

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

STATE OF LOUISIANA ET AL

CASE NO. 2:21-CV-00778

VERSUS

JUDGE TERRY A. DOUGHTY

JOSEPH R. BIDEN, JR. ET AL

MAG. JUDGE KATHLEEN KAY

MEMORANDUM RULING

The issue before this Court is whether the Plaintiff States¹ are entitled to a preliminary injunction against the Government Defendants² as a result of the implementation of a “pause” of new oil and natural gas leases on public lands or in offshore waters (“Pause”) after Executive Order 14008 was signed by President Joseph R. Biden, Jr. (“President Biden”) on January 27, 2021.

The Plaintiff States alleged the Government Defendants³ violated provisions of the Administrative Procedure Act, (“APA”) entitling Plaintiff States to a preliminary injunction.

¹ The Plaintiff States consist of the States of Louisiana, Alabama, Alaska, Arkansas, Georgia, Mississippi, Missouri, Montana, Nebraska, Oklahoma, Texas, Utah, and West Virginia.

² Government Defendants consist of Joseph R. Biden, Jr. in his official capacity as President of the United States; Deb Haaland, in her official capacity as Secretary of the Interior; Michael Nedd, in his official capacity as Deputy Director of the Bureau of Land Management; Chad Padgett, in his official capacity as Director of the Bureau of Land Management Alaska Office; Raymond Suazo, in his official capacity as Director for the Bureau of Land Management Arizona Office; Karen Mouristen, in her official capacity as Director for the Bureau of Land Management California Office; Jamie Connell, in his official capacity as Director for the Bureau of Land Management Colorado Office; Mitchell Leverette, in his official capacity as Director for the Bureau of Land Management Eastern States Office; John Ruhs, in his official capacity as Director for the Bureau of Land Management Idaho Office; John Mehlhoff, in his official capacity as Director for the Bureau of Land Management Montana – Dakotas Office; Jon Raby, in his official capacity as Director for the Bureau of Land Management Nevada Office; Steve Wells, in his official capacity as Director for the Bureau of Land Management New Mexico Office; Barry Bushue, in his official capacity as Director for the Bureau of Land Management Oregon-Washington Office; Greg Sheehan, in his official capacity as Director for the Bureau of Land Management Utah Office; Kim Liebhauser, in her official capacity as Director for the Bureau of Land Management Wyoming Office; Amanda Lefton, in her official capacity as Director of the Bureau of Ocean Energy Management; Michael Celata, in his official capacity as Regional Director of the Bureau of Ocean Energy Management Gulf of Mexico Office; Lars Herbst, in his official capacity as Regional Director of Bureau of Safety and Environmental Enforcement Gulf of Mexico OCS Office; and Mark Fesmire, in his official capacity as Regional Director of the Bureau of Safety and Environmental Enforcement Alaska and Pacific Office.

³ With the exception of President Biden, who is not an “agency” under the Administrative Procedures Act.

A Motion for Preliminary Injunction [Doc. No. 3] was filed by Plaintiff States on March 31, 2021. An Opposition [Doc. No. 120] was filed by Government Defendants on May 19, 2021. A Reply [Doc. No. 126] was filed by Plaintiff States on May 28, 2021.

Having considered the pleadings, the record, the applicable laws, evidence, and oral arguments of counsel, for the reasons set forth herein, this Court finds Plaintiff States have satisfied the requirements for a preliminary injunction. Accordingly, Plaintiff States' Motion for Preliminary Injunction is GRANTED.

I. BACKGROUND

The factual statements made herein should be considered as findings of fact regardless of any heading or lack thereof. Similarly, the legal conclusions should be taken as conclusions of law regardless of any label or lack thereof.

On March 24, 2021, Plaintiff States filed a Complaint [Doc. No. 1] against Government Defendants asking for declaratory and injunctive relief as to Section 208 of Executive Order 14008, which ordered the Secretary of the Interior to pause new oil and gas leases on public lands, or in offshore waters pending completion of a comprehensive review. This allegedly resulted in the halting of new oil and gas leases on public lands and offshore waters in violation of the United States Constitution, the APA, the Outer Continental Shelf Lands Act ("OCSLA"), and the Mineral Leasing Act ("MLA").

The Motion for Preliminary Injunction was filed by Plaintiff States on March 31, 2021. Briefs have been filed by Plaintiff States and by Government Defendants. Amici Curiae briefs were filed by the County of Daggett, County of Rio Blanco, County of Uintah and County of Wayne [Doc. No. 116] and by Center for Biological Diversity, Cook Inletkeeper, Defenders of Wildlife, Friends of the Earth, Healthy Gulf, National Resources Defense Council, Oceana,

Sierra Club and Wilderness Society [Doc. No. 123]. Per a status conference held on June 3, 2021 [Doc. No. 127], the court set oral arguments on these issues to be heard on June 10, 2021.

The oral arguments were heard on that day in Lafayette, Louisiana.

1. Executive Order 14008

On January 27, 2021, President Biden issued Executive Order 14008⁴, entitled “Tackling the Climate Crisis at Home and Abroad.” At issue in this proceeding is Section 208 of the Executive Order, which reads as follows:

Sec. 208. Oil and Natural Gas Development on Public Lands and in Offshore Waters. To the extent consistent with applicable law, the Secretary of the Interior shall pause new oil and natural gas leases on public lands or in offshore waters pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices in light of the Secretary of the Interior’s broad stewardship responsibilities over the public lands and in offshore waters, including potential climate and other impacts associated with oil and gas activities on public lands or in offshore waters. The Secretary of the Interior shall complete that review in consultation with the Secretary of Agriculture, the Secretary of Commerce, through the National Oceanic and Atmospheric Administration, and the Secretary of Energy. In conducting this analysis, and to the extent consistent with applicable law, the Secretary of the Interior shall consider whether to adjust royalties associated with coal, oil, and gas resources extracted from public lands and offshore waters, or take other appropriate action, to account for corresponding climate costs.

Id.

The implementation of Section 208 of Executive Order 14008 by the remaining Government Defendants (“Agency Defendants”) is at issue based upon the alleged violation of the APA by the government agencies. 5 USC 551, et seq.

A court may review a Presidential Executive Order. A President’s authority to act, as with the exercise of any governmental power, must stem either from an act of Congress, or from the Constitution itself, or a combination of the two. Medellin v. Texas, 552 U.S. 491, 128 S. Ct.

⁴ Tackling the Climate Crisis at Home and Abroad, 86 FR 7619

1346, 170 L. Ed. 2d 190 (2008); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 72 S. Ct. 863, 96 L. Ed. 1153 (1952); California v. Trump, 379 F. Supp. 3d 928 (N.D. Cal. 2019), aff'd, 963 F.3d 926 (9th Cir. 2020), cert. granted sub nom. Trump v. Sierra Club, 141 S. Ct. 618, 208 L. Ed. 2d 227 (2020); and Sierra Club v. Trump, 379 F. Supp. 3d 883 (N.D. Cal. 2019), aff'd, 963 F.3d 874 (9th Cir. 2020), cert. granted, 141 S. Ct. 618, 208 L. Ed. 2d 227 (2020).

Plaintiff States have based their Motion for Preliminary Injunction on violations by the Government Agencies pursuant to the APA. Although President Biden is not an agency subject to the APA, whether Section 208 of the Executive Order 14008 would be consistent with applicable law is at issue. California, 379 F. Supp. 3d 928. In reviewing the lawfulness of the defendants' conduct, the Court begins each inquiry by determining whether the disputed action exceeds statutory authority. Sierra Club v. Trump, 379 F.Supp. 3d 883 (N.D. Cal. 2019).

A President may not transgress constitutional limitations. Courts determine where constitutional boundaries lie. Indigenous Env't Network v. Trump, 428 F. Supp. 3d 296 (D. Mont. 2019).

The case of League of Conservation Voters v. Trump, 363 F. Supp. 3d 1013 (D. Alaska 2019), vacated and remanded sub nom. League of Conservation Voters v. Biden, 843 F. App'x 937 (9th Cir. 2021) involved issues centered on OCSLA, which is one of the acts at issue in this proceeding. President Trump issued an Executive Order, (EO 13795) which purported to revoke previous Executive Orders involving a prior land withdrawal from OCSLA.⁵ The Court found OCSLA allowed the President to withdraw lands from disposition, but it did not allow a President to revoke a prior withdrawal. The Court held that since OCSLA does not give the President specific authority to revoke a prior withdrawal, the power to revoke a prior withdrawal

⁵ 43 U.S.C. 1341(a) allows a President of the United States to withdraw from disposition any of the unleased lands of the Outer Continental Shelf.

lies solely with Congress under the Property Clause of the United States Constitution. U.S. Const. art. IV, § 3, cl. 2.

Similarly, since OCSLA does not grant specific authority to a President to “Pause” offshore oil and gas leases, the power to “Pause” lies solely with Congress. Therefore, Plaintiff States have made a showing that there is a substantial likelihood that President Biden exceeded his powers in Section 208 of Executive Order 14008.

2. Administrative Procedure Act

Plaintiff States’ Motion for Preliminary Injunction centers upon alleged violations of the APA by the Agency Defendants, which includes the U.S. Department of the Interior (“DOI”), the U.S. Bureau of Land Management (“BLM”), the U.S. Bureau of Ocean Energy Management (“BOEM”), the U.S. Bureau of Safety and Environmental Enforcement and named officials.

The APA allows judicial review of certain agency actions. The Plaintiff States allege that in implementing Section 208 of Executive Order 14008, the Agency Defendants violated the following provisions of the APA:

- i. Acted contrary to law in violation of 5 USC 706(2)(A) and (C);
- ii. Acted in an arbitrary and capricious manner in violation of 5 USC 706(2)(A);
- iii. Failed to provide notice and comment required by 5 USC 553(a); and
- iv. Unreasonably withheld and unreasonably delayed agency required activity in violation of 5 USC 706(1).

Each of these allegations will be discussed in greater detail herein.

3. The Outer Continental Shelf Lands Act

Congress passed the OCSLA more than 70 years ago. OCSLA declares “the outer Continental Shelf” to be “a vital national resource reserve held by the Federal Government for the

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