

of H-2B Aliens in the United States, Part II, 78 Fed. Reg. 10038 (Feb. 21, 2012) (“2012 H-2B Comprehensive Final Rule”), would cause Bayou irreparable injury.

3. This Court entered a Preliminary Injunction on April 26, 2012 enjoining DOL from enforcing the 2012 H-2B Comprehensive Final Rule pending the Court’s adjudication of Bayou’s and the other Plaintiffs’ claims. The Court entered this Order because it found that we and the other Plaintiffs were likely to succeed on the merits of our claims, that there was a substantial threat that enforcement of the 2012 H-2B Comprehensive Final Rule would cause significant and irreparable losses of revenue, customers, and goodwill, and that any harm to DOL was outweighed by the devastating effects of the regulations in the 2012 H-2B Comprehensive Final Rule.

4. This Court also stated that preliminarily enjoining DOL’s enforcement of the 2012 H-2B Comprehensive Final Rule was in the public interest because the public interest is best served when federal agencies respect congressionally imposed limits to their authority and a delay in implementation while awaiting adjudication of those limits was appropriate.

5. DOL then appealed this Court’s decision to the United States Court of Appeals for the Eleventh Circuit. The Court of Appeals affirmed this Court’s decision. It ruled that Congress had not expressly authorized DOL to set legally binding standards governing the wages and working conditions of H-2B nonimmigrants admitted to the United States or governing any other aspect of an employer’s participation in the H-2B program. The Court of Appeals also rejected DOL’s argument that the “text, structure, and object” of the statutory provisions relating to the H-2B program implicitly delegated lawmaking power to DOL. The Court of Appeals also agreed with this Court that we Plaintiffs had sufficiently shown that we would be irreparably

injured if DOL enforced the provisions of 2012 H-2B Comprehensive Rule and that the public interest favored a preliminary injunction.

6. After the Court of Appeals issued its mandate, it is my understanding that this Court entered an Order requiring the parties to make additional submissions so that the Court could adjudicate our claims.

7. In connection with the resumption of these proceedings, I reviewed the Declaration that I submitted at the beginning of this litigation. I have attached it for ease of reference. Everything in that Declaration is still true. Labor shortages persist. Customers are still extremely price-sensitive. Major contracts are still entered into through competitive bidding. Significant revenue losses, that we have no way to make up, are certain. The reasons that this is true bear repeating:

12. The new regulations will have an immediate impact on our business. Bayou obtains new customers, and keeps its current ones, by successfully bidding for the jobs. Many factors affect the price that Bayou bids for a particular job. One of the most important is labor costs. DOL's new H-2B regulations create substantial uncertainty about those costs, but it is certain that the costs will be much higher under the new rules, exactly how much remains to be seen. Bayou has two options for dealing with this uncertainty. It can submit bids that are much higher than would otherwise be the case to accommodate a worst case scenario under the new rule. But if it does that Bayou will certainly lose contracts that it otherwise would have won. Significantly, it is currently formulating a bid for a major, five-year contract for its largest customer. Losing this customer would have a serious financial impact on Bayou's business as would a bid that is too low to cover Bayou's costs.

13. Second, Bayou can opt not to pass on the additional costs of the new H-2B rule, but if it did that it would lose money and go out of business. In short, neither option is palatable.

14. These rule changes will be devastating to our small business and will have similar effects on all lawn and landscape companies in this area using the H-2B program. Landscaping is an inherently labor-intensive and price-sensitive industry, with fixed contracts and no real opportunity to pass increased costs on to customers. Most contracts for lawn and landscaping work for commercial customers are won through a bid process. With these new burdens, we would not be able to bid successfully against companies using the H-2B program for new projects and would lose money on our existing

contracts. A large number of our residential customers are retirees on a fixed income. We would not be able to pass along increased costs under our existing contracts and would not be able to enter into new contracts with these customers or others similarly situated.

8. In Paragraph 12 of my Declaration, I mentioned that Bayou was then bidding on a long-term contract with a major customer. Because Bayou did not have to put the increased costs related to DOL's new rule into its bid, Bayou was able to win the contract. If DOL were allowed to enforce the new rules now, we would be forced operate at a loss or risk loss of this crucial customer. Bayou cannot afford either option.

9. Bayou is a member of Professional Landcare Network.

10. This Supplemental Declaration consists of four pages and ten paragraphs. I ask that the Court treat my Declaration as incorporated herein by reference.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 9, 2013


James Allen