

Nos. 23-35440, 23-35450

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

STATE OF IDAHO,

Defendant-Appellant,

v.

MIKE MOYLE, Speaker of the Idaho House of Representatives; CHUCK
WINDER, President Pro Tempore of the Idaho Senate; THE SIXTY-SEVENTH
IDAHO LEGISLATURE, Proposed Intervenor-Defendants,

Movants-Appellants.

On Appeal from the United States District Court
for the District of Idaho

**UNITED STATES'S RESPONSE
TO IDAHO LEGISLATURE'S EMERGENCY MOTION TO EXPEDITE**

Of Counsel:

SAMUEL BAGENSTOS

General Counsel

PAUL R. RODRÍGUEZ

Deputy General Counsel

DAVID HOSKINS

Supervisory Litigation Attorney

JESSICA BOWMAN

MELISSA HART

Attorneys

*U.S. Department of Health
and Human Services*

BRIAN M. BOYNTON

*Principal Deputy Assistant Attorney
General*

JOSHUA D. HURWIT

United States Attorney

MICHAEL S. RAAB

McKAYE L. NEUMEISTER

NICHOLAS S. CROWN

Attorneys, Appellate Staff

Civil Division, Room 7325

U.S. Department of Justice

950 Pennsylvania Avenue NW

Washington, DC 20530

202-305-1754

This consolidated appeal concerns a preliminary injunction that issued on August 24, 2022. On September 28, 2023, a motions panel of this Court granted the Idaho Legislature's motion for a stay pending appeal; on October 10, the Court ordered that the matter be reheard *en banc* and vacated the stay. No. 23-35440, Dkt. 69.

After waiting nearly a year to seek a stay, the Legislature now requests an expedited *en banc* decision on its stay motion by November 15. Dkt. 71. In seeking expedited review, the Legislature repeats its arguments regarding the stay factors articulated in *Nken v. Holder*, 556 U.S. 418, 434 (2009).

The United States takes no position on the timing of an *en banc* decision and does not object to expedited treatment of the Legislature's motion for a stay pending appeal. The government, however, disputes the Legislature's renewed assertions of irreparable harm and entitlement to interim relief. As explained in our briefs in the underlying appeal (Dkt. 35) and concerning the Legislature's stay request (Dkts. 33, 53, 65-2), the Legislature cannot make any of the showings that *Nken* requires. The motion for a stay pending appeal should be denied.

Of Counsel:
SAMUEL BAGENSTOS
General Counsel
PAUL R. RODRÍGUEZ
Deputy General Counsel
DAVID HOSKINS
Supervisory Litigation Attorney
JESSICA BOWMAN
MELISSA HART
Attorneys
*U.S. Department of Health
and Human Services*

Respectfully submitted,

BRIAN M. BOYNTON
*Principal Deputy Assistant Attorney
General*

JOSHUA D. HURWIT
United States Attorney

MICHAEL S. RAAB
McKAYE L. NEUMEISTER

s/ Nicholas S. Crown

NICHOLAS S. CROWN
*Attorneys, Appellate Staff
Civil Division, Room 7325
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 305-1754
nicholas.s.crown@usdoj.gov*

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STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, appellee states that it knows of one case related to the above-captioned consolidated appeals: Case No. 23-35153. That appeal arises from the district court's partial grant of intervention issued during the proceedings below.

s/ Nicholas S. Crown

Nicholas S. Crown

CERTIFICATE OF COMPLIANCE

This filing complies with the type-volume limitation of Ninth Circuit Rules 27-1 and 32-3 because it contains 192 words. This filing also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 27 because it was prepared using Word for Microsoft 365 in Garamond 14-point font, a proportionally spaced typeface.

s/ Nicholas S. Crown

Nicholas S. Crown