

Exhibit C

May 11, 2012 Order Denying Stay

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

**BAYOU LAWN & LANDSCAPE
SERVICES, et al.,**

Plaintiffs,

v.

Case No. 3:12cv183/MCR/CJK

HILDA L. SOLIS, et al.,

Defendants.

ORDER

The plaintiffs in this case challenge certain rules issued by the Department of Labor ("DOL") governing the employment of temporary, non-agricultural foreign workers under the H-2B program on the grounds that DOL had no authority to issue the rules and that, even if DOL had rulemaking authority, the rules were issued in violation of the Administrative Procedure Act and Regulatory Flexibility Act. The plaintiffs, all of which participate in the H-2B program or are comprised of members who participate in the program, filed a motion for a temporary restraining order and preliminary injunction seeking to enjoin DOL from enforcing the rules, which were scheduled to go into effect on April 27, 2012. The defendants, Hilda L. Solis, in her official capacity as United States Secretary of Labor, and Jane Oates, in her official capacity as United States Assistant Secretary of Labor (referred to collectively as "DOL"), opposed the plaintiffs' motion.¹ Following a hearing on the motion, the court entered an order granting the plaintiffs' motion and enjoining DOL from enforcing the challenged rules during the pendency of this matter. Both DOL and the proposed intervenors have appealed the court's order granting a

¹ A number of parties have moved to intervene as defendants. The motion to intervene remains pending, although the proposed intervenors have appealed the court's alleged effective denial of their motion to the Eleventh Circuit Court of Appeals.

preliminary injunction and also have filed motions to stay the preliminary injunction pending appeal (docs. 26, 29). Having reviewed the motions to stay, the court finds that they should be denied.² Specifically, the court finds that neither DOL nor the proposed intervenors have made a strong showing that they are likely to succeed on the merits in this matter.³ See *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (noting that under both Fed. R. Civ. P. 62(c) and Fed. R. App. P. 8(a), a party must demonstrate, among other things, a "strong showing that he is likely to succeed on the merits" in order for the court to stay an order pending appeal). Accordingly, the motions to stay (docs. 26, 29) are hereby **DENIED**.

DONE and ORDERED on this 11th day of May, 2012.

s/ M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE

² "Consistent with the language of Rule 8(a)(1), a district court is not divested of ruling on a motion for a stay pending appeal after a party has taken the normally jurisdiction-divesting action of filing a notice of appeal to the Court of Appeals." *Dominguez v. Overton*, 2008 WL 564859, at *1 (E.D. Mich. Feb. 28, 2008) (internal marks omitted) (citing *Freethought Soc'y v. Chester Cnty.*, 194 F. Supp. 2d 437, 439, 439 n.2 (E.D. Penn. 2002), for the proposition that a "district court enjoys continuing jurisdiction to rule on 8(a)(1)(A) and (C) motion as it does under Federal Rule of Civil Procedure 62(c)").

³ In their motion, the proposed intervenors urge the court to immediately order the plaintiffs to post security pursuant to Fed. R. Civ. P. 65(c). According to Rule 65(c), "[t]he court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). "The purpose of this provision is to enable a restrained or enjoined party to secure indemnification for the costs, usually not including attorney's fees, and pecuniary injury that may accrue during the period in which a wrongfully issued equitable order remains in effect." 11A CHARLES A. WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 2954 (2d ed. 1995). The only party that has been enjoined in this action is DOL, and DOL has not requested that the plaintiffs post security. Moreover, the court is aware of no costs or damages DOL will sustain as a result of the preliminary injunction.