

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

INTERNATIONAL FRESH PRODUCE
ASSOCIATION, *et al.*,

Plaintiffs,

v.

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

Defendants.

No. 1:24-cv-00309-HSO-BWR

**PRIVATE PLAINTIFFS' URGENT AND NECESSITOUS
MOTION FOR A SECTION 705 STAY OR PRELIMINARY INJUNCTION**

Michael B. Wallace (MS Bar No. 6904)
Wise Carter Child & Caraway, P.A.
401 E. Capitol Street (39201)
Post Office Box 651
Jackson, MS 39205-0651
601-968-5534
mbw@wisecarter.com

James C. Simpson, Jr. (MS Bar No. 6810)
Wise Carter Child & Caraway, P.A.
2510 14th Street, Suite 1125
Gulfport, MS 39501
228-867-7141
jcs@wisecarter.com

*Counsel for Mississippi Farm Bureau
Federation and Stone County Farm Bureau*

Michael B. Kimberly (*pro hac vice*)
Paul W. Hughes (*pro hac vice*)
Connor J. Suozzo (*pro hac vice*)
McDermott Will & Emery LLP
500 North Capitol Street NW
Washington, D.C. 20001
(202) 756-8901
mkimberly@mwe.com

Jonathan P. Dyal (MS Bar No. 99146)
M. Brant Pettis (MS Bar No. 101976)
Alison G. Geter (MS Bar No. 105939)
Balch & Bingham LLP
1310 25th Avenue
Gulfport, MS 39501
(228) 864-9900
jdyal@balch.com

Counsel for all Private Plaintiffs

The private Plaintiffs in this action—the International Fresh Produce Association, American Farm Bureau Federation, Mississippi Farm Bureau Federation, Stone County Farm Bureau, Chamber of Commerce of the United States of America, AmericanHort, Florida Fruit & Vegetable Association, North American Blueberry Council, Texas International Produce Association, and U.S. Apple—respectfully move pursuant to 5 U.S.C. § 705 and the Court’s inherent equitable power for a stay, or alternatively a preliminary injunction against enforcement, of a final Rule promulgated by the United States Department of Labor (DOL) titled *Improving Protections for Workers in Temporary Agricultural Employment in the United States*, 89 Fed. Reg. 33,898 (April 29, 2024) (the “Rule”). The Rule establishes labor-related rights for agricultural workers and imposes corresponding obligations on agricultural employers that hire foreign workers through the H-2A visa program. 20 C.F.R. § 655.135(h); *see also* 8 U.S.C. § 1101(a)(15)(H)(ii)(a).

Under 5 U.S.C. § 705, the Court is authorized to “issue all necessary and appropriate process to postpone the effective date of an agency action . . . pending conclusion of the review proceedings.” This Court should grant an immediate stay because Plaintiffs are likely to succeed on the merits, there is a substantial threat of irreparable harm absent a stay, and the balance of harms and public interest favor an injunction. *See Career Colleges & Schools of Texas v. DOE*, 98 F.4th 220, 233 (5th Cir. 2024). The “scope of preliminary relief under Section 705” is “not party-restricted” and “aligns with the scope of ultimate relief under Section 706.” *Id.* at 255.

As demonstrated in the attached memorandum of law and the supporting declarations, the requirements for a stay are met. First, Plaintiffs are likely to prevail on the merits. The Rule exceeds DOL’s rulemaking authority under the Immigration and Nationality Act. It also is precluded by the National Labor Relations Act (NLRA), a comprehensive statute setting forth the federal law and policy of labor relations that explicitly excludes “agricultural laborers” from its protection. *Sure-Tan v. NLRB*, 467 U.S. 883, 891 (1984) (quoting 29 U.S.C. § 152(3)). Finally, the Rule contains speaker-based and content-based speech restrictions that do not survive strict scrutiny. Those

restrictions are furthermore vague and are chilling additional protected speech.

The Rule irreparably harms Private Plaintiffs by restricting their First Amendment freedoms (*see Elrod v. Burns*, 427 U.S. 347, 373 (1976)) and imposing unrecoverable compliance costs, including by altering Plaintiffs' members' operating procedures (*see Wages & White Lion Investments v. FDA*, 16 F.4th 1130, 1142 (5th Cir. 2021)). The balance of hardships and the public interest also favor a stay or preliminary injunction in this context.

In support of this Motion, Private Plaintiffs attach the following exhibits:

- Exhibit 1: Declaration of Johnie Walter Boatright, III, American Farm Bureau Federation.
- Exhibit 2: Declaration of Ken Fisher, AmericanHort
- Exhibit 3: Declaration of Kasey Cronquist, North American Blueberry Council
- Exhibit 4: Declaration of Jonathan Baselice, Chamber of Commerce of the United States of America
- Exhibit 5: Declaration of James B. Fussell, Jr., Florida Fruit & Vegetable Association
- Exhibit 6: Declaration of Kent M. Bloodworth, Mississippi Farm Bureau Federation
- Exhibit 7: Declaration of J.B. Brown, Stone County Farm Bureau
- Exhibit 8: Declaration of Dante Galeazzi, Texas International Produce Association
- Exhibit 9: Declaration of James Bair, U.S. Apple Association
- Exhibit 10: Declaration of Brig Aylward, ABA Farms Partnership
- Exhibit 11: Declaration of Mikel Grimm, Adams County Nursery
- Exhibit 12: Declaration of John Conner, Berry Brothers
- Exhibit 13: Declaration of William G. Fritz, Brookside Farms
- Exhibit 14: Declaration of Joel Crist, Crist Bros. Orchards Inc.
- Exhibit 15: Declaration of John Boelts, Desert Premium Farms, LLC

- Exhibit 16: Declaration of Don Hartman, Don Hartman Farms
- Exhibit 17: Declaration of David Doyle, Doyle's Farms
- Exhibit 18: Declaration of James K. Holland, Dutch Brothers Greenhouses, Inc.
- Exhibit 19: Declaration of Daniel Batson, Greenforest Nursery, Inc.
- Exhibit 20: Declaration of James V. Bassetti, J&D Produce, Inc.
- Exhibit 21: Declaration of Layton Scipper, L&A Farms
- Exhibit 22: Declaration of Douglas Adam Lytch, L&M Farms of North Florida, LLC
- Exhibit 23: Declaration of Judd Davis, Longhorn Farms
- Exhibit 24: Declaration of Edward Overdevest, Overdevest Nurseries, LP
- Exhibit 25: Declaration of Adron Belk, Triple Run Farms
- Exhibit 26: Declaration of Jerry Untiedt, Untiedt's Vegetable Farm, Inc.
- Exhibit 27: Declaration of Pepper G. Roberts, Van Buren Farms II
- Exhibit 28: Declaration of Emily Showalter, Willoway Nurseries

The Court should enter a Section 705 stay by or before the end of November 2024 continuing for the duration of judicial review, including any appellate proceedings before the Fifth Circuit or Supreme Court. Alternatively, it should enter an order preliminarily enjoining defendants from enforcing or implementing the Rule as against the plaintiffs and their members.

Dated: October 17, 2024

Michael B. Wallace (MS Bar No. 6904)
Wise Carter Child & Caraway, P.A.
401 E. Capitol Street (39201)
Post Office Box 651
Jackson, MS 39205-0651
601-968-5534
mbw@wisecarter.com

James C. Simpson, Jr. (MS Bar No. 6810)
Wise Carter Child & Caraway, P.A.
2510 14th Street, Suite 1125
Gulfport, MS 39501
228-867-7141
jcs@wisecarter.com

*Counsel for Mississippi Farm Bureau
Federation and Stone County Farm Bureau*

Respectfully submitted,

/s/ M. Brant Pettis

Michael B. Kimberly (*pro hac vice*)
Paul W. Hughes (*pro hac vice*)
Connor J. Suozzo (*pro hac vice*)
McDermott Will & Emery LLP
500 North Capitol Street NW
Washington, D.C. 20001
(202) 756-8901
mkimberly@mwe.com

Jonathan P. Dyal (MS Bar No. 99146)
M. Brant Pettis (MS Bar No. 101976)
Alison G. Geter (MS Bar No. 105939)
Balch & Bingham LLP
1310 25th Avenue
Gulfport, MS 39501
(228) 864-9900
jdyal@balch.com
bpettis@balch.com
ageter@balch.com

Counsel for all Private Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record. Additionally, I certify that I have sent a copy of the foregoing pleading or other paper via certified mail on the following:

Todd W. Gee
United States Attorney
1575 20th Avenue
Gulfport, MS 39501

Merrick B. Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, VW
Washington, DC 20530

United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Julie Su
Acting U.S. Secretary of Labor
United States Department of Labor, Office of the Secretary
200 Constitution Avenue, NW
Washington, DC 20210

Jose Javier Rodriguez
Assistant Secretary for Employment and Training
U.S. Department of Labor, Employment and Training Administration
200 Constitution Avenue, NW
Washington, DC 20210

Jessica Looman
Administrator of the Wage & Hour Division
United States Department of Labor, Wage and Hour Division
200 Constitution Avenue NV
Washington, DC 20210

This the 17th day of October, 2024.

/s/ M. Brant Pettis
Of Counsel