

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

ARACELY ZAMORA-GARCIA, <i>et al</i> ,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. M-09-73
	§	
MARC MOORE, <i>et al</i> ,	§	
	§	
Defendants.	§	

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO STAY DECISION DURING PENDENCY OF APPEAL PERIOD

Now before the Court is Defendants' Motion to Stay Decision During Pendency of Appeal Period (the "Motion"). (Doc. 11). The Court issued its Order Granting in Part and Denying in Part Petitioners'/Plaintiffs' Motion for Summary Judgment and Granting in Part and Denying in Part Federal Respondents'/Defendants' Motion for Summary Judgment on August 23, 2010 and entered its final judgment in accordance with that order on October 13, 2010. (Docs. 6, 8). On October 19, 2010, the Court granted Defendants' unopposed motion to stay the Court's final judgment until the expiration of the 60-day time period for appealing that judgment. (Doc. 10). The stay expires on December 13, 2010.

On December 6, 2010, Defendants filed the instant Motion seeking to extend the stay throughout the pendency of Defendants' appeal to the Fifth Circuit of the Court's final judgment. (Doc. 11).¹ Defendants are appealing only the segment of this case involving the Cash Bond Classes. *Id.* With respect to these classes, the relief ordered by the Court in its final judgment, in accordance with the Court's August 23, 2010 order, is as follows: (1) the members of the Obligor Cash Bond Class are entitled to the reinstatement of the breached bonds they posted (if

¹ The Notice of the Filing of Defendants' Appeal was entered on December 9, 2010. (Doc. 16).

proceedings are ongoing) or the reinstatement and cancellation of the breached bonds (if proceedings have been completed); and (2) the members of the Immigrant Cash Bond Class B are entitled to prospective relief requiring the Department of Homeland Security (“DHS”) to take additional reasonable steps to provide notice to the obligor of any demand on a class member’s bond that is returned undelivered. (Doc. 8).

In exercising its discretion to stay a decision pending appeal, a district court is guided by the same four-part test used in determining whether to grant preliminary injunctive relief. *See Vidal v. Gonzales*, 491 F.3d 250, 254 n.17 (5th Cir. 2007). Before the court may grant a stay, the movant must show: (1) a likelihood of success on the merits; (2) that irreparable harm would occur if a stay is not granted; (3) that the potential harm to the movant outweighs the harm to the opposing party if a stay is not granted; and (4) that the granting of the stay would serve the public interest. *Ignacio v. Immigration & Naturalization Serv.*, 955 F.2d 295, 299 (5th Cir. 1992)(citing *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981), *cert. denied*, 460 U.S. 1042 (1982)). “[I]f a serious legal question is involved, the first prong requires a showing only of ‘a substantial case on the merits.’” *Id.* (citing same).

Plaintiffs represent that they are unopposed to a continued stay of the portion of the Court’s final judgment requiring reimbursement to class members for breached bonds, recognizing that “it would doubtless be difficult to recoup those monies, once paid.” (Doc. 13). In other words, Plaintiffs appear willing to concede that irreparable harm to Defendants would result if a stay were not granted. Therefore, the Court will grant Defendants’ Motion as unopposed to the extent that it seeks a continued stay of the portion of the Court’s judgment requiring reimbursement to class members.

Plaintiffs are opposed, however, to Defendants' additional request that the Court continue the stay of the portion of the final judgment requiring prospective relief. (Doc. 13). The Court agrees with Defendants that the case presents a serious legal question—that is, whether *Jones v. Flowers*, 547 U.S. 220 (2006), sets forth the requirements of due process in this case—and that Defendants have presented “a substantial case on the merits.” (Doc. 11). However, the remaining factors to be considered weigh against extending the stay of the prospective relief ordered by the Court, for the following reasons.

Defendants argue that declining to extend the stay would result in irreparable harm to them, in that “using ICE [Immigration and Customs Enforcement] to track down obligors who have not provided their current addresses to ICE would be costly and would detract from their ability to perform other critical duties.” (Doc. 11). In so arguing, Defendants ignore the evidence and mischaracterize the nature of the relief ordered by the Court in its final judgment and in accordance with the August 23, 2010 order. First, the evidence is undisputed that even if the obligor were to attempt to update his address, Defendants look only to the obligor's address as initially provided on the “Immigration Bond” form contract, or “Form I-352,” in sending notice to the obligor of a demand on a bond. Further, in discussing the claims of the Obligor Cash Bond Class, the Court's order explained as follows:

The Supreme Court in *Jones* recognized that “[a]n open-ended search for a new address—especially when the State obligates the taxpayer to keep his address updated with the tax collector—imposes burdens on the State significantly greater” than the other “relatively easy” options available. *Jones*, 547 U.S. at 236 (internal citation omitted). Here, however, INS/DHS had at its disposal the bond contract with additional information about the obligor and/or the “A file” of the bonded immigrant who had appeared at all hearings of which he or she received adequate notice. The Court finds that consulting the contract and/or A file for alternate contact information would have been reasonable, especially where the government itself bore some responsibility for the fact that the obligor had no means to keep her address current.

(Doc. 6).² Then, in discussing the claims of the Immigrant Cash Bond Class B, the Court explained:

[U]nder Defendants' current notice practices, a request to the obligor for the Immigrant Plaintiff's appearance that is returned undelivered results in a bond breach and the Plaintiff's possible return to custody and loss of otherwise available legal remedies. Defendants have provided no evidence that additional reasonable steps are not available to provide further notice to the obligor when the initial attempt has failed, and for the reasons explained *supra*, the Court finds that such steps do in fact exist. Perhaps most notably, the current Form I-352, and the one in place at the time [class representative] Mr. Larin-Ulloa obtained his bond, requires the obligor to provide his or her name, address, telephone number, and taxpayer identification number. (Doc. 256, Ex. 8). Therefore, additional information that could be used to locate the obligor is readily available to DHS. Accordingly, and for the reasons detailed in the Court's discussion of Obligor Plaintiffs' claims, the Court finds that Defendants' current notice practices fail to afford the process due under *Jones*, and that Immigrant Plaintiffs are entitled to prospective relief requiring DHS to take additional reasonable steps to provide notice to the obligor of a bond demand that is returned undelivered.

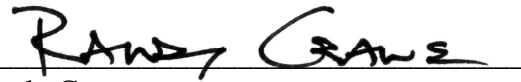
Id. In short, Defendants are not required to go to great lengths to "track down" obligors, but are merely required to take additional reasonable steps to provide notice in the those cases in which the initial attempt at notice is returned undelivered. This does not constitute irreparable harm. Further, as noted in the portion of the Court's order cited above, "under Defendants' current notice practices, a request to the obligor for the Immigrant Plaintiff's appearance that is returned undelivered results in a bond breach and the Plaintiff's possible return to custody and loss of otherwise available legal remedies." In other words, irreparable harm may result if this Court further extends the stay. Finally, Defendants support their argument that a stay serves the public interest by arguing that the outcome of this case "could have far-reaching policy implications relating to ICE's current immigrant bond framework," although they fail to explain what those implications are other than to reassert that ICE would be required to "divert scarce monetary and personnel resources away from other operations." (Doc. 11). Again, for the reasons explained *supra*, the relief ordered by the Court requires only that additional, reasonable steps be taken in

² The "A file" refers to the bonded alien's file.

limited cases. Upon consideration of all of the factors, the Court finds that the balance of those factors weighs in favor of denying Defendants' renewed Motion to stay the portion of the Court's judgment requiring prospective relief.

Accordingly, the Court hereby **ORDERS** that Defendants' Motion to Stay is hereby **GRANTED** in part and **DENIED** in part, as follows: (1) the Court's final judgment is stayed throughout the pendency of Defendants' appeal to the extent that it requires Defendants to reinstate or reinstate and cancel the breached bonds posted by members of the Obligor Cash Bond Class; and (2) the stay of the portion of the Court's final judgment requiring DHS to take additional reasonable steps to provide notice to the obligor of any demand on a class member's bond that is returned undelivered expires on December 13, 2010 and will not be extended by this Court.

SO ORDERED this 9th day of December, 2010, at McAllen, Texas.

A handwritten signature in black ink that reads "Randy Crane". The signature is written in a cursive, slightly slanted style. Below the signature is a horizontal line.

Randy Crane
United States District Judge