

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

The State of KANSAS, *et al.*,

Plaintiffs,

v.

UNITED STATES of AMERICA and the
CENTERS FOR MEDICARE &
MEDICAID SERVICES,

Defendants.

Civil Action No. 1:24-cv-00150-DMT-CRH

JOINT MOTION TO STAY PROCEEDINGS

The parties respectfully move to stay further proceedings pending Defendants' appeal of the Court's December 9 order granting a preliminary injunction and stay of the Final Rule. *See Kansas v. United States*, No. 24-3521 (8th Cir.). In support of this motion, the parties state as follows:

1. On August 8, 2024, Plaintiffs filed this suit challenging the Centers for Medicare & Medicaid Services' final rule defining "lawfully present" in 42 U.S.C. § 18032(f)(3) and related Affordable Care Act provisions. *See* Clarifying the Eligibility of Deferred Action for Childhood Arrivals (DACA) Recipients and Certain Other Noncitizens for a Qualified Health Plan through an Exchange, Advanced Payments of the Premium Tax Credit, Cost-Sharing Reductions, and a Basic Health Program, 89 Fed. Reg. 39,392, 39,415 (May 8, 2024); 45 C.F.R. § 155.410(e)(4). On August 30, Plaintiffs moved for a preliminary injunction and stay of the final rule, contending that the rule violated the Administrative Procedure Act. *See generally* ECF No. 35; *see also* ECF Nos. 81, 103, 105, 111, 114, 127.

2. Defendants opposed this motion, contending that the Court lacks subject-matter jurisdiction and venue and that Plaintiffs' claims fail as a matter of law. *See generally*

ECF No. 61; *see also* ECF Nos. 90, 96, 107, 112, 119, 129. Defendants also moved to dismiss on similar grounds. *See* ECF No. 108.

3. On December 9, the Court granted Plaintiffs' motion. *See* ECF No. 117. The Court also denied the motion to dismiss. *See id.*

4. Defendants appealed and, over Plaintiffs' opposition, sought a stay of that order in this Court and in the Eighth Circuit. *See* ECF Nos. 118, 119, 127, 129. This Court denied Defendants' motion on December 18. *See* ECF No. 130. The Eighth Circuit initially granted an administrative stay of the Court's December 9 order, *see* Order (8th Cir. Dec. 16, 2024), but on December 23, a divided motions panel vacated the administrative stay and denied Defendants' motion for a stay pending appeal, *see Kansas v. United States*, --- F.4th ---, 2024 WL 5242428, at *3 (8th Cir. Dec. 23, 2024). Judge Kelly dissented, concluding that North Dakota lacks standing and thus that venue is improper. *See id.* at *4 (Kelly, J., dissenting).

5. The Eighth Circuit expedited the appeal. Defendants' opening brief is due January 17, 2025. Plaintiffs' brief is due February 7, and Defendants' reply is due February 19.

6. The issues before the merits panel will include whether this Court has jurisdiction and whether venue is proper in this district. *See, e.g.*, Statement of Issues at 2 (8th Cir. Dec. 20, 2024).

7. The parties agree that the resolution of the appellate proceedings may significantly affect the issues in this case and whether the case may proceed in this district. Therefore, in the interest of efficiency and to conserve judicial and party resources, the parties jointly request that the Court stay further proceedings and deadlines pending the resolution of Defendants' appeal.¹ If further developments that warrant the Court's attention occur

¹ On December 30, 2024, Plaintiffs moved for clarification of the Court's December 9 order. *See* ECF No. 134. Defendants opposed that motion and maintain that it lacks merit for reasons stated in their opposition. *See* ECF No. 137. However, the parties' requested stay would not preclude the Court from deciding Plaintiffs' motion for clarification.

during this period, the parties will notify the Court expeditiously and move to lift the stay, if necessary.

8. The parties further propose to file a joint status report concerning further proceedings within 14 days of the Eighth Circuit issuing its mandate in this case.

9. For the foregoing reasons, the parties respectfully request that the Court stay further proceedings in this case pending resolution of Defendants' appeal.

January 14, 2025

Respectfully submitted,

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