

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE NATIONAL COUNCIL OF AGRICULTURAL
EMPLOYERS,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF LABOR, *et al.*,

Defendants.

Civil Action No. 1:22-cv-03569-RC

PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Plaintiff National Council of Agricultural Employers (“NCAE”) respectfully moves this Court for summary judgment. In support thereof, NCAE concurrently submits a memorandum of law, joint stipulation of undisputed facts, statement of undisputed material facts, and a proposed order. Plaintiff seeks the following relief:

1. A declaration that the 2022 Rule is (1) “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”; (2) “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right”; and (3) “without observance of procedure required by law,” and that it is set aside. 5 U.S.C. § 706(2)(A), (C)–(D);
2. An injunction against further enforcement of or reliance on the 2022 Rule;
3. An order that the 2010 Rule be immediately reinstated because it is the *status quo ante*;
4. If they wish to promulgate a new rule to replace to the 2010 Rule, a direction that the DOL repeal the 2021 Rule through proper notice and comment rulemaking, and

- thereafter engage in APA-compliant notice and comment rulemaking to promulgate a new substitute rule;
5. A declaration that the Office of the Federal Register violated the Federal Register Act and its own regulations by failing to timely publish the 2021 and that action was (1) “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”; (2) “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right”; and (3) “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A), (C)–(D);
 6. An award to Plaintiff of its cost and expenses, including reasonable attorneys’ fees, whether under the Equal Access to Justice Act, 28 U.S.C. § 2412, or otherwise; and
 7. Award such further and additional relief as is just and proper.

Dated: July 6, 2023

Respectfully submitted,

/s/ David R. Dorey

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