

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

STATE OF KANSAS, *et al.*,

Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants-Appellants.

No. 24-3521

CONSENT MOTION TO HOLD APPEAL IN ABEYANCE

Pursuant to Federal Rule of Appellate Procedure 27, defendants-appellants the United States of America and the Centers for Medicare & Medicaid Services (CMS) respectfully move to hold this appeal in abeyance for 60 days. Plaintiffs consent to this motion.

1. This appeal concerns a challenge to a final rule issued by CMS in 2024 that, among other things, states that recipients of deferred action under the Deferred Action for Childhood Arrivals program are considered “lawfully present in the United States” for certain purposes under the Affordable Care Act (ACA) and consequently may be eligible to obtain health insurance on an ACA exchange and to receive certain federal subsidies. Kansas and 18 other States challenged the rule as unlawful, and the district court issued a preliminary injunction and stay of the effective date of the rule within the 19 plaintiff States. The federal government appealed the district court’s

order, and the parties have filed opening and response briefs pursuant to the expedited schedule this Court ordered on December 23, 2024. The federal government's reply brief is currently due on February 19, 2025.

2. Due to the recent change in administration on January 20, 2025, CMS and the U.S. Department of Health and Human Services (HHS) are now under new leadership. New agency officials are still in the process of onboarding and familiarizing themselves with all of the issues presented by this case and other pending litigation, including the impact on the rule at issue in this litigation of the Executive Order titled Protecting the American People Against Invasion, Exec. Order No. 14,159, 90 Fed. Reg. 8443 (Jan. 20, 2025), which the federal government previously noted in its January 31 letter to the Court.

3. HHS's and CMS's further evaluation of the issues presented by this appeal may obviate the need for this Court to address the merits of this preliminary injunction appeal. As a result, the federal government respectfully suggests that this appeal be placed in abeyance for 60 days to allow HHS and CMS time to complete their evaluation. Such an abeyance will conserve judicial resources and promote the efficient and orderly disposition of this appeal.

4. Counsel for plaintiffs-appellees have authorized us to state that they consent to this motion.

CONCLUSION

For the foregoing reasons, defendants-appellants respectfully request that this appeal be held in abeyance for 60 days.

Respectfully submitted,

MELISSA N. PATTERSON

s/ Leif Overvold

LEIF OVERVOLD

JOSHUA M. KOPPEL

Attorneys, Appellate Staff

Civil Division

U.S. Department of Justice

950 Pennsylvania Ave. NW

Room 7226

Washington, DC 20530

(202) 305-1754

Counsel for Defendants-Appellants

FEBRUARY 2025

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 396 words. This motion also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because it was prepared using Word for Microsoft 365 in Garamond 14-point font, a proportionally spaced typeface.

Pursuant to Circuit Rule 28A(h)(2), I further certify that the motion has been scanned for viruses, and the motion is virus free.

s/ Leif Overvold

Leif Overvold

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2025, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

s/ Leif Overvold

Leif Overvold