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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

9 Mr. Smoky's BBQ, LLC, et al.,

No. CV 13-2585-PHX-DGC

10 Plaintiffs,

11 vs.

PRELIMINARY INJUNCTION

12 United States, et al.,

(AMENDED)

13 Defendants.
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16 Plaintiffs have filed an application for a temporary restraining order and
17 preliminary injunction, and Defendants have filed a response. Docs. 4, 10. The Court
18 held a hearing on December 20, 2013. The Court will grant a preliminary injunction.

19 **I. Background.**

20 The facts in this order are taken from Plaintiffs' affidavits and the parties' briefing.
21 In 2005, Alfred and Shamirin Joseph, husband and wife, acquired Bubba's Drive Thru in
22 Surprise, Arizona. Bubba's is located in a poor neighborhood. Most of the people who
23 live in the area receive government assistance in some manner, usually in the form of
24 food stamps, now known as the Supplemental Nutrition Assistance Program ("SNAP").

25 Plaintiffs received a letter from Defendants on September 25, 2013, charging
26 violations of SNAP regulations. The letter listed SNAP trafficking violations which
27 occurred in 2008 and 2009, almost five years earlier, and concerned approximately \$55 in
28 SNAP benefits. The letter gave Plaintiffs ten days to respond to the charges. Plaintiffs
requested additional details about the charges, but received no further information from

1 Defendants. Because the charges concerned events from several years ago, Plaintiffs
2 lacked records and memories to respond fully. Plaintiffs responded in writing to the
3 charges on November 8, 2013, and received a decision letter from Defendants on
4 December 5, 2013. The decision letter informed Plaintiffs that, effective immediately,
5 Plaintiffs were permanently disqualified from participating in the SNAP program.
6 Plaintiffs had ten calendar days to request administrative review, which they did, but
7 SNAP regulations prevent Plaintiffs from applying for a stay of the disqualification
8 during administrative and judicial review. *See* 7 C.F.R. § 279.2(d).

9 Plaintiffs assert without contradiction that they operate a very small store,
10 accommodating only three or four customers at a time, that they earn only \$26,000
11 annually from the store, and that loss of their SNAP qualifications will put them out of
12 business in the next few weeks. They claim that they will be out of business before they
13 can pursue any administrative or judicial review of the decision, and note that the law
14 precludes them from recovering their losses if their disqualification ultimately is found to
15 have been erroneous. *See* 7 U.S.C. § 2023(a)(18). They assert a due process violation.

16 **II. Preliminary Injunction.**

17 The parties agreed at the December 20 hearing that the Court should rule on
18 Plaintiffs' request for a preliminary injunction, but afford the parties an opportunity to
19 make additional submissions after the ruling. Such an injunction is an extraordinary
20 remedy "that should not be granted unless the movant, by a clear showing, carries the
21 burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)
22 (quoting 11A C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 2948,
23 pp. 129-130 (2d ed. 1995)). An injunction may be granted only where the movant shows
24 that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in
25 the absence of preliminary relief, that the balance of equities tips in his favor, and that an
26 injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7,
27 20 (2008); *Am. Trucking Ass'n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir.
28 2009).

1 **A. Likelihood of Success on the Merits.**

2 The Court concludes that Plaintiffs are likely to succeed on their as-applied due
3 process challenge. The due process clause provides that an individual cannot be deprived
4 of property without constitutionally adequate procedures. *Cleveland Board of Education*
5 *v. Loudermill*, 470 U.S. 532, 541 (1985). To prevail on a due process claim, Plaintiffs
6 must show that they have a property interest in their SNAP qualification and that they
7 received inadequate process before losing that property interest. *Id.* Defendants do not
8 dispute that Plaintiffs have such a property interest. Doc. 10 at 10-11.

9 The Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976), set forth three
10 factors by which to judge the sufficiency of an administrative procedure:

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12 (1) the private interest that will be affected by the official action; (2) the
13 risk of an erroneous deprivation of the interest through the procedures used,
14 and the probable value, if any, of additional or substitute procedural
15 safeguards; and (3) the government's interest, including the function
involved and the fiscal and administrative burdens that the additional
substitute procedural requirement would entail.

16 *Id.* at 335.

17 Considering these factors in this as-applied challenge, the Court concludes that the
18 procedures afforded Plaintiffs are likely to be found insufficient. As noted, Plaintiffs
19 assert without contradiction that they will be out of business within a matter of weeks.
20 Thus, if their disqualification takes effect immediately as provided in Defendants
21 procedures, with no possibility of a stay, Plaintiffs will have been permanently deprived
22 of their business and livelihood through a procedure that allowed them only ten days to
23 respond in writing to charges that are four or five years old. Under *Mathews'* three-
24 factor analysis, the Court cannot conclude that such procedures are sufficient.

25 First, a significant private interest – Plaintiffs' livelihood – will be affected by this
26 official action. Second, the risk of erroneous deprivation is substantial given the age of
27 the charges, the loss of memories and records in the interim, and the fact that Plaintiffs
28 were afforded no opportunity to be heard other than a written response required within

1 ten days. Third, although the government clearly has a significant interest in prompt
2 action when SNAP trafficking violations occur, the urgency of that interest is
3 significantly undercut in this case by the fact that the Defendants waited four or five
4 years to bring the charges. In addition, the burden of the further procedures Plaintiffs
5 request – a stay of disqualification during administrative and judicial review – is not
6 significant given Defendants’ multi-year delay in seeking disqualification.

7 Two cases have addressed similar due process arguments, *Ameira Corp. v.*
8 *Veneman*, 169 F.Supp.2d 432 (M.D. N.C. 2001), and *Mansour v. United States*, 2009 WL
9 3763778 (E.D. Cal. 2009), and have found no constitutional violation. The Court would
10 find the reasoning of these cases persuasive in a facial challenge to Defendants’
11 procedures, but cannot reach the same conclusion in this as-applied case. Given the
12 unique facts of this case, the disqualification will be permanent, will cause the loss of
13 Plaintiffs’ business, and will be based entirely on a single opportunity to respond in
14 writing, on only ten days’ notice, to years-old charges. Both *Ameira* and *Mansour* noted
15 that Defendants’ procedures afforded the plaintiffs in those cases opportunities for
16 administrative and judicial review of the SNAP disqualification decision. In light of
17 Plaintiffs’ tenuous financial situation, no similar opportunity exists here, and the Court
18 cannot conclude that the single, ten-day written response opportunity is sufficient process
19 under the *Matthews* considerations. Plaintiffs are therefore likely to prevail on the merits
20 of their due process claim.

21 **B. Irreparable Injury.**

22 Permanent loss of Plaintiffs’ business and livelihood, with no opportunity for
23 redress (7 U.S.C. § 2023(a)(18)), constitutes a likelihood of irreparable harm.

24 **C. Balance of the Equities.**

25 Defendants note that the government’s strong interest in policing SNAP
26 trafficking and promptly closing down dishonest operations outweighs Plaintiffs’ interest
27 in maintaining their SNAP qualification, particularly when Plaintiffs are only incidental
28 beneficiaries of the SNAP program. The Court agrees with this proposition generally. In

1 this case, however, Defendants' delay of four or five years in bringing charges seriously
2 undercuts any claim that the government had a significant or urgent interest in
3 disqualifying Plaintiffs from the SNAP program. In this as-applied case, the Court
4 concludes that Plaintiffs' imminent loss of their business and livelihood outweighs the
5 government's long-delayed interest in enforcing the SNAP regulations against Plaintiffs.

6 **D. Public Interest.**

7 Similarly, the public interest normally would favor an honest and effectively
8 enforced SNAP program. On the unique facts of this case, however, the Court concludes
9 that the public interest would not be served by permanently shutting down Plaintiffs'
10 business on ten days' notice with stale charges that cannot easily be addressed,
11 particularly when the charges were not sufficiently important for Defendants to act
12 promptly.

13 **III. Preliminary Injunction.**

14 The Court finds that Plaintiffs have carried their burden of showing that a
15 preliminary injunction is warranted. The Court will require Plaintiffs to post a bond of
16 \$250. The Court is not persuaded that Defendants face any greater risk from the possible
17 improper entry of this injunction, particularly when Defendants have identified only \$55
18 of SNAP trafficking violations in the last five years of Plaintiffs' business.

19 **IT IS ORDERED:**

20 1. Plaintiff's application (Doc. 4) is **granted**. Defendants are preliminarily
21 enjoined from (a) disqualifying Plaintiffs from accepting Supplemental Nutrition
22 Assistance Program ("SNAP") benefits as a form of payment for eligible items sold in
23 Plaintiffs' store; (b) collecting any fines or penalties as a result of the disqualification;
24 and (c) disabling of Plaintiffs' Electronic Benefit Transfer ("EBT") connection and
25 demanding return of Plaintiffs' EBT machine. If the EBT connection has been
26 disconnected, it must be reconnected immediately. This preliminary injunction shall
27 remain in effect throughout the pendency of this action.

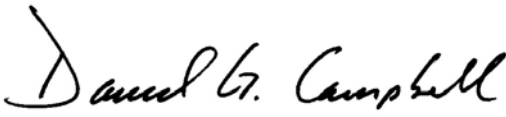
28 2. By **January 10, 2014**, either party may request the opportunity to submit

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additional briefs or factual material to the Court related to this preliminary injunction. The request shall be made in the form of a joint conference call to the Court. If additional submissions are not requested, the parties shall, by the same date, file a joint proposal for the remaining litigation of this case, including a proposed case schedule.

3. Plaintiffs shall post a \$250 bond with the Clerk of the Court.

Dated this 2nd day of January, 2014.



David G. Campbell
United States District Judge