

United States Court of Appeals For the First Circuit

No. 19-1838

MARIAN RYAN, in her official capacity as Middlesex County District Attorney, ET AL.,

Plaintiffs, Appellees,

v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT ET AL.,

Defendants, Appellants.

Before

Torruella, Selya, and Kayatta,
Circuit Judges.*

ORDER OF COURT

Entered: June 24, 2021

The plaintiffs have moved to vacate the panel decision in this case on the ground of mootness. We have examined the record with care, taking into account both the plaintiffs' motion papers and the government's opposition. We deny the motion.

The thrust of the plaintiffs' motion is that this case was rendered moot when Immigration and Customs Enforcement (ICE) withdrew the so-called 2018 directive (the Directive). The record, however, belies that claim. The scope of both the plaintiffs' complaint and their claims for relief extends beyond the parameters of the Directive. So, too, the scope of the preliminary injunction issued by the district court exceeds those parameters. And, finally, so does the scope of the panel opinion. It follows that this action did not become moot when ICE withdrew the Directive but, rather, when the plaintiffs voluntarily dismissed their complaint. Moreover, they have identified no sufficiently compelling equitable considerations that made it necessary for them

* Judge Torruella participated in the original hearing and disposition of this case but died on October 26, 2020 prior to the filing of this motion. The remaining members of the panel comprise a quorum for the issuance of this order. See 28 U.S.C. §46(d).

to dismiss their complaint and thereby eliminate any opportunity for further review. Nor have they identified any exceptional circumstances sufficient to warrant vacatur under United States v. Munsingwear, Inc., 340 U.S. 36 (1950). Absent any such showing, there is no adequate basis for us to grant the equitable remedy that the plaintiffs seek. Bastien v. Office of Senator Ben Nighthorse Campbell, 409 F.3d 1234, 1235 (10th Cir. 2005).

The motion to vacate is denied.

By the Court:

Maria R. Hamilton, Clerk

cc: Donald Campbell Lockhart, Michael P. Sady, Rayford A. Farquhar, Eve A. Piemonte, Francesca Genova, Julian Kurz, David Zimmer, Alicia Rubio-Spring, Christopher J.C. Herbert, Daryl L. Wiesen, Wendy S. Wayne, Oren Nimni, Bradly Paul Bennion, Michael Meriwether Hethmon, Ralph L. Casale, Martin W. Healy, Thomas J. Carey Jr., Sarah Chapin Columbia, Douglas Keith, Alicia L. Bannon, Steven Chiajon Wu, Ari Joseph Savitzky, Barbara D. Underwood, Letitia James, William M. Tong, Karl A. Racine, Kwame Raoul, Brian E. Frosh, Keith Ellison, Gurbir S. Grewal, Hector H. Balderas, Ellen F. Rosenblum, Josh Shapiro, Peter F. Neronha, Robert W. Ferguson, Thomas J. Donovan Jr., Mark R. Herring, Philip L. Torrey, Nikolas Bowie, Sabrineh Ardalan, Norah Rast, Brianne J. Gorod, Dayna Zolle, Elizabeth B. Wydra, Ashwin Phatak, Howard M. Cooper, Maria T. Davis, Joel Anderson Fleming, Lauren Godles Milgroom, Amanda Rose Crawford