

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

TECHE VERMILION SUGAR CANE
GROWERS ASSOCIATION INC., ET AL.

CIVIL ACTION NO. 6:23-cv-00831

VERSUS

JUDGE ROBERT R. SUMMERHAYS

JULIE A. SU, ET AL.

MAGISTRATE JUDGE CAROL B.
WHITEHURST

PLAINTIFFS' EMERGENCY MOTION FOR CLARIFICATION AND REVISION OF
THE COURT'S SEPTEMBER 19, 2024 ORDER AND
MEMORANDUM RULING (DOC. NOS. 45 AND 46)

MAY IT PLEASE THE COURT:

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Teche Vermilion Sugar Cane Growers Association, Inc.; Cora Texas Growers and Harvesters Agricultural Association, Inc.; American Sugar Cane League;¹ Four Oaks Farm, GP; and Gonsoulin Farms, LLC (collectively, "Plaintiffs"), and respectfully move for clarification and revision of the Court's September 19, 2024 Order and Memorandum Ruling, to wit, that the preliminary injunction order be clarified and revised to explicitly recognize that the "members" of the Associations entitled to benefit from the preliminary injunction include all "present *and future*" members of the Associations, and would show the following in support hereof:

1. On July 7, 2023, Plaintiffs filed an Application for Preliminary Injunction, in which Plaintiffs sought to enjoin the Department of Labor from enforcing a final rule "revising the methodology by which it determines the hourly Adverse Effect Wage Rates for non-range

¹ Plaintiffs' Motion for Clarification primarily seeks clarification regarding Plaintiffs, Teche Vermilion Sugar Cane Growers Associations, Inc.; Cora Texas Growers and Harvesters Agricultural Association, Inc.; and American Sugar Cane League. Accordingly, those Plaintiffs shall be collectively referred to herein as "the Associations."

occupations,” published at 88 Fed. Reg. 12,760 (Feb. 28, 2023) and codified at 20 C.F.R. § 655.120(b) (the “Final Rule”). *See* Doc. No. 3.

2. On September 19, 2024, the Court entered an Order and Memorandum Ruling partially granting Plaintiffs’ Motion for Preliminary Injunction. Doc. Nos. 45, 46.

3. Pursuant to the Order and Memorandum Ruling, Defendants are enjoined from enforcing the Final Rule with respect to “H-2A workers employed in sugar cane farming and processing operations in the State of Louisiana” and “H-2A workers hired by the named Plaintiffs *and the members of*” the Associations. Doc. No. 46 (emphasis supplied).

4. As the ruling relates to the Associations, the Order and Memorandum Ruling do not specify whether the injunction is limited only to current members of the Associations or whether it applies to both current and future members of the Associations.

5. Clarification is needed, as the Associations’ membership changes from year to year, and the current proceedings have already spanned two growing seasons. For example, the membership of the Associations has changed between the time this lawsuit was filed, and the time the preliminary injunction issued.

6. The preliminary injunction is an interlocutory order. *Jiao v. Xu*, 28 F.4th 591, 596 (5th Cir. 2022). Under Federal Rule of Civil Procedure 54(b), this Court may clarify or revise an interlocutory order at any time prior to entry of final judgment. *Cabral v. Brennan*, 853 F.3d 763, 766 (5th Cir. 2017); *see Plaquemines Holdings, LLC v. CHS, Inc.*, 2013 WL 1344570, *3 (E.D. La. April 3, 2013) (motion to clarify discovery order properly decided pursuant to Rule 54(b)).

7. In similar cases involving employer associations’ requests for injunctive relief, district courts have granted preliminary injunctions to then-current and future members of the associations.

8. For example, in *Christian Employers Alliance v. Azar*, No. 3:16-cv-309, 2019 WL 2130142 (D.N.D. May 15, 2019), the District of North Dakota granted a preliminary injunction in favor of three (3) religious organizations seeking to enjoin the contraceptive mandate then-required under the Affordable Care Act.

9. The district court held that the injunction would also apply to future members of the religious organizations, reasoning that excluding future members of the organizations “would result in an endless cycle of litigation.” *Azar*, 2019 WL 2130142 at *4; *see also Reaching Souls Int’l Inc. v. Azar*, No. Civ-13-1092-D (W.D. Okla. Mar. 15, 2018); *Catholic Benefits Ass’n v. Hargan*, No. Civ-14-685-R (W.D. Okla. Mar. 7, 2018).

10. The same principles should apply here. The Court’s preliminary injunction grants prospective (future) relief to remedy future harms, not retrospective relief to remedy past harms. The relief should thus extend to the Associations’ present and prospective (future) members.

11. Allowing new members to enjoy the benefit of the Court’s ruling is simply an incidental benefit to which the Associations are entitled, due to the expenditure of time and resources, and the risks, the Associations suffered in undertaking the prosecution of this lawsuit. Moreover, such relief is within the ambit of the relief originally requested by Plaintiffs, who sought a preliminary injunction barring enforcement of the Final Rule against all employers of H-2A labor in the State of Louisiana.

12. This motion seeks no other clarification or revision of the preliminary injunction, which shall remain effective only as to those members of the Associations who grow, harvest, and process sugar cane in the State of Louisiana.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Court grant this Motion for Clarification and Revision of the Court's September 19, 2024 Order and Memorandum Ruling (Doc. Nos. 45 and 46).

CERTIFICATE OF COMPLAINT WITH LOCAL RULE 7.4.1

Pursuant to Local Rule 7.4.1, undersigned counsel has contacted counsel for Defendants to ascertain whether they oppose this motion, who indicated that Defendants oppose Plaintiffs' Motion for Clarification and Revision of the Court's September 19, 2024 Order and Memorandum Ruling.

Dated: September 26, 2024

Respectfully submitted,

/s/ J. Walter Green

Brandon E. Davis (#29823)

J. Walter Green (#27812)

A. Paul LeBlanc, Jr. (#23186)

Marcellus D. Chamberlain (#917498)

PHELPS DUNBAR LLP

II City Plaza | 400 Convention Street, Ste 1100

Baton Rouge, Louisiana 70802

Telephone: 225 346 0285

Facsimile: 225 381 9197

Email: walt.green@phelps.com

davisb@phelps.com

paul.leblanc@phelps.com

marcellus.chamberlain@phelps.com

Counsel for Plaintiffs Teche Vermilion Sugar Cane Growers Association, Inc.; Cora Texas Growers and Harvesters Agricultural Association, Inc.; American Sugar Cane League; Four Oaks Farms; Gonsoulin Farms; Triple E Farms; and Townsend Brothers Farms

CERTIFICATE OF SERVICE

I do hereby certify that on September 26, 2024, a copy of the foregoing Plaintiffs' Emergency Motion for Clarification of the Court's Order and Memorandum Ruling (Doc. Nos. 45 and 46) was filed electronically with the Clerk of Court using the CM/ECF system, which will transmit a copy to all counsel of record.

/s/ J. Walter Green
COUNSEL FOR PLAINTIFFS