

1991 WL 330944

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United States District Court, S.D. Florida.

HAITIAN REFUGEE CENTER, INC., et al,
Plaintiffs,
v.
James BAKER, III, et al, Defendants.

No. 91-2653-CIV-ATKINS. | Dec. 18, 1991.

Opinion

ORDER MEMORIALIZING ORAL RULINGS

ATKINS, Senior District Judge.

*1 At approximately 10:00 p.m. on December 17, 1991, following a telephonic conference with counsel, this court made rulings on the following two motions: first, plaintiffs' Emergency Motion for Issuance of Temporary Restraining Order Based Upon the Administrative Procedure Act (APA); and second, defendants' Emergency Motion for Stay of Temporary Restraining Order Pending Appeal. Upon consideration of the motions and the relevant law, it was

ORDERED AND ADJUDGED that plaintiffs' Emergency Motion for Temporary Restraining Order (TRO) is *GRANTED*, for the following reasons. First, plaintiffs have demonstrated a substantial likelihood of prevailing on their claims under the APA.¹ Second, plaintiffs have demonstrated a substantial threat that they will suffer irreparable, even fatal, injury if the TRO is not granted. Third, plaintiffs have shown that this threat outweighs the potential harm the TRO would cause defendants. Finally, plaintiffs have shown that the TRO would not disserve the public interest. Accordingly, in an

effort to preserve the status quo pending the preliminary injunction hearing provided for below, defendants are hereby temporarily restrained from forcefully repatriating plaintiffs and class members in their custody.²

It was further ORDERED AND ADJUDGED that defendants' Emergency Motion for Stay of the Temporary Restraining Order Pending Appeal is *DENIED* for the reasons set forth above.

Finally, it was ORDERED AND ADJUDGED that a hearing on this matter will be held on Friday, December 20, 1991, at 10:00 a.m., in Courtroom 4, Federal Courthouse Square, 301 North Miami Ave, Miami, Florida. Each side will have thirty (30) minutes for argument.

¹ The court recognizes its previous determination that plaintiffs had not shown a likelihood of prevailing under the APA. That determination was based on Congress' broad grant of discretion to the President in establishing the interdiction program. However, the court now has the benefit of the thorough briefing of the APA issue before the Eleventh Circuit Court of Appeals, as well as the Court of Appeals' December 17, 1991 per curiam opinion. In this new light, the court now finds a substantial likelihood of success, based in part on the distinction between the President's discretion in establishing the program and subordinates' discretion or lack thereof in following program procedures and guidelines.

² This TRO does not preclude the return of class members who, as determined by representatives of the United Nations High Commissioner on the Status of Refugees, wish to be returned to Haiti.