

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

Electronically filed

RICHARD BARTON, *et al.*

Plaintiffs

v.

U.S. DEPARTMENT OF LABOR, *et al.*

Defendants

Civil Action No. 5:24-cv-000249-DCR

**THE INTERVENING STATE PLAINTIFFS’
MOTION FOR A § 705 STAY AND PRELIMINARY INJUNCTION**

The Intervening Plaintiffs Kentucky, Alabama, Ohio, and West Virginia are challenging the Department of Labor’s final rule, “Improving Protections for Workers in Temporary Agricultural Employment in the United States,” 89 Fed. Reg. 33,898 (Apr. 29, 2024) (“Final Rule”). *See* Doc. 15. The Final Rule imposes new and extraordinary conditions on American farmers seeking to employ temporary foreign agricultural workers, including requiring that farmers allow foreign workers to engage in “collective action and concerted activity.” *See* 89 Fed. Reg. at 33,901. To enforce the Final Rule’s radically new conditions, the Department of Labor (“Department”) mandates in the Final Rule that State Workforce Agencies “must initiate procedures for discontinuation of [employment] services to employers who” do not comply. *See id.* at 34,065–66. The requirements of the Final Rule are

immediately enforceable in Kentucky, Alabama, Ohio, and West Virginia. *See* Doc. 15, PageID.310.

Therefore, the Intervening State Plaintiffs move for preliminary relief under the Administrative Procedure Act, 5 U.S.C. § 705, which allows courts to stay the effective date of a challenged rule pending judicial review, as well as under Federal Rule of Civil Procedure 65. Specifically, the Intervening State Plaintiffs request entry of an order:

- a) Declaring the Final Rule unlawful under the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act, the National Labor Relations Act, the Administrative Procedure Act, and the U.S. Constitution;
- b) Staying the effective date of the Final Rule under 5 U.S.C. § 705, and thus denying it legally operative effect, during the pendency of these proceedings;
- c) Preliminarily enjoining the Department, and any other agency or employee of the United States, from enforcing, relying on, implementing, or otherwise acting pursuant to the Final Rule's challenged provisions; and
- d) Granting any and all other preliminary relief the Court deems just and proper.

Preliminary relief is warranted here. First, the States are likely to prevail on the merits of their claims because the text of the enabling statute is clear that the Department does not have authority to issue the Final Rule. Additionally, the obvious conflict between the Final Rule and the National Labor Relations Act, as well as the commandeering of State Workforce Agencies and the arbitrary and capricious nature of the Rule, mean the Final Rule must be vacated under the Administrative Procedure Act. Second, allowing the Final Rule to take effect during the course of

litigation would inflict irreparable harm on the States, including compliance costs associated with rule familiarization. Third and fourth, the requested preliminary relief would not harm the Department and would further the public interest. A memorandum in support of this motion explains fully.

The Intervening State Plaintiffs further request that this Court exercise its discretion to waive the security requirement of Federal Rule of Civil Procedure 65(c). No security requirement attends a stay under 5 U.S.C. § 705.

Respectfully submitted,

RUSSELL COLEMAN
Attorney General

/s/ Lindsey R. Keiser

Justin D. Clark
Aaron J. Silletto
Victor B. Maddox
Lindsey R. Keiser
Kentucky Office of the Attorney General
700 Capital Avenue, Suite 118
Frankfort, Kentucky 40601
(502) 696-5300
Justind.Clark@ky.gov
Aaron.Silletto@ky.gov
Victor.Maddox@ky.gov
Lindsey.Keiser@ky.gov

Counsel for the Commonwealth of Kentucky

STEVE MARSHALL
Attorney General

/s/ Robert M. Overing

Robert M. Overing*
Deputy Solicitor General
Robert.Overing@AlabamaAG.gov
Office of the Attorney General of Alabama
501 Washington Avenue
Montgomery, Alabama 36130
Telephone: (334) 242-7300
Fax: (334) 353-8400

Counsel for the State of Alabama

DAVE YOST
Attorney General

/s/ T. Elliot Gaiser
T. Elliot Gaiser*
Solicitor General
Office of the Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
(614) 466-8980
Thomas.Gaiser@ohioago.gov

Counsel for the State of Ohio

PATRICK MORRISEY
Attorney General

/s/ Michael R. Williams
Michael R. Williams**
Solicitor General
Office of the West Virginia Attorney General
State Capitol, Bldg. 1, Room E-26
1900 Kanawha Blvd. E.
Charleston, West Virginia 25305
304-558-2021
michael.r.williams@wvago.gov

Counsel for the State of West Virginia

* *Pro Hac Vice* application forthcoming

** Admitted *Pro Hac Vice*

CERTIFICATE OF SERVICE

I certify that on October 15, 2024, the above document was filed with the CM/ECF filing system, which electronically served a copy to all counsel of record.

/s/ Lindsey R. Keiser
Counsel for the Commonwealth of Kentucky