UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

BAYOU LAWN & LANDSCAPE SERVICES, ET AL.

Plaintiffs,

v. **Case No. 3:12-cv-00183-MCR-CJK**

HILDA L SOLIS, ET AL.

Defendant.
_____/

ORDER

Plaintiffs in this case challenge the validity of a 2012 regulation issued by the United States Department of Labor ("DOL") in connection with the H-2B visa program. *See Temporary Non-Agricultural Employment of H-2B Aliens in the United States*, Final Rule, 77 Fed. Reg. 10,038 (Feb. 21, 2012) ("2012 Rule"). On December 18, 2014, the Court granted summary judgment in favor of Plaintiffs and enjoined enforcement of the 2012 Rule. *See Bayou Lawn & Landscape Servs. v. Perez*, 81 F. Supp. 3d 1291 (N.D. Fla. 2014). Defendants appealed, and on November 5, 2015, the Eleventh Circuit vacated the Court's grant of summary judgment, *see Bayou Lawn & Landscape Servs. v. Sec'y, U.S. Dep't of Labor*, 621 F. App'x 620 (11th Cir. 2015), in light of new regulations promulgated jointly by the DOL and the Department of Homeland Security ("DHS") during the pendency

of the appeal, *see Temporary Non-Agricultural Employment of H-2B Aliens in the United States*, 80 Fed. Reg. 24,042 (Apr. 29, 2015); *Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program*, 80 Fed. Reg. 24,146-01 (Apr. 29, 2015) (collectively "2015 Rules"). As the 2015 Rules superseded the 2012 Rule, the Eleventh Circuit remanded for the Court to consider whether the instant challenge to the 2012 Rule is moot in light of the jointly issued Rules.[1] The parties have submitted briefs on the issue, and the Court is now prepared to rule.

Plaintiffs argue that Count I of their Complaint, which challenges DOL's authority to issue the 2012 Rule, is not moot, because the general question of whether DOL has rulemaking authority with respect to the H-2B program has been left unsettled.[2] Though they concede that "the 2012 Rule is not (and has never been) in effect," they point to the 2015 Rules, which were issued jointly by DOL and DHS, as evidence that DOL continues to make rules with respect to the H-2B program. Further, Plaintiffs contend that the Court already recognized DOL is without rulemaking authority in its previous order on summary judgment.

Defendants respond that this case is moot, because the 2015 Rules superseded the 2012 Rule, and the Court cannot invalidate a rule that is not in effect. Further,

[1] Plaintiffs filed a separate lawsuit in this Court challenging the 2015 Rules, and the Court granted summary judgment in favor of Defendants. *See Bayou Lawn & Landscape Servs. v. Johnson*, No. 3:15CV249/MCR/EMT, 2016 WL 1397834 (N.D. Fla. Mar. 25, 2016).

[2] Plaintiffs concede that the remaining counts in their Complaint, which challenge substantive provisions of the 2012 Rule, are moot.

Defendants argue that the Court's prior finding on summary judgment was resolved on the issue of whether DOL has independent authority to promulgate the 2012 Rule, and contend that Plaintiffs may not revive the instant suit by raising the entirely different issue of whether DHS and DOL had authority to jointly promulgate the 2015 Rules.

A case is moot and must be dismissed where a court does not have the ability to grant meaningful relief. *Sierra Club v. U.S. E.P.A.*, 315 F.3d 1295, 1299 (11th Cir. 2002); *see also Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001) (observing moot cases must be dismissed because mootness is jurisdictional); *Fla. Ass'n of Rehab. Facilities, Inc. v. Fla. Dep't of Health & Rehabilitative Servs.*, 225 F.3d 1208, 1217 (11th Cir. 2000) (explaining decision on merits in moot case is impermissible advisory opinion). A change in factual circumstances or a change in the law can render a case moot. *BankWest, Inc. v. Baker*, 446 F.3d 1358, 1364 (11th Cir. 2006). Further, a case is moot if a superseding regulation eliminates the challenged features of the regulation a plaintiff seeks to invalidate. *See Covenant Christian Ministries, Inc. v. City of Marietta, Georgia*, 654 F.3d 1231, 1243 (11th Cir. 2011); *see also Naturist Soc., Inc. v. Fillyaw*, 958 F.2d 1515, 1520 (11th Cir. 1992) (observing that superseding law will also moot a case where it "so fundamentally alter[s] the statutory framework as to render the original controversy a mere abstraction").

Plaintiffs' Complaint in this case makes clear that they are challenging DOL's authority to unilaterally issue the 2012 Rule. The relief they request is a declaratory judgment that the 2012 Rule is invalid, and an injunction to bar DOL from implementing it. Plaintiffs now concede, however, that the 2012 Rule "is not (and has never been) in effect," because it was superseded by the 2015 Rules. They cite to no evidence suggesting that DOL intends to implement the 2012 Rule in the future, or once again unilaterally promulgate H-2B regulations. Further, they acknowledge that DHS, which promulgated the 2015 Rules jointly with DOL, does have rulemaking authority with respect to the H-2B program.

Based on the foregoing, the Court finds that it cannot grant meaningful relief on the claims raised in Plaintiffs' Complaint. *See Sierra Club*, 315 F.3d at 1299 (explaining case is moot where court cannot grant meaningful relief). Plainly, reinstating the Court's injunction against DOL implementing the superseded 2012 Rule would be an empty gesture. Moreover, the issue of DOL's authority to unilaterally promulgate the 2012 Rule was specifically sidestepped by DHS and DOL's decision to jointly promulgate the 2015 Rules. *See* 80 Fed. Reg. 24046; 80 Fed. Reg. 24148; *see also Covenant Christian Ministries*, 654 F.3d at 1243 (explaining case is moot if superseding regulation eliminates challenged features of regulation at issue). As there is no question that DHS does have authority to promulgate H-2B regulations, the Court finds that a challenge to DHS and DOL's

authority to jointly issue a rule presents a new legal question. Plaintiffs cannot shift the focus of this case to a new legal question about a new regulation simply because the regulation they originally sought to invalidate no longer provides a vehicle to attack the "programmatic harms" they perceive in the H-2B visa process.[3] Therefore, the Court finds that this case is now moot. This case is **DISMISSED**. The Clerk of Court is directed to close the file.

DONE and ORDERED this 20th day of April, 2016.

s/ *M. Casey Rodgers*

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE

[3] Plaintiffs cite several cases concerning the "voluntary cessation" exception to the mootness doctrine. While it is true that a court does not necessarily lose jurisdiction to hear and determine a case when the defendant voluntarily ceases challenged conduct, *Coral Springs St. Sys., Inc. v. City of Sunrise*, 371 F.3d 1320, 1328 (11th Cir. 2004), at the same time, "a challenge to a government policy that has been unambiguously terminated will be moot in the absence of some reasonable basis to believe that the policy will be reinstated if the suit is terminated," *Troiano v. Supervisor of Elections in Palm Beach Cty., Fla.*, 382 F.3d 1276, 1285 (11th Cir. 2004). As the Court explained supra, Plaintiffs cite to no evidence suggesting there is reason to believe that DOL will implement the 2012 Rule in the future, or once again engage in unilateral rulemaking with respect to the H-2B program. Therefore, the voluntary cessation exception does not apply.