APPENDIX

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
April 18, 2025
Lyle W. Cayce
Clerk

No. 25-10534

A.A.R.P., *on their own behalf and on behalf of others similarly situated*;
W.M.M., *on their own behalf and on behalf of others similarly situated*;
F.G.M., *on their own behalf and on behalf of others similarly situated*,

Petitioners—Appellants,

versus

Donald J. Trump, *in his official capacity as President of the United States*; Pamela Bondi, *Attorney General of the United States, in her official capacity*; Kristi Noem, *Secretary of the United States Department of Homeland Security, in her official capacity*; United States Department of Homeland Security; Todd Lyons, *Acting Director of the Director of United States Immigration and Customs Enforcement, in his official capacity*; United States Immigration and Customs Enforcement; Marco Rubio, *Secretary of State, in his official capacity*; United States State Department; Josh Johnson, *in his official capacity as acting Dallas Field Office Director for United States Immigration and Customs Enforcement*; Marcello Villegas, *in his official capacity as the Facility Administrator of* the Bluebonnet Detention Center; Phillip Valdez, *in his official capacity as Facility Administrator of* the Eden Detention Center; Jimmy Johnson, *in his/her official capacity as Facility Administrator of* the Prairieland Detention Center; Judith Bennett, *in her official capacity as Warden of the Rolling Plains Detention Center*,

Respondents—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:25-CV-59

UNPUBLISHED ORDER

Before HO, WILSON, and RAMIREZ, *Circuit Judges*.

PER CURIAM:

Petitioners' opposed motion for a temporary administrative stay and an injunction pending appeal is DENIED as premature.

"A court of appeals sits as a court of review, not of first view." *Zaragoza v. Union Pacific Railroad Company*, 112 F.4th 313, 322 (5th Cir. 2024) (cleaned up). That principle dictates our ruling today.

Just yesterday, the district court entered an order indicating that "[t]he government states that authorities will not remove the petitioners during this litigation, and it will alert the Court if that changes." If Petitioners are concerned that Respondents' position has changed, they should have litigated these concerns before the district court in the first instance. We do not doubt the diligence and ability of the respected district judge in this case to act expeditiously when circumstances warrant. Petitioners insist that they tried to proceed before the district court in the first instance, and that the district court simply "refus[ed] to act." But the district court's order today indicates that Petitioners gave the court only 42 minutes to act—and did not give Respondents an opportunity to respond.

The appeal is DISMISSED for lack of subject matter jurisdiction under 28 U.S.C. § 1291(a)(1), for substantially the reasons stated in Judge Ramirez's concurrence.

IRMA CARRILLO RAMIREZ, *Circuit Judge*, concurring:

This court has jurisdiction to review interlocutory orders, including interlocutory orders that refuse or dissolve injunctions, 28 U.S.C. § 1292(a)(1), as well as orders that do not expressly refuse an injunction but have the "practical effect of doing so," *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 83 (1981) (citing *Gen. Elec. Co. v. Marvel Rare Metals Co.*, 287 U.S. 430, 433 (1932)). A litigant appealing an effective denial of an injunction must "show that [the order or inaction] might have a serious, perhaps irreparable, consequence." *Carson,* 450 U.S. at 84. *Id.* (internal quotation marks omitted). To be sufficiently serious, the consequences must be "greater than the harm suffered by any litigant forced to wait until the termination of the [proceedings] before challenging interlocutory orders it considers erroneous." *Sherri A.D. v. Kirby*, 975 F.2d 193, 204 n.15 (5th Cir. 1992) (quoting *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 378–79 n.13 (1981)). Petitioners have identified sufficiently serious consequences—removal of individuals detained under the Alien Enemies Act to a foreign country without "notice . . . within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs." *See Trump v. J.G.G.*, 604 U.S. ___, 2025 WL 1024097, at *2 (Apr. 7, 2025).

Nevertheless, "what counts as an effective denial is contextual—different cases require rulings on different timetables." *In re Fort Worth Chamber of Commerce*, 100 F.4th 528, 535 (5th Cir. 2024). "District courts have wide discretion in managing their docket, and they do not necessarily deny a motion by failing to rule on a parties' requested timeline." *Id.* Here, the petitioners filed a motion for a temporary restraining order just after midnight on April 18, 2025. Around noon the next day, they filed a motion seeking a status conference and informing the district court that they would construe its failure to act within 42 minutes as a constructive denial of their

motion. The ensuing appeal, after the district court failed to meet this unreasonable deadline, divested the district court of jurisdiction. It was therefore unable to complete its review of the filings, after affording the government an opportunity to respond, and issue rulings by noon on April 19, 2025, as it had planned. Although the declarations fully reflect the need for urgency, we cannot find an effective denial of injunctive relief based on the district court's failure to issue the requested ruling within 42 minutes. The appeal is dismissed for lack of subject-matter jurisdiction under 28 U.S.C. § 1291(a)(1).

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

April 19, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 25-10534 A.A.R.P. v. Trump
USDC No. 1:25-CV-59

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Roeshawn Johnson, Deputy Clerk
504-310-7998

Mr. Lee P. Gelernt
Ms. Karen S. Mitchell
Mr. George M. Padis

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

A.A.R.P., on his own behalf and on behalf of all others similarly situated, et al., Petitioners-Plaintiffs, v. DONALD J. TRUMP, in his official capacity as President of the United States, et al., Respondents-Defendants.	No. 1:25-CV-059-H

ORDER

Before the Court is the petitioners' emergency motion for an immediate status conference (Dkt. No. 34). The petitioners seek an emergency status conference in light of new evidence and declarations laid out in the motion. *See generally id.* The motion is denied.

The petitioners filed this motion at 12:48:55 p.m. today, April 18, 2025. *See id.* The petitioners demanded that the Court grant the second temporary restraining order or "hold a status conference to obtain the government's position as to" that motion, and whether the government is imminently removing the proposed class. *Id.* at 2. Approximately 133 minutes after the plaintiffs filed their motion for an emergency status conference (Dkt. No. 34) and approximately 90 minutes after the party-imposed deadline, the petitioners filed a notice of appeal, informing the Court that they appealed the Court's order denying the first motion for a temporary restraining order (Dkt. No. 2), as well as the "constructive" denials of the petitioners' motions for class certification (Dkt. Nos. 3; 39) and second emergency motion for a temporary restraining order (Dkt. No. 30). Because the filing of a notice of

appeal divests a district court of jurisdiction over those matters, a status conference is unnecessary because the Court cannot act on the motions at issue. The Court therefore denies the motion for an emergency status conference (Dkt. No. 34).

Petitioners A.A.R.P. and W.M.M. filed their habeas petition and first motion for an emergency, ex parte temporary restraining order on April 16, 2025. Dkt. Nos. 1; 2. That same day, and while the Court was conducting a criminal jury trial, the Court entered an order directing A.A.R.P. and W.M.M. to either give notice to the Acting United States Attorney for the Northern District of Texas or file a brief explaining why the exceptions to notice under Federal Rule of Civil Procedure 65 have been met. Dkt. No. 8. The petitioners on that same day provided notice to the Acting United States Attorney Chad Meacham. Dkt. No. 11. The government had until 4 p.m. CT on April 16, 2025, to respond to the first motion for a temporary restraining order (Dkt. No. 2). The government filed its response (Dkt. No. 19), and A.A.R.P. and W.M.M. filed a reply shortly thereafter (Dkt. No. 22). The following afternoon, the Court entered an order denying the motion for a temporary restraining order and explaining that it would decide in due course the petitioners' motion for class certification (Dkt. Nos. 3; 39). Dkt. No. 27. The evening of April 17, 2025, an attorney for A.A.R.P. and W.M.M. contacted the Court, seeking to speak with the Court and discussing the substance of the proceedings in a voicemail. In response, the Court entered an order late that night informing the parties that if they wanted to seek emergency relief, that they must so file on the docket. Dkt. No. 29. The Court further instructed in that order that a party opposing any temporary relief would have 24 hours to respond. *Id.*

At 12:34 a.m. CT on April 18, 2025, the petitioners A.A.R.P. and W.M.M. filed a second motion for an emergency temporary restraining order in light of further evidence and declarations attached to the motion. Dkt. No. 30. The Court took the motion under advisement and was actively working on the motion. Pursuant to the Court's previous order (Dkt. No. 29), the government has until 12:34 a.m. CT on April 19, 2025, to respond. A.A.R.P. and W.M.M. asserted in their second emergency motion for a temporary restraining order (Dkt. No. 30) and their motion for an emergency status conference (Dkt. No. 34) that the 24-hour response period was too long because the respondents are going to remove from the United States members of the putative class. The Court did not order the government to file an earlier motion because it believed that 24 hours was an appropriate time for the government to respond and in light of the government's prior representations. These motions raise a series of complicated questions about habeas law, constitutional law, federal courts, and federal jurisdiction. The Court could not in good faith require the respondents to respond in any time less than 24 hours, especially since the petitioners filed the motion after midnight and today is Good Friday, an important day of observation for many. The Court was acting with utmost speed to resolve these motions in a timely manner, but matters of such importance and complexity for all involved required some level of care. And some level of care takes time.

Because the Court had not yet acted on the second emergency motion (Dkt. No. 34)—between the hours of 12:34 a.m. CT and 12:48:55 p.m. CT today—A.A.R.P. and W.M.M. filed this motion for an immediate status conference (Dkt. No. 34). If the Court did not act by 1:30 p.m. CT—less than 45 minutes after the filing of the motion for a status conference (Dkt. No. 34)—by granting the emergency relief requested (Dkt. No. 30) or

holding a status conference, A.A.R.P. and W.M.M. informed the Court that they intended to seek emergency relief from the Fifth Circuit.

That party-imposed, approximately 42-minute deadline has now passed. Approximately 90 minutes after the deadline, at 3:02 p.m. CT, the petitioners filed a notice of appeal, informing the Court that it was appealing the Court's denial of the first motion for an emergency restraining order (Dkt. No. 2) and the "constructive" denials of the amended motion for class certification (Dkt. Nos. 3; 39)[1] and second motion for a temporary restraining order (Dkt. No. 30). Dkt. No. 36.

The Court was aware of the pending motions and was working with utmost diligence to resolve these important and complicated issues as quickly as possible. The Court was prepared to issue an order resolving the second emergency motion (Dkt. No. 34) as soon as practicable after the government filed its response shortly after midnight, if not sooner, and planned to issue such order by no later than 12 p.m. CT tomorrow, Saturday, April 19, 2025.

When a party files a notice of appeal of an interlocutory order, the district court is divested of jurisdiction on any matter that is the subject of the appeal. *Alice L. v. Dusek*, 492 F.3d 563, 564 (5th Cir. 2007). Because the Court can thus no longer rule on the second emergency motion (Dkt. No. 30) or the motion for class certification (Dkt. Nos. 3; 39), the Court sees no purpose in holding an emergency status conference at this time.

[1] The Court notes for the record that the petitioners moved for leave to file an amended motion for class certification with their motion for leave to file an amended complaint. The Court signed an order granting those motions, but they were not docketed until after the petitioners filed their notice of appeal.

The Court was preparing to issue an order regarding the motion for an emergency status conference but was unable to do so in this 133-minute timeframe, as multiple members of the Court's chambers are out of the office, and it is a day of religious importance to many. But regardless of the practicalities, the Court did not find a status conference to be necessary at this juncture. The Court is aware of the allegations, declarations, and evidence in the petitioners' pleadings and motions before the Court and acknowledges the important and time-sensitive nature of this case. But again, the Court cannot shirk its responsibility to decide careful and complicated issues of law without at least some opportunity to review the pleadings and attachments and to get thoughtful responses from the parties.

The Court thus denies the motion for an emergency status conference (Dkt. No. 34). Further, and in light of the notice of appeal (Dkt. No. 36), the Court vacates its scheduling order regarding the motion for class certification (Dkt. No. 31), as reiterated in its subsequent order (Dkt. No. 37). The Court further orders that its previous order directing the parties to file responses to emergency motions within 24 hours (Dkt. No. 29) no longer applies to the government as to the second motion for an emergency temporary restraining order (Dkt. No. 30).

So ordered on April 18, 2025.

JAMES WESLEY HENDRIX
UNITED STATES DISTRICT JUDGE