

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

EVERGLADES HARVESTING )  
AND HAULING, INC., *et al.*, )

Plaintiffs, )

v. )

EUGENE SCALIA, sued in his )  
official capacity, *et al.*, )

Defendants. )

Civil Case No. 19-3291 (RJL)

**ORDER**

(December 16, 2019) [#5]

THIS CASE comes before the Court upon plaintiffs’ Motion for Preliminary Injunction [Dkt. #5]. The motion is fully briefed and ripe for decision.

UPON CONSIDERATION of this motion, oral argument, and the entire record, it is hereby

1. ORDERED that, for the reasons stated in the accompanying memorandum opinion, the Motion is GRANTED. Accordingly, it is

2. ORDERED that, within seven days of this order, defendants shall have an Office of Foreign Labor Certification Certifying Officer (“CO”) re-review each of the qualifying H-2A applications.<sup>1</sup> It is further

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<sup>1</sup> For purposes of this Order, the term “qualifying H-2A application” shall mean a Form ETA-9142A and all its supporting documentation that:

- Was filed with the DOL before this case was filed in this Court on October 31, 2019;

3. ORDERED that for any qualifying H-2A applications currently in the administrative review process, a CO will re-review such applications pursuant to the terms of this Order within seven days of that administrative review being completed or the application being remanded to the CO by the administrative law judge. It is further

4. ORDERED that, when conducting their re-review, the CO will determine whether or not the majority of the duties for each worker listed on the application would qualify as “agricultural labor or services,” and if so, will deem that application to have satisfied the requirement that TLCs be granted for “agricultural labor or services.” It is further

5. ORDERED that, in reviewing job duties, the CO will treat hauling incident to harvesting that occurs on the site of a farm (or farms) as “agricultural labor or services.” It is further

6. ORDERED that, should any qualifying H-2A applications once again be found deficient, the CO will issue a Notice of Deficiency, including possible modifications required for acceptance, as specified in 20 C.F.R. § 655.143. It is further

7. ORDERED that, should any qualifying H-2A applications be denied, the ALCs will have the same opportunity for administrative review accorded to all applicants under

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- Has a period of need that extends beyond seven days from the date of this Order; and
  - Was filed by an Agricultural Labor Contractor that:
    - Had received a certification for the same or nearly the same work in a prior year; and
    - Is a named plaintiff in this matter or was a member of one of the named plaintiff associations (FFVA, FCM, or NCAE) at the time this case was filed. This fact may be proven by affidavit if necessary.


the Department of Labor's regulations. It is further

8. ORDERED that, throughout this administrative review process, the Secretary of Labor and his designees shall be bound by the terms of the ORDER. It is further

9. ORDERED that, in accordance with Federal Rule of Civil Procedure 65(d), Defendants shall provide actual notice of this Order to their officers, agents, servants, employees, attorneys, and all those in active concert and participation with them, including all relevant state workforce agencies, so as to ensure compliance. It is further

10. ORDERED that, pursuant to Rule 65(c), it appearing to the Court that the Defendants will suffer no monetary harm as a result of this Preliminary Injunction, Plaintiffs shall post bond with the Clerk of this Court in the amount of \$300.00.

**SO ORDERED.**

  
RICHARD J. LEON  
United States District Judge