FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AL OTRO LADO, a California corporation; ABIGAIL DOE; BEATRICE DOE; CAROLINA DOE; DINORA DOE; INGRID DOE; JOSE DOE; URSULA DOE; VICTORIA DOE; BIANCA DOE; JUAN DOE; ROBERTO DOE; CESAR DOE; MARIA DOE; EMILIANA DOE, individually and on behalf of all others similarly situated, *Plaintiffs-Appellees*, v. CHAD F. WOLF, Acting Secretary, US Department of Homeland Security; MARK A. MORGAN, Acting Commissioner of U.S. Customs and Border Protection; TODD C. OWEN, Executive Assistant Commissioner, Office of Field Operations, United States Customs and Border Protection, in his official capacity, *Defendants-Appellants.*	No.19-56417 D.C. No. 3:17-cv-02366-BAS-KSC ORDER

Filed December 20, 2019

Before: Sidney R. Thomas, Chief Judge, Marsha S. Berzon and Daniel A. Bress, Circuit Judges.

Order;
Concurrence by Judge Bress

SUMMARY*

Immigration

The panel granted the government's motion for an emergency temporary stay of the district court's order provisionally certifying a class and preliminarily enjoining enforcement of the Third Country Transit Rule, 8 C.F.R. § 208.13(c)(4), against non-Mexican nationals who were allegedly in the process of arriving at a port of entry before the Rule went into effect.

The panel observed that a temporary stay in this context (sometimes referred to as an administrative stay) is only intended to preserve the status quo until the substantive motion for a stay pending appeal is considered on the merits, and does not constitute in any way a decision as to the merits of the motion for stay pending appeal. Accordingly, the panel granted the temporary stay to preserve the status quo, explaining that the Third Country Transit Rule has been in effect since July 16, 2016, and prohibiting the government from applying the Rule to the proposed class members could cause complications at the border in the period before the motion for stay pending appeal is decided.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Concurring, Judge Bress wrote that, based on the standards that apply here, which includes consideration of the likelihood of success on the merits, the government has demonstrated that a temporary stay is warranted.

ORDER

The government requests an emergency temporary stay of the district court's order provisionally certifying a class, and preliminarily enjoining the government from enforcing the Third Country Transit Rule, 8 C.F.R. § 208.13(c)(4), against non-Mexican nationals who were allegedly in the process of arriving at a port of entry before the Third Country Transit Rule went into effect. The government also seeks a stay of the district court's order pending appeal.

A temporary stay in this context (sometimes referred to as an administrative stay) is only intended to preserve the status quo until the substantive motion for a stay pending appeal can be considered on the merits, and does not constitute in any way a decision as to the merits of the motion for stay pending appeal.

Because granting the stay request would preserve the status quo, we grant the government's motion for a temporary stay to preserve the status quo pending a decision on the motion for stay pending appeal.

The Third Country Transit Rule has been in effect since July 16, 2019. Prohibiting the government from applying the Rule to the proposed class members could cause complications at the border in the period before the motion for stay pending appeal is decided. Our ruling is based on

these considerations and not in any respect on the merits of the dispute.

Plaintiffs' response to the motion for stay pending appeal is due December 23, 2019, and any government reply is due December 30, 2019.

The parties are directed to appear for oral argument on the motion for stay pending appeal on Thursday, January 9, 2020, at 10:00 am in San Francisco, California. Each side will be allotted 20 minutes of argument time. The parties are encouraged to appear in person if possible. If any party wishes to appear by video, that party must notify Kwame Copeland, 415.355.7888, no later than Friday, January 3, 2020, and must coordinate with Mr. Copeland in making suitable arrangements for an appearance by video.

The opening brief and excerpts of record are due January 2, 2020; the answering brief is due January 30, 2020, or 28 days after service of the opening brief, whichever is earlier; and the optional reply brief is due within 21 days after service of the answering brief. This case will be assigned to the next available oral argument panel for a decision on the merits of the appeal.

BRESS, Circuit Judge, concurring:

Based on the standards that apply here, which includes consideration of the likelihood of success on the merits, *see Doe #1 v. Trump*, No. 19-36020 (9th Cir. Dec. 20, 2019) (Bress, J., dissenting), the government has demonstrated that a temporary stay is warranted.