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United States District Court; S.D. Florida.

LUCIEN LOUIS, et al., Plaintiffs,

v.

ALAN NELSON, et al., Defendants.

Case No. 81-1260-CIV-EPS. | July 2, 1982.

Opinion

ORDER GRANTING DEFENDANTS' MOTION FOR A PARTIAL STAY

SELLMAN, District Judge.

*1 This cause came before the Court on Defendants' motion for a partial stay. Said motion has been joined in by the State of Florida which has moved to intervene in this matter. Having reviewed the record in this cause and being otherwise duly advised, it is hereby,

ORDERED AND ADJUDGED that the motion for partial stay is GRANTED for the reasons, and under the conditions, set forth herein.

On June 30, 1982, this Court issued an Order denying Defendants' motion for a stay of the entire final judgment in this cause and taking under advisement Defendants' alternative motion for a stay of the portion of the Final Judgment that enjoined future enforcement of the new detention policy. In that Order, the Court indicated that under no circumstances would it stay the release of the Plaintiffs now in detention but, upon a proper showing of an intent to engage in rulemaking and a likelihood of irreparable harm during the interim, a stay would be considered with regard to aliens who arrive in the future.

On July 1, 1982 the Defendants filed with the Court a notice of intent to proceed with rulemaking. On July 2, 1982, the State of Florida filed their renewed motion to intervene along with a motion for a partial stay and an affidavit in support thereof.¹ The affidavit, sworn to by the Governor of the State of Florida, states that he has information from reliable sources indicating that there are between 20,000 and 40,000 Haitians in the Bahamas as well as 'additional numbers of Haitians, Nicaraguans, El Salvadorians and other nationals currently residing in other areas within the Caribbean basin . . . Consistent with the information obtained from the aforesaid reports your affiant fears a renewed influx of Haitian and other aliens into South Florida if the court's judgment dated June 29,

1982 is not stayed . . .'

The filing of these documents places this Court in a very difficult position. On the one hand, it is unquestionable that detaining people pursuant to a detention policy declared unlawful causes them irreparable harm. On the other hand, the Defendants represent that they are going to cure the defect in the Court found in the new detention policy and the intervening State of Florida asserts that while that defect is cured they are likely to incur irreparable harm.

The factors to be considered by the Court when faced with a motion to stay include '(1) the likelihood that the moving party will ultimately prevail on the merits of the appeal; (2) the extent to which the moving party would be irreparably harmed by denial of the stay; (3) the potential harm to opposing parties if the stay is issued; and (4) the public interest.' Florida Businessmen For Free Enterprise v. City of Hollywood, 648 F.2d 956, 957 (5th Cir. 1981); Belcher v. Birmingham Trust National Bank, 395 F.2d 685, 686 (5th Cir. 1968). Here, as reflected by the prior Orders of this Court, the likelihood of success on appeal is not considered to be great.² However, the balancing of equities that weighed in favor of the Plaintiffs with regard to the stay of their release is tipped in favor of the Defendants with regard to the prospective effects of the Final Judgment.

*2 The appearance of an inability on behalf of the United States Government to control unlawful immigration into this country is 'the greatest inducement to the ultimate swollen tide of incoming undocumented [aliens].' Haitian Refugee Center v. Smith, No. 80-5683, slip op. at 15182 n.11 (11th Cir. May 24, 1982). This Court does not want its Final Judgment to render INS helpless and thereby induce further migration to these shores. It is therefore,

ORDERED AND ADJUDGED that the portion of this Court's Final Judgment, dated June 29, 1982, that enjoined future enforcement of the new detention policy is STAYED for a period of thirty (30) days. The Defendants shall publish notice of their intent to engage in rulemaking with regard to detention as soon as possible and in no event later than thirty (30) days from the date of this Order. Said notice shall invite comment, as provided for in Title 5 of the United States Code, but Defendants are not precluded from publishing notice pursuant to section 553(b)(3)(B), (d)(3). In other words the Defendants may utilize the good cause provisions of section 553 if, in their discretion they believe it to be necessary but they must, within the time period established, institute notice and comment rulemaking. The failure to do so within thirty (30) days will result in the lifting of this stay. It is further the intent of the Court that the rulemaking process go forward as expeditiously as

possible and that the final rule be published no later than ninety (90) days from the date of this Order. The Court will take under advisement the question of the status to be assigned persons who arrive in between the time of the Final Judgment and the effective date of the new rule.

¹ The State of Florida's motion to intervene is GRANTED solely for the purpose of participation with regard to the issue of staying the prospective effects of the Court's Final Judgment. The State is bound by the law of the case as of the date of its intervention and may only participate hereafter with regard to the issue for which intervention was granted.

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The Court believes that the Defendants' intent and representation that they will comply with the Court's Memorandum Opinion and the provisions of the Administrative Procedures Act, 5 U.S.C. § 551 et seq., is a factor to be considered in connection with their request for interim relief.