**UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

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| BAYOU LAWN & LANDSCAPE SERVICES, et al., | ) | |
| Plaintiffs | ) | No. 12-12462 |
| v. | ) | |
| HILDA L. SOLIS, et al. | ) | |
| Defendants. | ) | |

**RESPONSE TO DEFENDANTS' TIME SENSITIVE MOTION FOR STAY OF PRELIMINARY INJUNCTION ORDER**

## INTRODUCTION & BACKGROUND

Defendants ("DOL or 'the Department") seek a stay of the lower court's preliminary injunction barring implementation of the defendants' H-2B Program Rules ("H-2B Rules"). Defendants sought a stay from the District Court, which was denied on May 11, 2012. *See* Exhibit B to Defendants-Appellants' Time Sensitive Motion for Stay of Preliminary Injunction Order (filed May 15, 2012) ("DOL Motion").

DOL's motion should be denied because DOL has not and cannot meet its heavy burden of demonstrating a strong likelihood of success on the merits. Nor

do the balance of equities favor disrupting the *status quo* and effectively reversing the District Court's preliminary injunction.[1]

The H-2B Rules have become regulations in search of theory with DOL adopting, at each stage of this proceeding, a different statutory basis to support the challenged rules. Plaintiffs alleged, DOL acknowledged, and the District Court found that the Immigration and Nationality Act ("INA") contains no provision expressly delegating rulemaking authority to DOL for the H-2B program. In its rulemaking, DOL sought to infer rulemaking authority from three provisions in the INA, one of which granted rulemaking authority to another agency. Recognizing that inferring rulemaking authority from legislative silence is ill-conceived, DOL, in its response and again at oral argument, posited a second basis for its authority, one not mentioned in the proposed or final rule, namely 8 U.S.C. § 1103(a)(6). The District Court found that provision was not applicable and even if it were, the fact that it had not been mentioned in the rulemaking, as required by the Administrative Procedure Act, 5 U.S.C. § 553(b), would have fatally undermined the rule's validity. *See* Exhibit A to DOL Motion; *Motor Vehicle Mfg'rs Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 50 (1983) (a "short — and sufficient

[1] Proposed intervenors have similarly sought a stay. Plaintiffs have moved to dismiss their appeal and thus moot their motion for a stay. Nevertheless, this response applies with equal force to proposed intervenors' motion for a stay.

— answer to petitioners' submission is that the courts may not accept appellate counsel's post hoc rationalizations for agency action.").

Defendants then argued a third theory for their rulemaking authority, namely the Wagner-Peyser Act of 1933, 29 U.S.C. § 49 *et seq*. Wagner-Peyser on its face grants only limited rulemaking authority that does not extend to the H-2B program. In fact, DOL's "Wagner-Peyser Act" website lists the various rules that have been issued under the authority of that Act and not surprisingly, neither the rules at issue here nor their predecessors, the 2008 Rules, are listed. Aside from the reference to Wagner-Peyser, the remainder of DOL's memorandum in support of its motion for a stay is a rehash of its response (*see* Doc. 29-1) and oral argument and as such, is little more than a motion for reconsideration. The District Court was unpersuaded. Defendants now renew these theories before this Court.

**PROCEDURAL POSTURE**

On April 16, 2012, plaintiffs sought to enjoin the H-2B Rules issued by DOL governing the employment of temporary, non-agricultural foreign workers that were to go into effect on April 27, 2012. Following a hearing on April 24, 2012, the District Court entered a preliminary injunction on April 26, 2012, that enjoined DOL from enforcing the challenged rules. *See* Exhibit A to DOL Motion at 8. The District Court found that it was substantially likely that plaintiffs would succeed on the merits in light of the Department's own acknowledgement that it

lacked express authority to promulgate the H-2B Rules. The District Court was not persuaded by the Department's attempt to infer authority from other provisions of the INA. The District Court also found that plaintiffs demonstrated a substantial threat of irreparable harm if the H-2B Rules were to go into effect. In contrast, the Department had not articulated any harm that it would suffer were the implementation of the H-2B Rules delayed while the merits of the case proceeded. Finally, the District Court found that the public was best served by preliminarily enjoining the enforcement of rules that were issued without statutory authority.

More than one week later, on May 4, 2012, DOL filed an emergency motion to stay the preliminary injunction and requested a decision no later than May 11, 2012. On May 11, 2012, the District Court denied that motion. *See* Exhibit B to DOL Motion.

**ARGUMENT**

**I. Standard for Granting a Stay Pending Appeal**

While "[d]ifferent Rules of Procedure govern the power of district courts [Rule 62(c)] and courts of appeals [Fed. R. App. P. 8(a)][,] . . . the factors regulating the issuance of a stay are generally the same: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the

proceeding; and (4) where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (citing among others *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986)).

## II. DOL Has Failed to Satisfy Any of the Four *Braunskill* Requirements

### A. DOL Has Not Demonstrated Any Likelihood of Success on the Merits

#### 1. The Wagner-Peyser Act Does Not Grant DOL General Rulemaking Authority

DOL argues that it will prevail on the merits because "the Supreme Court [in its 1982 decision in *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592 (1982)] already has determined [that] Congress [in the Wagner-Peyser Act] provided DOL with the authority to administer the H-2B program through rulemaking." DOL Motion at 9 (footnote omitted). In fact, the Supreme Court made no such statement and issued no such holding. If it had, DOL presumably would have cited the Wagner-Peyser Act long before its Motion to Stay before the District Court. Rulemaking authority under Wagner-Peyser is expressly limited to a discrete program and does not extend to the H-2B Program, a fact expressly acknowledged by DOL on its website. *See* <http://www.doleta.gov/programs/almislaws.cfm> (visited May 5, 2012). Moreover, in *Alfred L. Snapp & Son*, the Court focused exclusively on Puerto Rico's standing; the case had nothing to do with the Secretary's rulemaking authority under the INA of 1952.

"The purpose of the [Wagner-Peyser] Act was to provide for a cooperative Federal-State system of public employment offices to be operated by the States under systems created by State law." *NAACP, Western Region v. Brennan*, 360 F. Supp. 1006, 1008 (D.D.C. 1973). The Act was aimed at tackling the severe unemployment associated with the Great Depression and ensuring that unemployment insurance was properly distributed. Toward that end, the Act authorized the creation and federal funding of local state employment offices. *See id*. at 1009; 29 U.S.C. § 49. The Act, which is codified in chapter 4B of title 29, also authorizes the Secretary of Labor "to make such rules and regulations as may be necessary to carry out the provisions of this chapter." 29 U.S.C. § 49k (emphasis supplied). DOL's rulemaking authority is limited to implementing a single chapter (Chapter 4B) that has nothing to do with the H-2B program. It does not mention the word "immigrant," and does not authorize either the H-2B program or H-2B rulemaking. Indeed, DOL's own website identifies all of the regulations issued under the authority of the Wagner-Peyser Act as those set out in 20 C.F.R. pts. 652-654. *See* <http://www.doleta.gov/programs/almislaws.cfm> (visited May 5, 2012). The H-2B Rules were and are set out at 20 C.F.R. pt. 503 and 29 C.F.R. pt. 655. *See* 77 Fed. Reg. 10,038 (Feb. 21, 2012). Moreover, DOL did not rely on the Wagner-Peyser Act as a source of its H-2B rulemaking authority. It specifically rejected the notion that the model employed under the

Wagner-Peyser Act was designed to foster national uniformity. *See id*. at 10,063 (col. a) (the "existing cooperative Federal-State model under the Wagner-Peyser system is much too decentralized to accommodate the requirement that SWAs [state agencies] use a specific form.").

The Court's holding and discussion in *Alfred L. Snapp & Son, Inc.*, 458 U.S. 592, does not suggest otherwise. Puerto Rico sued the federal government alleging violations of the Wagner-Peyser Act and the INA, because qualified Puerto Rican workers were passed over as apple pickers on the mainland in favor of non-immigrant foreign workers. Although the facts underlying the suit arose as a result of the interaction between the Wagner-Peyser Act and the INA, *see id*. at 594, the issue before the Court involved "whether Puerto Rico has standing to maintain this suit." *Id*. The Court was not asked to determine whether DOL had rulemaking authority under the INA nor to determine whether DOL had general rulemaking authority over the temporary worker program under the Wagner-Peyser Act. The portion of the Court's introduction reproduced in DOL's brief merely stands for the rather unremarkable proposition that DOL relies on its "employment referral system established under the Wagner-Peyser Act" when consulting with the Attorney General. *Id*. at 595. There is nothing in the Court's opinion that suggests

that this consultation role somehow bestows general rulemaking authority on DOL.[2]

### 2. DOL's View that a Congressional Grant of Rulemaking Is Not Necessary Is Inconsistent With the APA and Established Law

In their Motion, defendants argue that explicit congressional authorization to engage in legislative rulemaking is not necessary since "Congress intended to grant DOL jurisdiction over rulemaking in order to administer the H-2B program." DOL Motion at 9 (italics in original). This statement finds no support in the case law or the Administrative Procedure Act ("APA") § 9(a), 5 U.S.C. § 558(b). To the contrary, the Supreme Court has consistently held that "[i]t is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 161 (2000); *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). "Thus, if there is no statute conferring authority, a federal agency has none." *Michigan v. E.P.A.*, 268 F.3d 1075, 1081 (D.C. Cir. 2001).

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[2] Defendants have abandoned the argument made to the District Court that they were not obligated to specify in either the proposed rule or the final rule that their rulemaking authority stemmed from the Wagner-Peyser Act. Thus, even if the Wagner-Peyser Act provided an independent basis for DOL's rulemaking in this case, the fact that that it was not identified as the source of authority in the rulemaking is enough to compel a *vacatur*. *See* 5 U.S.C. § 553(b)(2); *S.E.C. v. Chenery*, 323 U.S. 194, 196-97 (1947); *Global Van Lines v. Interstate Commerce Comm'n*, 714 F.2d 1290, 1298 (5th Cir. 1983).

DOL argues that it is unnecessary for Congress to grant it rulemaking authority if one concludes that it has jurisdiction over the subject matter. The APA, though, like the courts, requires not only jurisdiction, but also a grant of authority. *See* 5 U.S.C. § 558(b). Jurisdiction alone will not suffice.[3] While the defendants have never argued otherwise, they have focused exclusively on jurisdiction and continue to do so. This case is not about jurisdiction, but rather authorization and it is that authorization that remains missing. *See Adams Fruit Co. v. Barrett*, 494 U.S. 638, 649-650 (1990) (holding that a delegation of authority to promulgate motor vehicle safety "standards" did not include the authority to decide the pre-emptive scope of the federal statute because "[n]o such delegation regarding [the statute's] enforcement provisions is evident in the statute"); *Amalgamated Transit Union v. Skinner*, 894 F.2d 1362 (D.C. Cir. 1990) (authority to investigate on a case-by-case basis does not provide agency with authority to issue legislative rules); *Merck & Co., Inc. v. Kessler*, 80 F.3d 1543, 1549-50 (Fed. Cir. 1996) (Patent and Trademark Office's broad grant of procedural rulemaking authority does not authorize it to issue substantive rules).

In *United Airlines v. Brien*, 588 F.3d 158, 179 (2d Cir. 2009), the court invalidated an immigration rule issued by the Immigration and Naturalization Service because although the agency clearly had jurisdiction over the issue, it was

[3] Defendants also have abandoned the argument that even had they violated the APA, that would have amounted to harmless error.

required by statute to issue the rule jointly with the Department of State. According to the court, "[t]he INS's attempt to amend the jointly enacted regulation on its own, therefore, is ineffective." *Id.* At least in *Brien*, the agency had a modicum of general rulemaking authority, albeit shared; here there is none.

Defendants rely on *Production Tool Corp. v. ETA*, 688 F.2d 1161, 1166-67 (7th Cir. 1982).[4] That case only proves plaintiffs' point. At issue in *Production Tool* was the validity of an "interpretative," as opposed to a legislative, rule. In upholding DOL's ability to issue an interpretative rule in the absence of express authority to do so, the court went out of its way to emphasize that if the rule were legislative, it would have to be "promulgated under a delegation of legislative authority." *Id*. at 1167.

DOL interprets an absence of rulemaking authority as congressional silence from which the Court can and should infer DOL's rulemaking authority. The Supreme Court has repeatedly rejected similar attempts by DOL to find authority where the enabling statute does not grant it such authority. *See Director, OWCP v. Newport News Shipbldg & Dry Dock Co.*, 514 U.S. 122 (1995) ("Finally, the Director retreats to that last redoubt of losing causes, the proposition that the statute at hand should be liberally construed to achieve its purposes, … That principle may be invoked, in case of ambiguity, to find present rather than absent

[4] The court's holding on the merits was effectively reversed in *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994).

elements that are essential to operation of a legislative scheme; but it does not add features that will achieve the statutory 'purposes' more effectively. Every statute purposes, not only to achieve certain ends, but also to achieve them by particular means - and there is often a considerable legislative battle over what those means ought to be. The withholding of agency authority is as significant as the granting of it, and we have no right to play favorites between the two."); *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994); *Morrison-Knudsen Constr. Co. v. Director, OWCP*, 461 U.S. 624, 633 (1983); *Potomac Elec. Power Co. v. Director, OWCP*, 449 U.S. 258, 282 & n.24 (1980).

DOL argues here, just as the Department of Interior argued to no avail in *Texas v. United States*, 497 F.3d 491, 502-03 (5th Cir. 2007), that "the ensuing congressional 'silence' creates an implicit delegation under *Chevron* to promulgate ... regulations. That is an inaccurate interpretation of the nature of the delegation inquiry under *Chevron's* first step." *Id.* "Agency authority may not be lightly presumed." *Michigan*, 268 F.3d at 1082. "Were courts to presume a delegation of power absent an express withholding of such power, agencies would enjoy virtually limitless hegemony, a result plainly out of keeping with *Chevron* and quite likely with the Constitution as well." *Ethyl Corp. v. EPA*, 51 F.3d 1053, 1060 (D.C. Cir. 1995). Defendants' reliance on *United States v. Mead Corp.*, 533 U.S. 218, 229 (2001), is also misplaced. The *Mead* Court was discussing

deference owed to interpretive, as opposed to legislative rules, and when discussing legislative rules, assumed that the agency had at least general rulemaking authority, something missing in this case. *See Mead*, 533 U.S. 227-30.

### 3. Rulemaking Authority Cannot Be Inferred From Congressional Acquiescence

Finally, DOL argues the notion that if something is done improperly for a long enough period of time, then its age can cure its sins; DOL argues that since it has been issuing rules for years, its regulatory authority can be inferred through congressional ratification and acquiescence. The Supreme Court has foreclosed these arguments. In *Brown v. Gardner*, 513 U.S. 115, 120-21 (1994), the government contended, as it does here, that Congress ratified a regulation through subsequent reenactments and further that "Congress's legislative silence as to the VA's regulatory practice over the last 60 years serves as an implicit endorsement of its fault-based policy." The Court rejected both the ratification and acquiescence theories.

As to ratification, it held that "[t]here is an obvious trump to the reenactment argument, however, in the rule that [w]here the law is plain, subsequent reenactment does not constitute an adoption of a previous administrative construction." *Id.* at 121 (internal quotations and citations omitted). In short, there must be ambiguity in the organic legislation to justify resorting to canons of construction. In two briefs and one lengthy oral argument, DOL has been unable

to point to that ambiguity. Further, here, there was no wholesale reenactment. Instead, when Congress acted the 1986 Amendments, it split the H-2 program into two separate programs. In the H-2A program, Congress delegated rulemaking authority to DOL. In the H-2B program it did not. Earlier attempts in Congress to delegate that authority had failed. *See e.g.*, H.R. 1510, 98th Cong., 1st Sess., § 211(d) (1983). DOL never addresses this historical reality.

Next, in rejecting the Government's acquiescence argument, the Court held that

> Congress's post-1934 legislative silence on the VA's [regulation] is likewise unavailing to the Government. As we have recently made clear, congressional silence "`lacks persuasive significance,'" *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 187 (1994) (quoting *Pension Benefit Guaranty Corporation v. LTV Corp.*, 496 U.S. 633, 650 (1990)), particularly where administrative regulations are inconsistent with the controlling statute, *see Patterson v. McLean Credit Union*, 491 U.S. 164, 175, n. 1 (1989) ("Congressional inaction cannot amend a duly enacted statute").

*Id*. at 121. In the end, the Court held that "[a] regulation's age [in that case sixty years] is no antidote to clear inconsistency with a statute."[5] *Id*. at 122.

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[5] DOL's reliance on *Lorillard v. Pons*, 434 U.S. 575 (1978), *Boesche v. Udall*, 373 U.S. 472 (1963), and a footnote in *Cremeens v. City of Montgomery*, 602 F.3d 1224, 1230 n.4 (11th Cir. 2010) is misplaced and circular. Neither Supreme Court case dealt with legislative rulemaking. *Pons* focused on relationship between two statutes and whether the provisions of one ought to be read in light of the corresponding provisions in the other. *Boesche* involved the Secretary of the Interior's inherent authority to manage federal properties by granting or canceling leases, as the case may be. The *Cremeens*' footnote referred back to *Pons* and *Chevron*; *Chevron* presupposes that an agency has general rulemaking authority.

Finally, DOL seeks to turn a sow's ear into a silk purse. After certain plaintiffs instituted suit challenging a different H-2B rule, known as the 2011 Wage Rule, Congress stepped in before the District Court ruled on plaintiffs' request for injunctive relief and effectively entered a legislative injunction through September 30, 2012, by denying DOL funds to implement the new rule. DOL suggests that since Congress did not prevent the agency from implementing the prior iteration of that rule (which was not issued through notice and comment rulemaking), this demonstrates Congress' acquiescence to DOL rulemaking. It does no such thing; it merely preserved the status quo, which is precisely what the District Court here ordered below.

**B. The Equities Favor Maintaining the *Status Quo***

The H-2B Rules were initially issued in 2008. Although certain sections of the regulations were successfully challenged in the Eastern District of Pennsylvania, most were either not challenged or only unsuccessfully challenged. Those regulations unaffected by the *CATA* Court's decision have remained in effect and represent the *status quo*. The 2012 Rules were designed to modify substantially those 2008 Rules. In light of the preliminary injunction, DOL issued a notice indicating that during the pendency of the injunction, it would administer the H-2B program under the 2008 Rules, which it had doing for more than three years. *See* 77 Fed. Reg. 28,764-65 (May 16, 2012).

DOL now claims that it cannot accept the preliminary injunction issued by the District Court. According to the Department, the preliminary injunction prevents it from administering the H-2B program because its use of the 2008 rules will meet resistance from employers, so, according to the Department, a stay will remedy the irreparable injury to the Department caused by this Court's injunction. This is the same argument that the Department pressed in its opposition to the preliminary injunction. Now, however, it tries to provide authority for its otherwise unsupported assertions.

The cases relied on by the Department provide no support at all. The Department relies on an unpublished decision by one U.S. District Court and a decision of another District Court granting injunctions to the government to prevent a federal inmate from placing false and retaliatory liens on the property of a federal judge and the attorneys and probation officer involved in the conviction. The courts found the defendants' liens were frivolous and that there was an imminent threat of irreparable injury to the United States by the abuse of the lien statutes. *United States v. Sec'y of Kansas*, slip op. at *2, 2001 WL 22472226 (D. Kan. 2003); *United States v. Poole*, 916 F. Supp. 861 (C.D. Ill. 1996). Both courts found it was in the public interest to protect public officers, or in the *Poole* case, court-appointed defense counsel, from such groundless and retaliatory harassment. *Secretary of Kansas*, slip op. at *3; *Poole*, 916 F. Supp. at 863. Here, the

Department cannot and has not argued that the allegations in plaintiffs' complaint are groundless, or false or retaliatory. Instead, the Department overstates the decisions in these cases. According to the Department, any time an injunction is issued against the government, it causes irreparable harm. No court has reached such a conclusion.

The Department similarly overstates the effect of this Court's preliminary injunction. According to the Department, the injunction "calls into question DOL's underlying authority" and causes it "huge difficulties in administering the H-2B program. DOL Motion at 14. In fact, the District Court simply ordered that the *status quo* be maintained. Unless the Department has played no role in the H-2B program over the last three years, its argument is based on hyperbole rather than reality. The Department's argument that its use of the 2008 Rule will subject it to potential litigation by employers is the epitome of speculation, and, not only that, it is unfounded given that no employer has challenged the 2008 Rule as *ultra vires*.

The Department also suggests that an injunction somehow prevents it from enforcing the 2008 H-2B rules or preventing their abuse. However, there is nothing to indicate that the injunction would in anyway affect DOL's ability to

ferret out illegal conduct or that suggests that the 2008 rule somehow permits employers to violate the law with impunity.[6]

Finally, the Department's assertion that a stay of the injunction will not substantially harm plaintiffs is wrong and inconsistent with the uncontradicted evidence presented to the District Court. According to the Department, plaintiffs did not specify any concrete, immediate injury that would result from implementation of the H-2B Rules. The Department overlooks or mischaracterizes the uncontradicted statements in the declarations. The declarations made clear that each of the plaintiff businesses would lose goodwill in the event the challenged H-2B rules were implemented. The loss of goodwill constitutes irreparable harm. *BellSouth Telecomm., Inc. v. MCIMetro Access Transmission Servs*., LLC, 425 F.3d 964, 970 (11th Cir. 2005) ("Although economic losses alone do not justify a preliminary injunction, 'the loss of customers and goodwill is an irreparable injury.'"), quoting *Ferrero v. Associated Materials Inc*., 923 F.2d 1441, 1449 (11th Cir. 1991) (internal quotation marks omitted). *See also Blackwelder Furniture Co. of Statesville, Inc. v. Seilig Mfg Co., Inc.*, 550 F.2d 189, 196-97 (4th Cir. 1977) (holding that "[w]ord-of-mouth grumbling of customers," and harm to a company's general goodwill by its inability to fill outstanding and accumulating orders is irreparable harm). *See also Foundry Servs., Inc. v. Beneflux Corp*., 206

[6] DOL has abandoned the argument made before the District Court that the injunction would engender confusion.

F.2d 214, 216 (2d Cir. 1952) (Hand, J., concurring) (irreparability of harm includes the "impossibility of ascertaining with any accuracy the extent of the loss": That has always been included in its meaning; and I cannot see how the plaintiff will ever be able to prove what sales the defendant's competition will make it lose, to say nothing of the indirect, though at times far-reaching, effects upon its good will . . . .”). The injury here satisfies that test. So too does it satisfy the test of imminent harm. *Cf. McConnell v. Federal Election Comm’n*, 540 U.S. 93, 225-26 (2003) (holding that injury occurring more than five years in the future was too remote to satisfy the test of imminent harm). DOL argues that any harm that the plaintiffs would suffer is not concrete because, according to DOL, it literally depends on the weather and that the so-called three-quarter guarantee rule and corresponding employment rule have been misconstrued. DOL misconstrues the evidence presented. Plaintiffs operate under long-term contracts which require them to factor into their costs and hence prices today, the effects of inclement weather in the future. With respect to corresponding employment and three-quarter guarantees, DOL ignores the uncontradicted evidence that these rules, as well as the other aspects of the challenged Rules, would increase costs and harm goodwill. DOL disputes none of this.

There can be no harm to public by stopping agency action that is beyond the law.

## CONCLUSION

For the reasons set forth above, defendants' time sensitive motion to stay preliminary injunction should be denied.

Respectfully submitted,
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 23, 2012, I electronically filed the foregoing Plaintiffs' Opposition to Time Sensitive Motion for Stay of Preliminary Injunction Order with the Clerk of Court by using the CM/ECF system, which will provide electronic notice and an electronic link to this document to the following attorneys of record:

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