRAM, Administrator of DEA

Defendant - Appellee

No. 23-1749
(2:22-cv-03758-BHH-MHC)

C. HOLMES, a/k/a C. Holmes, a/k/a Cynthia Holmes, a/k/a Cynthia Collie Holmes, M.D.

Plaintiff - Appellant

v.

ANNE MILGRAM, Administrator of DEA

Defendant - Appellee

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court in case no. 23-1591 is affirmed in part; the appeal is dismissed in part. The appeals in case nos. 23-1205 and 23-1749 are dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

C. Holmes, M.D.; *also known as*
C. Holmes; also known as Cynthia
Holmes; also known as Cynthia
Colie Holmes,

Plaintiff,

v.

Anne Milgram, *Administrator of DEA,*

Defendant.

Civil Action No. 2:22-3758-BHH

ORDER

This matter is before the Court upon Plaintiff C. Holmes, M.D.'a ("Plaintiff") pro se complaint. In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.), the matter was referred to a United States Magistrate Judge for preliminary review.

On January 26, 2023, Magistrate Judge Molly H. Cherry issued a Report and Recommendation ("Report") outlining the issues presented in this case and recommending that the Court deny Plaintiff's motion for a temporary restraining order ("TRO") and preliminary injunction. In her Report, the Magistrate Judge explained that Plaintiff's request for a TRO should be denied because Plaintiff has not complied with Rule 65(b)(1) of the Federal Rules of Civil Procedure by providing specific facts in an affidavit or a verified complaint to show that immediate and irreparable injury will result to her before Defendant can be heard in opposition, and because Plaintiff appears to request relief exceeding fourteen days and has not explained why an injunction is being requested without notice. Additionally, the Magistrate Judge explained that Plaintiff's request for a preliminary

injunction should be denied because the motion is premature as this action has not yet been served and because Plaintiff has not made a clear showing of any of the following: (1) that she is likely to succeed on the merits; (2) that she is likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of the equities tips in her favor; or (4) that an injunction is in the public interest. See *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Attached to the Magistrate Judge's Report was a notice advising Plaintiff of the right to file written objections to the Report within fourteen days of being served with a copy. On February 9, Plaintiff filed a motion to stay and appeal of the Magistrate Judge's decision, and on February 10, she filed a motion for an extension of time to respond to the Magistrate Judge's Report. (See ECF Nos. 13 and 15.) On February 14, the Court entered a text order granting Plaintiff's motion for extension and giving her until March 3, 2023, to file her objections to the Magistrate Judge's Report. (ECF No. 20.) The Court also entered a text order denying Plaintiff's motion to stay, explaining that this matter was referred to a Magistrate Judge for preliminary review in accordance with 28 U.S.C. § 636(b)(1)(B) and the Local Civil Rules for the District of South Carolina. (ECF No. 22.) On March 3, 2023, Plaintiff filed an amended complaint and objections to the Magistrate Judge's Report. (ECF Nos. 33 and 34.) It also appears that Plaintiff has appealed the Court's order denying her motion to stay to the Fourth Circuit Court of Appeals. (See ECF Nos. 28, 29, 31, and 42.)

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination only of those portions of the Report to

which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

In her objections to the Magistrate Judge's Report, Plaintiff first asserts that there is no consent for the Magistrate Judge's Report and that "authorization/jurisdiction is lacking for the R&R." (ECF No. 34 at 2.) In a 23-page affidavit attached to her objections, Plaintiff reiterates her argument that 28 U.S.C. § 636 does not provide authorization or jurisdiction for the referral of this case to a Magistrate Judge for preliminary review. (ECF No. 34-1 at 1-9.) Next, she asserts that she has met her burden of proof to obtain a TRO and preliminary injunction. Plaintiff states that her amended complaint is verified and makes a clear showing of a likelihood of success on the merits and irreparable harm in the absence of preliminary relief, and Plaintiff asserts that this case requires preservation of the status quo regarding Plaintiff's ability to practice medicine. (*Id.* at 9-11.) Plaintiff further contends that Defendant has unclean hands and would be protected by her proffer of escrow. (*Id.* at 10-12.) Plaintiff asserts that the Magistrate Judge elevated form over substance with respect to Rule 65(b)(1); that the Magistrate Judge misapprehended her complaint; and that the Report as a whole is void or voidable. (*Id.* at 15-18.) Plaintiff also contends generally that the balance of equities tip in her favor and that an injunction is in the public interest. (*Id.* at 18-23.)

The undersigned has thoroughly reviewed Plaintiff's written objections and her affidavit, and the Court has considered the record de novo in light of Plaintiff's recent filings. However, after review, the Court finds Plaintiff's objections unavailing, and the Court ultimately agrees with the Magistrate Judge that Plaintiff simply has not made the requisite

clear showing of any of the following elements, all of which are necessary to obtain a TRO and preliminary injunction: (1) that she is likely to succeed on the merits; (2) that she is likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in her favor; and (4) that an injunction is in the public interest. Accordingly, the Court overrules Plaintiff's objections (ECF No. 34); the Court adopts the Magistrate Judge's Report (ECF No. 8); and the Court denies Plaintiff's motion for temporary restraining order and preliminary injunction (ECF No. 5.)

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

May 22, 2023
Charleston, South Carolina

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

C. Holmes, MD,

Petitioner,

v.

Anne Milgram,
Administrator of DEA,
in official capacity and
individually,

Respondent.

APPENDIX

INDEX TO APPENDICES

- Appendix A US COA for the Fourth Circuit decision.
- Appendix B USDC-SC Charleston Division decision.
- Appendix C US COA correspondence.

FILED: January 23, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1205 (L)
(2:22-cv-03758-BHH-MHC)

C. HOLMES, M.D. a/k/a C. Holmes, a/k/a Cynthia Holmes, a/k/a Cynthia Collie
Holmes

Plaintiff - Appellant

v.

ANNE MILGRAM, Administrator of DEA

Defendant - Appellee

No. 23-1591
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C. HOLMES, M.D. a/k/a C Holmes, a/k/a Cynthia Holmes, a/k/a Cynthia Collie
Holmes

Plaintiff - Appellant

v.

ANNE MILGRAM, Administrator of DEA

Defendant – Appellee

APP A

No. 23-1749
(2:22-cv-03758-BHH-MHC)

C. HOLMES, a/k/a C. Holmes, a/k/a Cynthia Holmes, a/k/a Cynthia Collie Holmes, M.D.

Plaintiff - Appellant

v.

ANNE MILGRAM, Administrator of DEA

Defendant - Appellee

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk

APPEAL, JURY, PROSE

**U.S. District Court
District of South Carolina (Charleston)
CIVIL DOCKET FOR CASE #: 2:22-cv-03758-BHH-MHC**

Holmes v. Milgram

Date Filed: 10/31/2022

Assigned to: Honorable Bruce Howe Hendricks

Jury Demand: Plaintiff

Referred to: Magistrate Judge Molly H Cherry

Nature of Suit: 360 P.I.: Other

Case in other court: UNITED STATES COURT OF APPEALS FOR THE FOURTH

Jurisdiction: Federal Question

CIRC, 23-01205

UNITED STATES COURT OF APPEALS FOR THE FOURTH

CIRC, 23-01591

Cause: 28:1331 Fed. Question

05/22/2023	<u>43</u>	ORDER :The Court overrules Plaintiff's objections (ECF No. 34); the Court adopts the Magistrate Judge's Report (ECF No. 8); and the Court denies Plaintiff's motion for temporary restraining order and preliminary injunction (ECF No. 5.) IT IS SO ORDERED. Signed by Honorable Bruce Howe Hendricks on 05/22/2023. (an) (Entered: 05/22/2023)
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APP B

The following transaction was entered on 2/14/2023 at 2:46 PM EST and filed on 2/14/2023

Case Name: Holmes v. Milgram

Case Number: 2:22-cv-03758-BHH-MHC

Filer:

Document Number: 22(No document attached)

Docket Text:

TEXT ORDER denying [13] Motion to Stay. The Magistrate Judge entered a Report and Recommendation on January 26, 2023, recommending that the Court deny Plaintiff's motion for a temporary restraining order and preliminary injunction. In the instant "notice of appeal and expedited motion for stay," Plaintiff seeks to appeal the Magistrate Judge's Report and all intermediate orders, asserting a denial of Article III Judicial Officer without R&R and requesting de novo review without R&R on all dispositive matters. After review, the Court finds no merit to Plaintiff's arguments, as this matter was referred to a Magistrate Judge for preliminary review in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d), D.S.C. Accordingly, the Court denies Plaintiff's notice of appeal and expedited motion for stay. Instead, the Court has granted Plaintiff until March 3, 2023, to file her written objections to the Magistrate Judge's Report, following which the Court will consider the matters addressed therein. IT IS SO ORDERED. Signed by Honorable Bruce Howe Hendricks on 2/14/2023. (eswalm,)

2:22-cv-03758-BHH-MHC Notice has been electronically mailed to:

2:22-cv-03758-BHH-MHC Notice will not be electronically mailed to:

C. Holmes; M.D.

P.O. Box 187

Sullivans Isd, Chas Cty, SC 29482-0187

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
LEWIS F. POWELL, JR. UNITED STATES COURTHOUSE ANNEX
1100 EAST MAIN STREET, SUITE 501
RICHMOND, VIRGINIA 23219-3517
WWW.CA4.USCOURTS.GOV

PATRICIA S. CONNOR
CLERK

TELEPHONE
(804) 916-2700

February 13, 2023

Cynthia Holmes
P.O. Box 187
Sullivans Island, SC 29482

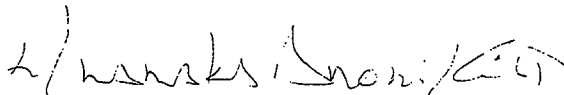
Re: Holmes v. Milgram
SC: 2:22-cv-03758

Dear Ms. Holmes:

This acknowledges receipt by this court of your proposed filing with respect to the above-referenced matter. Please be advised that this court has jurisdiction over matters appealed from federal district courts within our circuit, original proceedings arising from federal district courts within our circuit, and appeals from certain agencies. As the above case is still pending in the federal district court, we are without jurisdiction to act at this time. Additionally, please note that an appeal from a Magistrate Judge order is reviewed by a District Judge, not by this court.

Should you wish to appeal a final judgment by the district court, enclosed is a form notice of appeal. The notice of appeal should be filed in the district court.

Sincerely,



/s/ Nwamaka Anowi

Chief Deputy Clerk

NA:cad
Enclosure

APP C