

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION**

Richard Barton, et al.,

Plaintiffs,

v.

United States Department of Labor, et al.,

Defendants.

Civil Action No. 5:24-cv-00249

JOINT MOTION FOR SUMMARY JUDGMENT

Plaintiffs and Intervening Plaintiffs jointly move the Court to grant summary judgment in their favor, declare or hold the Final Rule is unlawful, and vacate and/or set aside the entire Final Rule titled, “*Improving Protections for Workers in Temporary Agricultural Employment in the United States*,” 89 Fed. Reg. 33898 (Apr. 29, 2024) (“Final Rule”). *See* DN 15-1 (*Federal Register* Notice). In the alternative, Plaintiffs and Intervening Plaintiffs move the Court to grant summary judgment in their favor, declare or hold the Final Rule is unlawful, and enter a permanent injunction preventing Defendants from enforcing the entire Final Rule against Plaintiffs, the association Plaintiffs’ members, and in Kentucky, Alabama, West Virginia, and Ohio.

As set forth in detail in the memorandum of law, the Final Rule is unlawful because it overstepped numerous legal boundaries. Perhaps none of its many transgressions is more flagrant than how, in the Court’s words, “[t]he Final Rule not so sneakily creates substantive collective bargaining rights” and “attempts to grant H-2A workers substantive rights without Congressional authorization” (DN 49 at 25). But that is far from the only legal boundary line the Final Rule transgresses. The Immigration and Nationality Act (“INA”) does not confer upon Defendants

authority to promulgate many of the new regulatory obligations contained in the Final Rule on topics that have never in the near 40-year history of the H-2A program been the subject of regulation. The Final Rule also violates the Fifth and Fourteenth Amendments to the U.S. Constitution, violates the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.* (“PRA”), and otherwise violates the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* (“APA”).

The Final Rule’s flaws are so numerous, and appear in so many different regulatory sections, that the Final Rule should be scrapped in its entirety. A proposed order is tendered in support of this motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On January 13, 2025, I caused the foregoing to be filed on the Court's ECF System, which will cause service to be effectuated on counsel of record.

/s/ Joseph A. Bilby

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