

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CARMEN GUERRERO-SANDOVAL, et al

Appellants

Case No. 25-3398

v.

PAMELA BONDI, et al

Appellees,

EMERGENCY MOTION FOR STAY AND RESTRAINING ORDER

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Motion

Now come the Appellants, CDBG and Unborn Child and move this Court for a stay and restraining order of their mother and primary caretaker and material witness for the following reasons.

Memorandum

Appellant filed a Complaint in the U. S. District Court Southern District of Ohio on May 19, 2025 (R.1, Complaint PAGEID# 1-7) along with a Motion for a Temporary Restraining Order (R.2, PAGEID# 8-9). An Amended Complaint was filed on May 22, 2025 (R.5, PAGEID# 23-30). After a hearing, the Court denied the Motion for a Temporary Restraining Order on May 22, 2025 (R. 7, PAGEID# 31-39). Notice of Appeal was filed on May 26, 2025 (R.8 and R.9, Notice of Appeal, PAGEID# 40-41, R.9, PAGRID# 42-43).

Appellant CDBG is a United States citizen and is nine years of age, Appellant Unborn Child is a child due to be born on or about October, 2025 and will be a United States citizen. Appellants' mother, is currently ordered to report to Immigration and Customs Enforcement (ICE), an agency of the Department of Homeland Security and will be removed from the United States pursuant to order of the Immigration Court at Cleveland, Ohio on Tuesday, June 3, 2025. ICE has been taking Hispanic individuals, such as the mother of the Appellants, into

custody at these scheduled check-in dates, without notice. Appellants' mother is the primary financial support of the Appellants. Appellant CDBG has been assessed by his school, Columbus City Schools, on April 28, 2025 to be eligible for special education under the Ohio Administrative Code 3301-51-01(B)(10) and OAC 3301-51-06 due to autism, There are no comparable special education facilities in El Salvador. (R.1, PAGEID# 2-4).

While District Courts have taken the position that they cannot challenge orders of removal from an immigration court, the Appellants are not challenging the order of removal by this motion but are requesting that the execution of this order be stayed pending the disposition of the case in the District Court (2:25-cv-559).

In determining whether to grant a temporary restraining order, courts consider four factors: “(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction.” *City of Pontiac Retired Emps. Ass’n v. Schimmel*, 751 F.3d 427, 430 (6th Cir. 2014) (per curiam) (en banc) (internal quotation marks omitted); see *Workman v. Bredesen*, 486 F.3d 896, 905 (6th

Cir. 2007) (applying these four preliminary injunction factors to the court's review of a temporary restraining order). "These factors are not prerequisites which must be met but are interrelated considerations that must be balanced together." *Ne. Ohio Coal. For Homeless & Serv. Emps. Int'l Union, Loc. 1199 v. Blackwell*, 467 F.3d 999, 1009 (6th Cir. 2006) (quoting *Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991)). "For example, the probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury the movants will suffer." *Id.*

The Appellants have made claims under Federal Tort Claims Act, 28 U.S.C. §§ Chap. 171, 28 U.S.C. §§ 1346, 1402, 2401, 2671 – 2680. While federal officers may not be liable under state tort law, they certainly are potentially liable under the FTCA.

Under 28 U.S.C. §2202, the District Court is given specific authority to issue injunctive relief, in this matter, a restraining order. The restraining order requested in the District Court is for the purpose of effectuating the FTCA claims and not a challenge to the removal order. Although it is premature to fully discuss evidentiary matters, certainly the testimony of the primary, in fact, the sole caregiver of the two Petitioners is necessary in such a suit by minor plaintiffs. The failure to accommodate a material witness is contrary to

both the Sixth Amendment right to a fair trial and the Due Process Clauses of the Fifth and Fourteenth Amendments.

As the case law states, a balance must be struck in determining whether to grant a restraining order. In the present matter, the District Court found irreparable harm to the Appellants due to the removal of their mother, their primary caretaker (and a necessary witness in their FTCA claim, one might add). While the Government might well have an interest in enforcing the immigration laws, such interest seems none too pressing in the present matter considering that the Government has taken no action against the Appellants mother during the five years since her appeal to the Board of Immigration Appeals was dismissed in 2020. They have been content with only yearly reporting. She has not concealed her address and has apparently complied with all requirements placed on her.

This leaves only the likelihood of success. As argued above, this is not a foregone conclusion either way. As such, while other constitutional claims were raised and disposed of, the District Court failed to give more than cursory consideration to the Appellants' FTCA claim and thus gave undue weight to this factor.

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Since the Appellants' mother is to be removed by ICE on June 3, 2025, one week from today, the Appellants request this Court to issue a stay and/or a restraining order, not on the order of removal itself, but on the imminent execution of that order until the proceedings in this matter are concluded.

CONCLUSION

For the foregoing reasons, this Court should issue a stay and a restraining order as requested.

Respectfully submitted,

/s/George A. Katchmer

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CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2025 a copy of the foregoing MOTION FOR STAY. CDBG and UNBORN CHILD APPELLANT was filed electronically with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following registered CM/ECF users:

Christopher R. Yates

/s/ George A. Katchmer
GEORGE KATCHMER
Attorney at law