

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

GABRIEL PEREZ,

Plaintiff,

v.

CASE NO: 3:14cv682/MCR/EMT

**THOMAS E. PEREZ,
ERIC M. SELEZNOW, and
UNITED STATES DEPARTMENT OF LABOR,**

Defendants.

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ORDER

Perez filed this suit on December 19, 2014, challenging certain regulations issued by the United States Department of Labor (“DOL”) governing the H-2B temporary foreign worker program and seeking a permanent injunction prohibiting DOL from enforcing those rules.¹ Shortly after suit was filed, Perez filed a Motion for a Temporary Restraining Order and Preliminary Injunction, and DOL filed an Unopposed Motion to Consolidate the Preliminary Relief Hearing with a Determination on the Merits, which the Court granted. The parties requested an expedited ruling on Perez’s motion, asked that it be treated as a motion for summary judgment on the merits, and urged the Court to quickly decide the case without an evidentiary hearing or oral argument. On March 4, 2015, the Court issued an Order vacating DOL’s 2008 H-2B regulations and permanently enjoining enforcement of those rules (“Injunction Order”). DOL then requested a stay of the Injunction Order until April 15, 2015, which the Court granted on March 18, 2015.²

¹ The Court refers to the Defendants collectively as “DOL.”

² The Court reaffirmed the stay in a separate Order entered April 7, 2015. Although the Court stated in that Order that there was seemingly no need for the stay to be extended at that time in light of Perez’s assertion that the statutory annual cap of H-2B visas had been met, the SSBLC states in its present motion that Perez has overstated this issue.

This matter is now before the Court on the Motion to Intervene for Limited Purposes by the Small and Seasonal Business Legal Center (“SSBLC”), filed today. (Doc. 33). In its motion, SSBLC states that it has over 800 members, consisting primarily of employers who employ or desire to employ temporary workers under the H-2B program.³ Although SSBLC states that the DOL takes no position on its motion and Perez opposes it, neither party has filed a written response to the motion.

SSBLC suggests there is a need for the Court to clarify the scope of its Injunction Order because of the manner in which the DOL is interpreting it. According to SSBLC, when the Court’s stay expires later today, the H-2B program will be dismantled or, at a minimum, interrupted, threatening to “destroy the . . . livelihoods of the people employed in the small businesses that depend on it.” This is because, according to SSBLC, the DOL is unreasonably refusing to perform its consultative role within the H-2B program, which violates a clear legal duty and harms SSBLC’s member organizations. SSBLC’s motion is accompanied by supporting affidavits. Accordingly, based on SSBLC’s representations regarding DOL’s interpretation of the Court’s injunction and its impact on the entire H-2B program – once the stay expires tonight – and given that DOL and Perez have not yet been given an opportunity to respond to these assertions, the Court finds it appropriate to preserve the status quo by extending the stay for an additional thirty days through May 15, 2015, during which time the Court will hear from the proposed intervenors and parties on these matters.

For these reasons, IT IS ORDERED:

1. A hearing will be held on Wednesday, April 22, 2015, at 1:00 p.m. Central Time at the United States Courthouse, Courtroom 5 (Fifth Floor), One North Palafox Street, Pensacola, Florida, to address all outstanding motions. Both parties and the proposed intervenors will be expected to attend.

³ Also pending before the Court is SSBLC’s separate Motion for Leave to File Brief *Amicus Curiae* (Doc. 18), as well as a Motion For Leave to Intervene as Parties Defendant filed by the Outdoor Amusement Business Association, Inc. (“OABA”), Reithoffer Shows, Inc., and Strates Shows, Inc. (Doc. 21), additional H-2B program participants. The Court was prepared to issue rulings today on these motions, but will defer ruling on them until after the hearing.

2. Before the Court rules on SSBLC's Motion to Intervene (Doc. 33), the parties will be required to file an expedited written response by 12:00 noon Central Time on Monday April 20, 2015. The Court expects the DOL to include in its written response an explanation of how it interprets the impact of the injunction on its continued operation of the H-2B program, including the processing of employer petitions.
3. The stay that was entered in this case is extended through May 15, 2015, unless otherwise lifted by written Order of this Court.

DONE and ORDERED this 15th day of April, 2015.

M. Casey Rodgers

**M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE**