

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 27 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

INDEX NEWSPAPERS LLC, DBA
Portland Mercury; et al.,

Plaintiffs-Appellees,

v.

UNITED STATES MARSHALS SERVICE;
U.S. DEPARTMENT OF HOMELAND
SECURITY,

Defendants-Appellants,

and

CITY OF PORTLAND, a municipal
corporation; et al.,

Defendants.

No. 20-35739

D.C. No. 3:20-cv-01035-SI
District of Oregon,
Portland

ORDER

Before: McKEOWN, MILLER, and BRESS, Circuit Judges.

Order by Judges MILLER and BRESS, Dissent by Judge McKEOWN

We have received appellants' emergency motion at Docket Entry No. 7 seeking to stay the district court's August 20, 2020 order pending resolution of this appeal. Appellants' request for an immediate administrative stay of the district court's August 20, 2020 order pending resolution of the emergency motion is granted. *See Nken v. Holder*, 556 U.S. 418, 426 (2009). Based on our preliminary review, appellants have made a strong showing of likely success on the merits that

the district court's injunction exempting "Journalists" and "Legal Observers" from generally applicable dispersal orders is without adequate legal basis. Given the order's breadth and lack of clarity, particularly in its non-exclusive indicia of who qualifies as "Journalists" and "Legal Observers," appellants have also demonstrated that, in the absence of a stay, the order will cause irreparable harm to law enforcement efforts and personnel. The August 20, 2020 order is stayed, temporarily, pending resolution of the emergency motion. This administrative stay preserves the status quo as it existed before the district court's preliminary injunction and temporary restraining order.

This order does not disturb the portion of the district court's August 20, 2020 order directing the parties to confer regarding identifying markings and directing that the parties submit proposals to the district court within 14 days if the parties cannot reach an agreement. However, the district court shall not issue a final order regarding identifying markings pending this court's resolution of the emergency motion.

Appellees' response to the emergency motion is due by 9:00 a.m. PDT September 2, 2020. Appellants' optional reply is due by 5:00 p.m. PDT September 3, 2020.

McKEOWN, Circuit Judge, dissenting:

I respectfully dissent and would deny the Federal Defendants' request for an administrative stay. The factual conclusions underlying the entry of a preliminary injunction are reviewed for clear error. *See Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). In light of the deferential review accorded to the district court's factual finding at this stage, the district court's extensive factual findings with respect to journalists and legal observers, including the finding that the injunction would not impair law enforcement operations to protect federal property and personnel, and the fact that a temporary restraining order has been in place since July 23, 2020, the government has failed to meet its burden to demonstrate either an emergency or irreparable harm to support an immediate administrative stay. I concur in the order with respect to the markings.