UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

GABRIEL PEREZ,

Plaintiff,

v. **CASE NO: 3:14cv682/MCR/EMT**

THOMAS E. PEREZ,
ERIC M. SELEZNOW, and
UNITED STATES DEPARTMENT OF LABOR,

Defendants.
_____/

ORDER

Plaintiff Gabriel Perez filed this suit on December 19, 2014, challenging the enforcement of regulations issued in 2008 by the Defendant, United States Department of Labor ("DOL"), regarding the H-2B temporary labor program, and seeking a permanent injunction prohibiting DOL from enforcing those rules.[1] Shortly after this suit was filed, Perez filed a Motion for a Temporary Restraining Order and Preliminary Injunction, and DOL filed an Unopposed Motion to Consolidate the Preliminary Relief Hearing with a Determination on the Merits, which the Court granted on December 29, 2014. The parties requested an expedited ruling on Perez's motion, asked that it be treated as a motion for summary judgment on the merits, and urged the Court to decide the case without an evidentiary hearing or oral argument. On March 4, 2015, the Court issued an Order granting Perez's motion, vacating DOL's 2008 H-2B regulations, and permanently enjoining DOL from enforcing those rules ("Injunction Order"). Pending before the Court is Defendants' Unopposed Motion for Limited Relief from the Vacatur Order and Judgment (Doc. 16), filed on March 16, 2015, in which they request limited relief from the Court's Injunction Order pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure.

[1] In this Order, the Court refers to the various Defendants collectively as "DOL."

Rule 60(b)(6) grants courts discretion to "relieve a party or its legal representative from a final judgment, order, or proceeding for . . . any other reason that justifies relief" beyond the reasons specifically enumerated in Rule 60(b). *See* Fed. R. Civ. P. 60(b)(6); *Pioneer Inv. Servs. Co. v. Brunswick Assoc. L.P.*, 507 U.S. 380, 393 (1993) (noting that the provisions of Rule 60(b) are "mutually exclusive"). Rule 60(b)(6) generally requires a party to demonstrate "extraordinary circumstances." *See Pioneer*, 507 U.S. at 393; *Booker v. Singletary*, 90 F.3d 440, 442 (11th Cir. 1996). Whether to grant relief under Rule 60(b)(6) is "a matter for the district court's sound discretion." *Booker*, 90 F.3d at 442.

According to DOL, the Court's March 4, 2015 Order "has resulted in a complete shutdown of the H-2B program because DOL is unable to issue H-2B labor certifications" to potential employers of H-2B workers. As a result, DOL claims, the Department of Homeland Security ("DHS"), which has been vested with rulemaking authority in this area, cannot run the H-2B program, and "no employer can request importation of H-2B workers until the agencies craft a solution to this immediate problem." DOL states that although DHS and DOL plan to draft a joint interim final rule as soon as possible to fill the legislative gap and to counteract this "emergency situation," the H-2B program will remain inoperative until the joint interim final rule is completed. Thus, DOL requests a temporary stay of the Court's Injunction Order until and including April 15, 2015.

Having considered the matter, the Court finds that the requested temporary relief is appropriate to ensure continued operation of the H-2B program. Although DOL suggests in its motion that it was caught off guard by the Court's Injunction Order, DOL was certainly aware of the Court's position regarding its rulemaking authority in the H-2B program at least as early as December 18, 2014, when the Court issued an Order resolving essentially the same issue in *Bayou Lawn & Landscape Services v. Perez*, No. 3:12cv183/MCR/CJK, 2014 WL 7496045 (N.D. Fla. Dec. 18, 2014), if not earlier.[2]

[2] In April 2012, the plaintiffs in *Bayou Lawn* filed suit against DOL, seeking to invalidate similar H-2B regulations issued in 2012 based primarily on DOL's lack of unilateral rulemaking authority in this area. The undersigned preliminarily enjoined DOL from enforcing the 2012 Rule on April 26, 2012, and the Court's issuance of a preliminary injunction was affirmed on appeal. *See Bayou Lawn & Landscape Servs. v. Sec'y of Labor*, 713 F.3d 1080 (11th Cir. 2013). In response to the preliminary injunction, DOL indicated that it would continue to process H-2B labor certification applications under its 2008 H-2B rules,

Once the instant case was filed, the parties promptly requested an expedited ruling on the merits and waived their right to a hearing or oral argument. Moreover, in its brief in opposition to Perez's motion, DOL acknowledged that "the sole issue in this case is whether DOL has authority . . . to issue legislative rules governing the H-2B program," a "pure question of law." Apart from arguing that it has authority to issue regulations under the H-2B program, DOL did not challenge Perez's request for injunctive relief, did not address the possibility of irreparable harm to potential employers of H-2B workers in the event the requested injunction were issued, and never raised the issue of the impact of Perez's request on pending H-2B applications.[3] Finally, DOL admits that the guidance documents it used prior to issuing its now vacated 2008 H-2B regulations were deemed invalid by another District Court several years ago, leaving DOL with no fallback method for administering the H-2B program. *See Comite De Apoyo A Los Trabajadores Agricolas v. Solis*, No. 09–240, 2010 WL 3431761, at *13-*25 (E.D. Pa. Aug. 30, 2010) (invalidating certain aspects of DOL's rulemaking regarding the H-2B program). Thus, it is disingenuous to suggest that the Court, rather than DOL, is somehow responsible for DOL's lack of a contingency plan. Nevertheless, given that there are numerous United States employers who rely on the H-2B program to fill their temporary labor needs, the Court agrees that the requested temporary relief is warranted.[4]

Accordingly, Defendants' Unopposed Motion for Limited Relief from the Vacatur Order and Judgment (Doc. 16) is **GRANTED**. It is further ordered that the Court's Injunction Order dated March 4, 2015 (Doc. 14) is **STAYED** or otherwise held in abeyance until and including April 15, 2015.

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which were still being enforced when the instant suit was filed. Accordingly, DOL was on notice, likely as early as April 1, 2013, when the Eleventh Circuit affirmed the Court's decision preliminarily enjoining DOL from enforcing its 2012 Rule, that its rulemaking authority in this area was, at best, uncertain.

[3] Because DOL did not address the potential impact of a permanent injunction on pending H-2B applications, the Court's prior Order (Doc. 14) did not specifically address that issue.

[4] The Court recognizes that there is a pending Motion of the Small and Seasonal Business Legal Center for Leave to File Brief Amicus Curiae (Doc. 18), which was filed March 17, 2015. To the extent that motion is granted, requiring resolution of additional issues, the Court may extend the stay if necessary.

DONE and ORDERED this 18th day of March, 2015.

M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE