

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 28 2023

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

JAMES MILLER, et al.

Plaintiffs - Appellees,

v.

ROB BONTA, in their official
capacity and ALLISON MENDOZA, In
their official capacity,

Defendants - Appellants.

No. 23-2979

D.C. No.

3:19-cv-01537-BEN-JLB

Southern District of California, San
Diego

ORDER

Before: W. FLETCHER, CALLAHAN, and BENNETT, Circuit Judges.
Order by Judges W. FLETCHER and BENNETT; Partial Dissent by Judge
CALLAHAN.

In light of this court's published order granting a stay in *Duncan v. Bonta*, 83 F.4th 803, 805–06 (9th Cir. 2023) (en banc) (concluding that the attorney general of California is likely to succeed on the merits and has shown that California will be irreparably harmed absent a stay), and the similarities between *Duncan* and this case, we grant appellants' motion (Docket Entry No. 6) and administratively stay the district court's October 19, 2023 permanent injunction and judgment. In granting an administrative stay, we do not intend to constrain the merits panel's consideration of the merits of this appeal in any way. The administrative stay shall remain in effect until the merits panel decides the appeal or issues an order lifting the stay.

We sua sponte expedite this appeal. The opening brief is due November 9, 2023. The answering brief is due November 22, 2023. The optional reply brief is due November 29, 2023. No streamlined extensions of time will be approved. *See* 9th Cir. R. 31-2.2(a)(1).

The Clerk will place this appeal on the calendar for December 2023. *See* 9th Cir. Gen. Ord. 3.3(g).

CALLAHAN, Circuit Judge, dissenting in part:

I would deny appellants' motion for a stay pending appeal. I do not believe we are bound by the published order in *Duncan v. Bonta*, 83 F.4th 803 (9th Cir. 2023), and I do not believe appellants have otherwise met their burden of showing a likelihood of success on the merits or that they will suffer irreparable injury absent a stay. I concur in the order insofar as it expedites this appeal.