

No. 26-5057

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

RAMSI A. WOODCOCK

Plaintiff-Appellant,

- v. -

UNIVERSITY OF KENTUCKY; ELI CAPILOUTO, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; ROBERT DIPAOLO, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; WILLIAM EUGENE THRO, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; JAMES C. DUFF, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; LINDA MCMAHON, IN HER OFFICIAL CAPACITY AS UNITED STATES SECRETARY OF EDUCATION; RUSSELL MATTHEW COLEMAN, ATTORNEY GENERAL

Defendants-Appellees.

On Appeal from the United States District Court for the Eastern District of Kentucky (Docket No. 5:25-cv-00424-DCR)

REPLY TO ATTORNEY GENERAL'S RESPONSE TO EMERGENCY MOTION FOR A RULING ON EMERGENCY MOTION FOR AN INJUNCTION PENDING APPEAL

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ARGUMENT

On January 24, 2026, Plaintiff-Appellant Ramsi A. Woodcock (“Plaintiff”) filed an Emergency Motion for Injunction Pending Appeal in this Court. First Emerg. Mot., Dkt. 6-1. Plaintiff sought to enjoin the investigation, suspension, and ban imposed by Defendants Capilouto, Thro, DiPaola and Duff (“Defendants”) in violation of the First Amendment and the due process protections of the Fourteenth Amendment. *Id.* at 1, 20–21. In the motion, Plaintiff explained that an injunction was required on an emergency basis because “[e]very day during which First Amendment freedoms are violated inflicts irreparable harm on Plaintiff as a matter of law” and that he was suffering “constitutional harm associated with . . . ongoing actions[.]” *Id.* at 9. Plaintiff also indicated that in addition to this ongoing constitutional harm, he would suffer additional harm associated with not being able to teach in the spring semester.¹ *Id.* at 8. He relied for the latter proposition on a declaration he had submitted as part of his motion for an injunction pending appeal to the District Court, which stated that “[c]lasses during the first week or two of the semester are usually non-substantive or introductory in nature. The law school occasionally adds classes or substitutes teaching assignments during or

¹ He also pointed out that absent an injunction, the investigation, suspension, and ban would end before this Court had time to decide the appeal, even under an expedited briefing schedule, causing him the additional harm of being entirely foreclosed from obtaining prospective relief, which is the only adequate relief for constitutional harm. First Emerg. Mot. 8, Dkt. 6-1.

immediately after this period.” Woodcock Decl. 1/21/26, R. 42-6, PageID# 2120.

He filed the motion at the end of the second week of classes, which began on January 12, 2026.

On February 3, 2026, Plaintiff filed an Emergency Motion Requesting a Ruling on Emergency Motion for Injunction Pending Appeal. Dkt. 13-1. In light of the passage of ten days since the filing of his first emergency motion, Plaintiff sought to do two things. First, he sought to highlight that he was suffering irreparable constitutional harm. Second Emerg. Mot. 3, Dkt. 13-1. Second, he sought to make the Court aware that the investigation, suspension, and ban were ongoing. *Id.* Third, he sought to make clear that intervening events—a snowstorm and attendant school closures—had extended the window of opportunity for him to return to teaching if this Court were to rule promptly. *Id.* at 2.

To highlight that he was suffering irreparable constitutional harm for which urgent relief was needed, Plaintiff cited to *Elrod v. Burns* for the proposition that constitutional harm is irreparable harm as a matter of law. 427 U.S. 347, 373 (1976). Plaintiff did not compare the facts of his case to those of *Elrod* in order to establish that the harm is irreparable. That is because this Court requires only that Plaintiff have a likelihood of success on his constitutional claims in order for irreparable harm to be implied. *Boone Republican Party Executive Comm. v. Wallace*, 116 F. 4th 586, 593 (6th Cir. 2024); *Vitolo v. Guzman*, 999 F. 3d 353, 365

(6th Cir. 2021); *Bays v. City of Fairborn*, 668 F. 3d 814, 819 (6th Cir. 2012); *Overstreet v. Lexington-Fayette Urban County Gov't*, 305 F. 3d 566, 578 (6th Cir. 2002). It does not require that the facts of a case resemble those of *Elrod* in any manner beyond the basic fact that both involve constitutional claims. Rather, Plaintiff demonstrated the resemblance of his case to *Elrod* to illustrate why this Court treats constitutional harm as irreparable. Second Emerg. Mot. 3–13, Dkt. 13-1. He showed that just as in *Elrod*, in this case he faces an impossible choice every time he considers speaking about Palestine, namely, that he must decide between self-censorship and potential sanction by the university. *Id.* at 2. Plaintiff had made the same point before the District Court. Woodcock Decl. 1/2/26, R. 35, PageID##1609–20. To highlight the ongoing character of this harm, Plaintiff provided an example of a decision between self-censorship and possible sanction that he was facing during the coming week. Second Emerg. Mot. 8–12, Dkt. 13-1. He sought to submit an article titled “A Law and Economic Argument for Ending Israel” for publication by law reviews but based on the University’s allegations against him for past speech, he reasonably feared that the University would seek to sanction him for submitting the article to law reviews. *Id.*² To support this

² Contrary to the Attorney General’s contention, Woodcock did not argue before the District Court that “his temporary suspension meant that he could not conduct research.” Rather, he contended that the administration had assigned him to 100% “professional development” and that his ability to conduct research was hindered

illustration, as well as his claims that the investigation, suspension, and ban were ongoing and that the window to return him to teaching remained open, Plaintiff attached a new declaration as well as relevant parts of the District Court record.³ Woodcock Decl. 2/3/26, Dkt. 13-2.

The Attorney General (“AG”) argues that this Court should not consider the parts of Plaintiff’s new declaration that relate to his article publication quandary or the extension of the window to return to teaching because these facts are not part of the record in the District Court.⁴ AG’s Second Mot. Resp. 2, Dkt. 16. In fact, Federal Rule of Appellate Procedure 8 (“Rule 8”), which governs motions for an injunction pending appeal, contemplates the filing of materials outside the record; it states that a motion will include both “affidavits and other sworn statements supporting facts subject to dispute” and “relevant parts of the record.” Fed. R. App. P. 8(a)(2)(B)(ii), 8(a)(2)(B)(iii). If courts of appeals were not permitted to entertain new facts as part of a motion for an injunction pending appeal, Rule 8 would only have needed to provide for inclusion of “relevant parts of the record.” The rule

by his banishment from the law library and from teaching. Woodcock Decl. 1/2/26, R. 35, PageID## 1608-10.

³ Plaintiff inadvertently filed the declaration without a signature. He has since corrected this oversight. Dkt. 27. Accordingly, the AG’s request that this Court disregard the declaration because it is unsigned is no longer relevant. AG’s Second Mot. Resp. 2–3, Dkt. 16.

⁴ It is not clear from the AG’s response whether the AG objects to any other parts of Plaintiff’s declaration.

explicitly allows for the additional submission of “affidavits and other sworn statements supporting facts subject to dispute” because courts of appeals may entertain them in the context of this kind of motion.

This Court approves such a practice and has gone so far as to accept new facts included in a brief arguing a motion for an injunction pending appeal even where not accompanied by an affidavit or other sworn statement in support. *Eastern Greyhound Lines v. Fusco*, 310 F. 2d 632, 635 (6th Cir. 1962). The statutory authority for injunctions pending appeal under Rule 8 is the All Writs Act. 28 U.S.C. § 1651. *See Overstreet*, 305 F. 3d at 572; *A. Philip Randolph Institute v. Husted*, 907 F. 3d 913, 917 (6th Cir. 2018) (citing *Eastern*’s discussion of the All Writs Act as authority governing an injunction pending appeal filed under Rule 8). In *Eastern*, plaintiff sought an injunction pending appeal under the All Writs Act to stop a union election. 310 F. 2d at 634. It was not clear that plaintiff faced irreparable harm if the election were to proceed, because plaintiff could challenge certification of the union after the election if plaintiff refused to bargain and the union filed an unfair labor charge. *Id.* at 635. Plaintiff claimed, however, that there was a danger that the union would strike rather than file a charge, and the strike would cause irreparable harm. *Id.* This Court denied the injunction because the union, in its briefing on the motion, had stated that it had no intention of striking. *Id.* This Court noted that the power to grant an injunction pending appeal is within

the “discretion” of a court of appeals and stated that “[i]n such discretionary matters, courts are justified in placing reliance upon such representations made by counsel, who are officers of the courts to whom they make such addresses.” *Id.* at 634–35. Similarly, in *Morgan v. Melchar*, Judge Gibbons quoted the affidavits provision of Rule 8, acknowledged that the rule “contemplate[es]” the creation of a “limited record” at the appellate level, and stated that it was “proper” for the movant in that case to have “brought before this court some of the evidence which” he might otherwise have provided below in a preliminary injunction hearing. 442 F. 2d 1082, 1091 (3rd Cir. 1970) (Gibbons, J. dissenting). Judge Gibbons wrote in dissent, but only because the majority in that case had not only accepted the movant’s provision of such new facts to the court of appeals but had gone on to rely on them not only to decide the motion but to reach a final judgment in the case. *Id.*

The two cases cited by the AG do not address the question whether, as a general matter, new facts may be presented to a court of appeals in relation to a motion for an injunction pending appeal. AG’s Second Mot. Resp. 3, Dkt. 16. New facts may be presented, as just discussed. Instead, the cases suggest that new facts may only be brought before a court of appeals if it would be “futile” or “pointless” to bring them to the district court first. *Chemical Weapons Working Group v. Dept. of Army*, 101 F. 3d 1360, 1362 (10th Cir. 1996); *Ruiz v. Estelle*, 650 F. 2d 555, 567

(5th Cir. 1981). The authorities cited by the AG suggest that where the volume of new facts is large and the district court has not foreclosed the possibility of ruling in the movant's favor, the movant should refile his motion for an injunction pending appeal in the district court. Thus in *Ruiz v. Estelle*, the Fifth Circuit held that where the movant had filed "reams of affidavits and other evidentiary materials never presented to" the district court, and the district court had "recognized" that the case involved "unsettled or unexplored areas of law", the district court should have been given an opportunity to consider the evidence. 650 F. 2d at 566–67. In *Chemical Weapons*, movants never filed a motion for an injunction pending appeal in the district court. 101 F. 3d at 1361–62. The Tenth Circuit rejected the argument that the motion would have been futile. *Id.* at 1362. The Tenth Circuit reasoned that because the evidence that the movants brought in the court of appeals was new and had not been considered by the district court in denying their preliminary injunction, it did not follow from the denial of the preliminary injunction that the district court would necessarily also have denied a motion for an injunction pending appeal. *Id.* The Tenth Circuit stated in dicta that the district court is the proper forum for presenting new evidence. *Id.* While that is undoubtedly true as an approximation, there are numerous circumstances in which courts of appeals may find facts, including in considering jurisdictional questions, which may be raised sua sponte, and in considering motions for injunctions

pending appeal. *Smith v. Jefferson County School Bd. of Com'rs*, 549 F. 3d 641, 649 (6th Cir. 2008).

As the AG correctly notes, *Ruiz* and *Chemical Weapons* are not Sixth Circuit cases. But Plaintiff easily meets any futility standard. In denying Plaintiff's motion for an injunction pending appeal, the District Court took the position that because it had already decided to abstain under *Younger* it had no authority to issue an injunction. Moreover, the District Court held that to the extent that the motion could be "construed as a motion for reconsideration of the Court's decision to abstain, it will be denied." Denial, R. 46, PageID# 2130. The District Court's refusal to reach the merits or reopen the *Younger* question makes any refiling of a motion in that court futile. The substance of a decision to abstain under *Younger* is that a District Court is categorically unwilling to interfere with a state court proceeding. In *Walker v. Lockhart*, the Eighth Circuit found a district court judge's statement that he was "unwilling to interfere with the operation" of a state prison sufficient to demonstrate futility. 678 F. 2d 68, 70 (8th Cir. 1981). The small number of new facts at issue here further distinguish this case from those cited by the AG.

Finally, the AG argues that even if new facts can be considered by this Court, Plaintiff's declaration may not be considered because it was not attached to the original motion. AG's Second Mot. Resp. 3, Dkt. 16. But Rule 8 states only that

affidavits “supporting” facts subject to dispute must be attached.” Fed. R. App. P. 8(a)(2)(B)(ii). It does not state that a court of appeals may only consider affidavits attached to the emergency motion or that all supporting affidavits must be attached. Such a restrictive interpretation would prevent this Court from, as here, receiving updates from the movant regarding a developing situation. As this Court noted in *Eastern*, an injunction pending appeal is within the discretion of this Court. 310 F. 2d at 634. It would not be advisable for the Court to exercise its discretion to restrict its ability to remain apprised of developments in a case.

February 12, 2026

Respectfully submitted,

/s/ Rima Kapitan

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TYPE-VOLUME CERTIFICATION

Pursuant to Federal Rule of Appellate Procedure 32(g), Rima Kapitan hereby certifies that this motion complies with the type-volume limitation in Rule 26(d)(2)(C) because, as counted by the Microsoft Word count tool, this motion contains 2,265 words, excluding the parts exempted by Rule 32(f). This motion complies with the typeface requirements in Rule 32(a)(5)(A) and the type-style requirements in Rule 32(a)(6) because this motion has been prepared in proportionally spaced 14-point Times New Roman font.

Dated: February 12, 2026

/s/ Rima Kapitan

RIMA KAPITAN

CERTIFICATE OF SERVICE

I certify that on February 13, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the CM/ECF system. I also certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Rima Kapitan

RIMA KAPITAN