

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

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

Plaintiffs-Appellees,

v.

SECRETARY OF LABOR, *et al.*,

Defendants-Appellants.

No. 12-12462-BB

D.C. No. 3:12-cv-183-MCR-CJK

**MOTION TO ENLARGE TIME
FOR FILING EN BANC
REHEARING PETITION**

Defendants-Appellants (the “Government”), through undersigned counsel, respectfully move the Court for an order enlarging the time to petition for *en banc* rehearing of the judgment in this matter for a period of 30 days, through and including Monday, June 17, 2013. Counsel for Plaintiffs-Appellees informed undersigned counsel that Plaintiffs-Appellees oppose this motion.

The Government has not previously requested an enlargement of time to petition for *en banc* rehearing. Good cause exists for this Court to grant the Government’s request for enlargement. The Solicitor General is responsible for making the decision whether the Government will petition for *en banc* rehearing. *See* 28 C.F.R. § 0.20(b). The Solicitor General is now considering recommendations from the interested components of the Government including the Departments of Justice and Homeland Security. A 30-day enlargement should be

sufficient both to allow the Solicitor General to make a final determination regarding *en banc* rehearing, and, if that determination is to pursue *en banc* rehearing, to allow the Government to complete and file a petition for *en banc* rehearing.

An enlargement of time is especially appropriate because this case presents important issues regarding the authority of a Federal administrative agency to engage in legislative rulemaking to administer a nation-wide immigration benefits program. On April 1, 2013, the Court issued a published decision concluding that the Department of Labor lacks authority under the Immigration and Nationality Act, as amended, to issue legislative rules to structure its consultation with the Department of Homeland Security in administering the H-2B nonimmigrant worker program. If the decision stands, it will have a significant effect on the Government's ability to administer the H-2B program, including the Department of Homeland Security's ability to consult with and rely on vital advice from the Department of Labor regarding labor market conditions in the United States.

Therefore, the Government asks this Court to enter an order enlarging the time to file a petition for *en banc* rehearing through and including June 17, 2013.

Dated: May 15, 2013

STUART F. DELERY
Acting Assistant Attorney General

DAVID J. KLINE
Director

Respectfully submitted,

s/ Geoffrey Forney
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ATTORNEYS FOR APPELLANTS

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Eleventh Circuit Rule 26-1, undersigned counsel believes that the certificate of interested persons contained in Defendants-Appellants' brief in support of its motion to stay is complete and does not require supplementing at this time, except to include Seth Harris, the Acting Secretary of Labor.

/s/ Geoffrey Forney
GEOFFREY FORNEY
Senior Litigation Counsel
United States Department of Justice

CERTIFICATE OF SERVICE

I certify that on May 15, 2013, I electronically filed the foregoing MOTION TO ENLARGE TIME FOR FILING EN BANC REHEARING PETITION through the Court's CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Geoffrey Forney
GEOFFREY FORNEY
Senior Litigation Counsel
United States Department of Justice