

No. 15-1390

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Apr 07, 2015  
DEBORAH S. HUNT, Clerk

WALTER BARRY, by his next friend, Elaine	)
Barry, on behalf of himself and all others similarly	)
situated; DONITHA COPELAND; KENNETH L.	)
ANDERSON; WESTSIDE MOTHERS,	)
	)
Plaintiffs-Appellees,	)
	)
v.	)
	)
NICK LYON, in his official capacity as Acting	)
Director, Michigan Department of Human Services,	)
	)
Defendant-Appellant.	)

ORDER

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

The Acting Director, Michigan Department of Human Services (“MDHS”), appeals the final judgment in this class action challenging the state law and policies governing the disqualification of fugitive felons from receiving various forms of public assistance, including benefits under the federal food stamp program—the Supplemental Nutrition Assistance Program (“SNAP”). MDHS moved for a stay pending appeal in the district court, and that court scheduled a hearing on the stay motion for May 6, 2015. Because MDHS is required to provide benefits to some individuals by April 14, 2015, and to notify class members of the action by April 28, 2015, it seeks an emergency stay pending appeal from this court. The plaintiffs oppose the motion for a stay.

No. 15-1390

-2-

MDHS “bears the burden of showing that the circumstances justify” the exercise of discretion to grant a stay pending appeal. *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). Four factors guide our decision: (1) whether MDHS has a strong or substantial likelihood of success on the merits; (2) whether it will suffer irreparable harm in the absence of a stay; (3) whether the requested injunctive relief will substantially injure other interested parties; and (4) where the public interest lies. *Id.* at 434; *see also Serv. Emps. Int’l Union Local 1 v. Husted*, 698 F.3d 341, 343 (6th Cir. 2012). The first two factors are “the most critical.” *Nken*, 556 U.S. at 434. “These factors are not prerequisites that must be met, but are interrelated considerations that must be balanced together.” *Husted*, 698 F.3d at 343 (internal quotation marks omitted).

The district court found that MDHS’s automated criminal justice disqualification notices violated the due process clause of the United States Constitution and the provisions of SNAP. And MDHS imposed invalid eligibility requirements on plaintiffs and the class members by disqualifying them from the receipt of benefits based solely on the existence of an outstanding warrant against them. Upon review, we conclude that MDHS has not demonstrated a sufficient likelihood of success on the merits or irreparable harm to support a stay pending appeal. As for MDHS’s reliance on *Armstrong v. Exceptional Child Care Center, Inc.*, No. 14-15, 2015 WL 1419423 (U.S. Mar. 31, 2015), nothing in the record shows that MDHS gave the district court the opportunity to assess its impact on this case. Because we are a court of “review and not first view,” *Zivotofsky ex rel. Zivotofsky v. Clinton*, 132 S.Ct. 1421, 1430 (2012) (internal quotation marks omitted), we leave it to the district court to consider the impact of *Armstrong*, in the first instance.

No. 15-1390

-3-

Accordingly, the motion for a stay pending appeal is **DENIED**. The clerk is directed to expedite the appeal for submission to the court.

ENTERED BY ORDER OF THE COURT



---

Deborah S. Hunt, Clerk

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

Deborah S. Hunt  
Clerk

100 EAST FIFTH STREET, ROOM 540  
POTTER STEWART U.S. COURTHOUSE  
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000  
[www.ca6.uscourts.gov](http://www.ca6.uscourts.gov)

Filed: April 07, 2015

Ms. Miriam J. Aukerman  
American Civil Liberties Union Fund of Michigan  
West Regional Office  
1514 Wealthy, S.E  
Suite 242  
Grand Rapids, MI 49506

Ms. Jacqueline Doig  
Center for Civil Justice  
320 S. Washington  
Second Floor  
Saginaw, MI 48607-0000

Sofia V. Nelson  
ACLU Fund of Michigan  
2966 Woodward Avenue  
Detroit, MI 48201

Ms. Elan S. Nichols  
Center for Civil Justice  
436 S. Saginaw Street  
Suite 400  
Flint, MI 48502

Mr. Joshua Sean Smith  
Office of the Attorney General  
of Michigan  
P.O. Box 30758  
Lansing, MI 48909

Re: Case No. 15-1390, *Walter Barry, et al v. Nick Lyon*  
Originating Case No. : 5:13-cv-13185

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Michelle M. Davis  
Case Manager  
Direct Dial No. 513-564-7025

cc: Mr. David J. Weaver

Enclosure