

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 02-cv-01239-MSK-KLM

MARK JORDAN,

Plaintiff,

v.

MICHAEL PUGH, et al.,

Defendants.

DEFENDANTS' MOTION TO STAY THE JUDGMENT

Defendants, by their undersigned counsel, hereby move pursuant to Federal Rule of Civil Procedure 62(b) for an order to stay the nationwide effect¹ of the judgment in the above-captioned case pending disposition of both the Plaintiff's and the Defendants' pending Rule 59(e) motions.

Pursuant to D.C.COLO.LCivR 7.1(A), on August 23, 2007, undersigned counsel spoke with Plaintiff's counsel about this motion. Plaintiff opposes this motion.

Rule 62(b) provides that "[i]n its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion ... made pursuant to Rule 59." Rule 62(b) gives the Court authority to stay a judgment while it considers and disposes of post-trial motions, but

¹ By way of this motion, defendants are not seeking to stay the judgment with respect to plaintiff Mark Jordan himself.

does not give the court authority to stay execution of the judgment on appeal after it has disposed of post-trial motions. *See In re Zapata Gulf Marine Corp.*, 941 F.2d 293, 295 (5th Cir. 1991).

On August 23, 2007, Plaintiff filed a motion pursuant to Rule 59(e) to amend the Court's judgment in the above-captioned case. (Doc. 357.) On that same day, Defendants filed a motion pursuant to Rule 59(e) to amend the Court's judgment in the above-captioned case. (Doc. 358.) Plaintiff's motion seeks to have the Court add language to its opinion to conform to the specific statutory language in 18 U.S.C. § 3626(a)(1). (Doc. 357 at 2.) Defendants' motion seeks to have the Court narrow the nationwide injunction it issued, in part to conform to the statutory mandate set forth by Congress in 18 U.S.C. § 3626(a)(1). (Doc. 358 at 3-4.) Both parties have filed motions seeking to amend the Court's judgment. Defendants' motion explicitly recognizes the overbreadth of the Court's injunctive relief. Plaintiff implicitly does: by seeking to have the Court add language to its opinion containing the 18 U.S.C. § 3626(a)(1) language, Plaintiff is hoping to prevent the "immediate termination" of the Court's injunctive relief. (Doc. 357 at 2.) Because both parties recognize the same potential shortcoming in the Court's judgment, a Rule 62(b) stay should be granted pending resolution of the Rule 59(e) motions.

Rule 62(b) additionally provides that "the district court may condition the stay on the provision of 'security of the adverse party as [is] proper.'" *International Wood Processors v. Power Dry, Inc.*, 102 F.R.D. 212, 215 (D.S.C. 1984). Here, there is no risk that, once the Rule 59(e) motions have been decided, Plaintiff will not be able to obtain his judgment. Because the only relief granted to Plaintiff is declaratory and injunctive, and the Defendants are, in effect, the Bureau of Prisons, Plaintiff's judgment is adequately secured.

For these reasons, Defendants respectfully requests that the Court enter a stay pursuant to Rule 62(b), staying the nationwide effect of the Court's judgment, pending the resolution of each party's Rule 59(e) motions.

Respectfully submitted this 13th day of September, 2007.

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s/ Marcy E. Cook

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September, 2007, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following e-mail addresses:

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I also hereby certify that on this 13th day of September, 2007, I mailed or served the foregoing document to the following non-CM/ECF participant(s) in the manner (mail, E-mail, etc.) indicated by the nonparticipant's name:

None

s/ Marcy E. Cook
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