WHEN POLITICS PROFOUNDLY AFFECT THE AGRICULTURE INDUSTRY: THE ROLE OF JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS IN *NORTH CAROLINA GROWERS' ASS'N, INC. V. SOLIS*

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I. INTRODUCTION

In America, the transition from one presidential administration to another necessarily brings about change. Due to the recent transition from the Bush administration to the Obama administration, litigation concerning changes to the H-2A Agricultural Guest Worker Program (hereinafter the "H-2A program") has erupted. This program provides an avenue through which United States employers are able to legally offer employment to non-citizens on a short-term basis.[1] In *North Carolina Growers' Ass'n, Inc. v. Solis*, farmers, foresters associations, and others brought suit against the Department of Labor (DOL), the Department of Homeland Security (DHS), and the secretaries of both departments (collectively "Defendants") because of these changes in administrative policy.[2]

Part of the Obama administration, the Defendants formulated a new rule, called the "Substitution Rule," governing the short-term employment of nonimmigrant agricultural workers.[3] This rule suspended a regulation recently instituted by the Bush administration (2008 Rule) and temporarily reinstated a prior regulation.[4] Plaintiffs alleged that the Defendants' action violated the Administrative Procedure Act, 5 U.S.C. §§553 and 701 (hereinafter "APA") and moved for a preliminary injunction.[5] Ultimately, U.S. District Judge Osteen, Jr., granted the Plaintiffs' motion.[6]

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[1] Ayesha Rascoe, *US Guest Worker Program Hurt Farm Workers*, REUTERS (Feb. 21, 2008, 2:33 PM), http://www.reuters.com/article/reutersEdge/idUSN2165176420080221?sp=true.

[2] N.C. Growers' Ass'n, Inc. v. Solis, 644 F. Supp. 2d 664, 667- 68 (M.D.N.C. 2009) (the full list of plaintiffs is as follows: Carolina Growers' Association, Inc., National Christmas Tree Association, Florida Fruit and Vegetable Association, Inc., Virginia Agricultural Growers Association, Inc., Snake River Farmers Association, National Council of Agricultural Employers, North Carolina Christmas Tree Association, North Carolina Pickle Producers Association, Florida Citrus Mutual, North Carolina Agribusiness Council, Inc., Maine Forest Products Council, Alta Citrus, LLC, Everglades Harvesting and Hauling, Inc., Desoto Fruit and Harvesting, Inc., Forest Resources Association, Titan Peach Farms, Inc., H-2A USA, Inc. and Overlook Harvesting Company, LLC).

[3] *Id.* at 667.

[4] *Id.*

[5] *Id.* at 668.

[6] *Id.* at 667.

N.C. Growers' Ass'n, Inc. will impact many areas throughout the United States that rely upon the workers the H-2A program provides. The H-2A program is utilized as far east as North Carolina, as illustrated by the case at hand, and as far west as California.[7] The United States contains a large agricultural industry and farmers are dependent upon nonimmigrant agricultural workers to keep their farming operations running. Based on estimates, roughly 78% of U.S. agricultural workers are born outside of the United States.[8] The absence of these workers, therefore, would have an enormous negative impact upon the farming industry and therefore the entire U.S. economy.

The remainder of this Comment will discuss *N.C. Growers' Ass'n, Inc.* and the impact of the policy changes to the H-2A program. Section II provides background information concerning the H-2A program, the relevant political backdrop, and the facts and procedural history of *N.C. Growers' Ass'n, Inc.* Section III examines the decision of the United States District Court for the Middle District of North Carolina, and section IV discusses the impact of this case on the agriculture industry throughout the United States.

II. BACKGROUND

A. H-2A Program Established To Assist Agricultural Employers

In the United States, employers have frequently faced shortages of "domestic workers who are able, willing, and qualified to fill seasonal agricultural jobs."[9] Thus, the H-2A program was created to provide a solution to employers who anticipate such problems.[10] The program allows agricultural employers to legally bring nonimmigrant foreign workers in to the United States to "perform agricultural labor or services of a temporary or seasonal nature."[11] While this is a type of legal migration to the United States, because it is a temporary program, nonimmigrant workers within the

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[7] Christine Souza, *Labor Department Reverses Changes to H-2A Program,* CALIFORNIA FARM BUREAU FEDERATION, AG ALERT (June 3, 2009), http://cfbf.com/agalert/AgAlertStory.cfm?ID=1320&ck=2A50E9C2D6B89B95BCB416D6857F8B45 (last visited Nov. 20, 2009).

[8] Rascoe, *supra* note 1.

[9] *H-2A Temporary Agricultural Worker Program,* DEP'T OF HOMELAND SECURITY, http://www.dhs.gov/files/programs/gc_1234207302139.shtm (last modified Feb. 9, 2009) [hereinafter DHS H-2A Program].

[10] *H-2A Temporary Agricultural Program,* U.S. DEP'T OF LABOR, http://www.foreignlaborcert.doleta.gov/h-2a.cfm (last updated Sept. 15, 2010) [hereinafter DOL H2-A Program].

[11] *Id.*

United States through the H-2A program are required to leave following a certain time period.[12]

Three federal agencies administer the H-2A program: (1) the Department of Labor; (2) the U.S. Citizenship and Immigration Services (USCIS); and (3) the Department of State (DOS).[13] Generally, the DOL issues "H-2A labor certifications and oversees compliance with labor laws."[14] In order to become certified for the H-2A program, an employer is required to file an application with the DOL stating that there are not sufficient American workers who are "able, willing, and qualified," and that the employment of aliens "will not adversely affect the wages and working conditions of similarly employed U.S. workers."[15] DOL regulations, as well as some federal statutes, create protections for H-2A workers by requiring minimum wages and establishing standards for working conditions.[16] Additionally, the DOL Wage and Hour Division investigates and enforces nonimmigrant worker contracts with American employers.[17]

Finally, following the submission of an employer's application to the DOL, USCIS "adjudicates the H-2A petitions," and the DOS issues visas to workers approved through the H-2A program at foreign consulates.[18]

B. Political Backdrop Surrounding Changes to H-2A Program

The DOL created specific regulations pertaining to the H-2A program in 1987 (the "1987 Rule").[19] These regulations essentially remained in effect until 2009.[20] Immediately prior to the Obama administration assuming control, "the Bush DOL adopted a final rule (2008 Rule)" setting forth new regulations pertaining to the H-2A program.[21] This rule became effective on January 17, 2009.[22] The Administration stated it intended the changes to remedy existing problems with the previous rule by expressly eliminating duplicative H-2A activities, requiring more rigorous penalties for noncompliance, and otherwise

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[12] DHS H-2A Program, *supra* note 9.
[13] *Id.*
[14] *Id.*
[15] DOL H-2A Program, *supra* note 10.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] 644 F. Supp. 2d at 667 (M.D.N.C. 2009).
[20] *Id.*
[21] *Department of Labor Adopts New H-2A Worker Program Rules,* AMERICAN HORSE COUNCIL, http://www.horsecouncil.org/regulations/DOL_New%20H-2A.php (last visited Sept. 28, 2010) [hereinafter American Horse Council].
[22] 644 F. Supp. 2d at 667.

protecting workers.[23] However, critics contend that the 2008 Rule also reduced the wage rates of workers participating in the H-2A program, thus actually harming nonimmigrant workers.[24]

In March of 2009, the Obama DOL "issued a notice of proposed rulemaking (2009 NPRM)" that proposed to "suspend" the newly implemented rule for nine months and reinstate the 1987 Rule.[25] The DOL limited the 2009 NPRM to a comment period of ten days; however, the DOL also informed interested parties that certain comments would not be considered in creating any new rule.[26] Specifically, the DOL provided the following notice:

> Please provide written comments only on whether the Department should suspend the December 18, 2008 final rule for further review and consideration of the issues that have arisen since the final rule's publication. Comments concerning the substance or merits of the December 18, 2008 final rule or the prior rule will not be considered.[27]

The Obama DOL in May 2009 issued a new H-2A rule (Substitution Rule), which became effective in June of that year.28 Federal regulations summarized the Substitution rule in the following manner:

> The Department of Labor (DOL or Department) is suspending the H-2A Final Rule published on December 18, 2008 and in effect as of January 17, 2009... To ensure continued functioning of the H-2A program, the Department is republishing and reinstating the regulations in place on January 16, 2009 for a period of 9 months, after which the Department will either have engaged in further rulemaking or lift the suspension.[29]

The Substitution Rule specifically states that, "[t]hough all comments have been reviewed, only those comments responding to issues on which the DOL sought comment were considered in the Final Rule."[30]

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[23] Temporary Agricultural Employment of H–2A Aliens in the United States; Modernizing the Labor Certification Process and Enforcement, 73 Fed. Reg. 77,110 (Dec. 18, 2008).

[24] *Labor Department Reverses Bush Administration Changes to H-2A Guestworker Program*, FARMWORKER JUSTICE (February 11, 2010), http://www.farmworkerjustice.org/guestworker-programs/h-2a/190-labor-department-reverses-bush-administration-changes-to-h-2a-guestworker-program.

[25] 644 F. Supp. 2d at 667.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] Temporary Employment of H-2A Aliens in the United States, 74 Fed. Reg. 25,972 (May 29, 2009).

[30] *Id.* at 25,973.

Despite the new policy concerns, the Substitution Rule also contained a grandfather provision stipulating "that the 2008 Rule applies to all H-2A applications filed prior to the Substitution Rule's effective date."[31]

C. Facts and Procedural History Of North Carolina Grower's Ass'n, Inc. v. Solis

On June 9, 2009, farmers and foresters associations, and other groups, including North Carolina Growers' Association, Inc., (hereinafter "Plaintiffs") filed a complaint in federal district court.[32] The Plaintiffs named the DOL, Hilda L. Solis, Secretary of the DOL, the DHS, and Janet Napolitano, Secretary of the DHS as Defendants.[33] In their complaint, Plaintiffs alleged that Defendants violated APA §§ 553 and 701 by instituting the Substation Rule.[34] Further on June 9, 2009, the "Plaintiffs filed a motion to preliminarily enjoin the Defendants from implementing the Substitution Rule."[35]

On June 18, 2009, United Farm Workers (UFW) along with eighteen agricultural workers filed a Motion to Intervene as Parties Defendant.[36] The court allowed UFW and the workers "to intervene for the limited purpose of [challenging] Plaintiffs' motion for preliminary injunctive relief."[37] The court also permitted the intervening parties "to participate in an oral argument hearing on Plaintiffs' motion."[38]

III. ANALYSIS OF COURT'S DECISION

A. Holding

The district court first held that Plaintiffs had established that they would likely suffer irreparable harm in "unrecoverable economic damages" by the absence of a preliminary injunction.[39] Second, the court found that Defendants were unlikely to suffer significant harm if the preliminary injunction motion were granted.[40] Further, the court held that Plaintiffs had established a likelihood of prevailing on the merits of their violation of the APA claim.[41] Due to these findings, the court ultimately granted Plaintiffs'

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[31] 644 F. Supp. 2d at 667.
[32] *Id.* at 667-68.
[33] *Id.* at 668.
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] 644 F. Supp. 2d at 668.
[38] *Id.*
[39] *Id.* at 669.
[40] *Id.* at 672.
[41] *Id.* at 671.

Motion for Preliminary Injunction against action taken under the new Substitution Rule promulgated by the Obama Administration.[42]

B. Legal Standards

Plaintiffs sought a preliminary injunction to prevent the DOL and DHS from implementing the Substitution Rule regulation, which "governs the short-term employment of nonimmigrant agricultural workers."[43] The court noted, however, that judicial review of agency action is utilized only in limited circumstances.[44] Although a court may not provide a substitute judgment for that of an agency, "an agency's actions may be set aside if found to be 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'"[45] In order to make this determination, a court must define what actions are considered arbitrary and capricious. The *N.C. Growers' Ass'n, Inc.* court used the following definition in its decision:

> Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.[46]

Thus, in *N.C. Growers' Ass'n, Inc.* Defendants' actions in formulating the Substitution Rule must have fallen into the above category for Judge Osteen, Jr. to consider granting the Plaintiffs' Motion for Preliminary Injunction.

Further, preliminary injunctions themselves "are extraordinary remedies involving the exercise of very far-reaching power to be granted only sparingly and in limited circumstances."[47] In determining whether preliminary injunction relief was appropriate in this case, the court employed a "balance-of-hardships test."[48] This test considers four factors:

> (1) the likelihood of irreparable harm to the plaintiffs if injunctive relief is denied; (2) the likelihood of harm to the defendants if the order is granted; (3) the likelihood that the

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[42] *Id.* at 674.

[43] 644 F. Supp. 2d at 666.

[44] *Id.* at 669.

[45] *Id.* (quoting 5 U.S.C. § 706(2)(A) (2006)).

[46] 644 F. Supp. 2d at 669 (quoting Motor Vehicles Mfrs. Ass'n of the U.S. v. State Farm Mut.Auto. Ins. Co., 463 U.S. 29, 43 (1983)).

[47] 644 F.Supp. 2d at 668 (quoting MicroStrategy, Inc. v. Motorola, Inc., 245 F.3d 335, 339 (4th Cir. 2001)).

[48] 644 F.Supp. 2d at 668 (employing the test articulated by the 4th Circuit in Blackwelder Furniture Co. v. Seilig Mfg. Co., 550 F.2d 189 (4th Cir. 1977)).

> plaintiffs will prevail on the merits; and (4) the degree to which the public interest is served by issuance of injunctive relief.[49]

The burden of establishing that each of these factors supports granting the injunction lies with the plaintiff.[50]

C. Balance-Of-Hardships Test

1. Irreparable Harm to Plaintiffs

The court in *N.C. Growers' Ass'n, Inc.* began the "balance-of-hardships test" by first analyzing whether Plaintiffs would clearly suffer irreparable harm absent injunctive relief.[51] The court found that such damages would result due to the increase in wages agricultural employers would be forced to pay because of the implementation of the Substitution Rule.[52] Specifically, the H-2A minimum wage that North Carolina farmers would be required to pay under the 2008 Rule would range from $7.25 to $8.51 per hour.[53] However, these same farmers would be required to pay $9.34 per hour under the 1987 Rules.[54] In the absence of injunctive relief, the Plaintiffs would suffer actual and immediate harm because they planned to submit H-2A applications after the Substitution Rule went into effect.[55] Accordingly, the "grandfather" provision would not apply to them.[56]

For several reasons, the court found that Plaintiffs' economic losses were unrecoverable. First, the doctrine of sovereign immunity bars suits for economic damages against the federal government and federal agencies.[57] Second, Plaintiffs would be unable to recover their losses from H-2A workers as Plaintiffs must contractually agree to employment terms consistent with the requirements set forth in the rule.[58] Finally, H-2A workers are nonimmigrant foreign workers and as such, it is highly unlikely Plaintiffs could garnish their wages if, due to the possible future invalidation of the Substitution Rule, it was determined that the workers were overpaid.[59]

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[49] *Id.*

[50] 664 F.Supp. 2d at 668 (quoting Direx Isr., Ltd. v. Breakthrough Med. Corp., 952 F.2d 802 (4th Cir. 1991)).

[51] 664 F.Supp. 2d at 668.

[52] 664 F.Supp. 2d at 669.

[53] *Id.*

[54] *Id.*

[55] *Id.* at 669-670.

[56] *Id.* at 670 n.3.

[57] *Id.* at 670.

[58] 664 F.Supp. 2d at 670.

[59] *Id.*

In further analyzing this particular factor, the court noted that while economic losses generally fail to constitute irreparable harm, this rule is based upon the assumption that economic losses are recoverable.[60] As previously discussed, in this particular case the economic losses Plaintiffs would suffer absent the preliminary injunction would be unrecoverable, placing these farmers in the position of being harmed without any redress. Thus, the court determined that Plaintiffs met their burden of proving that they would suffer irreparable harm absent the granting of injunctive relief.[61]

2. Harm to Defendants

The court then turned to the potential harm Defendants would suffer if the court granted the preliminary injunction.[62] Defendants argued that, "the 2008 Rule...resulted in the depletion of agency resources, increased agency and public confusion, and increased H-2A application processing delays."[63] However, the court concluded that the issuance of a preliminary injunction would not significantly harm Defendants because leaving the 2008 Rule in effect would simply maintain the status quo.[64] The court further found that any harm to Defendants would be entirely too speculative, as the Defendants themselves did not know if the 2008 Rule had or would cause any amount of harm.[65]

In relation to the harm affecting Defendants, the court determined that Plaintiffs would experience greater harm without the existence of an injunction.[66] As money is easier to repay than pay-back, the workers would be able to recover economic damages owed to them upon a future determination that the Substitution Rule became effective.[67] Thus, the intervening Defendants (workers) would not suffer *irreparable* harm if the preliminary injunction were to be granted.[68]

3. Likelihood of Success

According to the court, Plaintiffs demonstrated that they were "likely to prevail on the merits."[69] Because Defendants admitted that the DOL's suspension of the 2008 Rule and reinstatement of the 1987 Rule

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[60] *Id.* at 671 (citing Iowa Utils. Bd. V. F.C.C., 109 F.3d 418, 426 (8th Cir. 1996)).
[61] 644 F.Supp. 2d at 671.
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.* at 672.
[66] *Id.*
[67] 644 F.Supp. 2d at 672.
[68] *Id.*
[69] *Id.*

constituted "rule making" as set forth by the APA, it necessarily followed that they were required to allow the participation of interested parties.[70]

The APA defines "rule making" as an agency's "process for formulating, amending, or repealing a rule."[71] The APA additionally requires that agencies "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments."[72] In this case, the government *restricted* the types of comments that would be considered.[73] Accordingly, the court found that the Plaintiffs presented a substantial question concerning whether or not the Defendants violated the APA in prohibiting interested parties, such as the Plaintiffs, "from participating in the making of the actual rule the DOL proposed to implement, that is, the 1987 Rule."[74] In light of the foregoing reasons, the district court determined that any later court would likely find that "Defendant's formulation of the Substitution Rule was arbitrary and capricious."[75] The DOL declined to "consider comments concerning the merits and substance of the rule they reinstated," without explanation and, therefore, created an arbitrary and capricious rule.[76]

The court further noted the reason why the reinstatement of the 1987 Rule in its entirety might be problematic for Defendants. The Fourth Circuit had previously held that one of the regulations contained in the 1987 Rule was invalid and harmed one of the plaintiffs in the dispute at hand.[77] Consequently, the court found that Plaintiffs were likely to prevail on the merits as the Substitution Rule failed to account for this eventuality when reinstating the 1987 Rule.[78]

4. Public Interest

In order to make their case for a preliminary injunction, Plaintiffs argued that should the court decline to grant their motion, labor shortages would arise and, consequently, food and commodity prices would rise.[79] In response, the Defendants took the position that the issuance of a preliminary injunction would pose problems for non-H-2A workers.[80] Specifically, Defendants suggested that "non-H-2A worker wages might be

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[70] *Id.*
[71] 5 U.S.C. § 551(5) (2006).
[72] 5 U.S.C. § 553(c) (2006).
[73] 644 F.Supp. 2d at 667.
[74] *Id.* at 673.
[75] *Id.*
[76] *Id.*
[77] *Id.* at 674.
[78] *Id.*
[79] 644 F. Supp. 2d at 674.
[80] *Id.*

depressed and the government may have to bear the cost of administering an H-2A rule that might be changed by the current Presidential Administration for policy reasons."[81] The court found that neither public interest concerns articulated by the parties was profoundly more important than the other, and the overall public interest would be advanced to the same degree regardless of the ruling on Plaintiffs' Motion for Preliminary Injunction.[82]

IV. IMPLICATIONS

A. Immediate Implications

According to reports for the 2007 fiscal year, USCIS received 6,212 H-2A petitions and approved 6,134 petitions for 78,089 beneficiaries.[83] In turn, the DOS issued 50,791 H-2A visas.[84] Simply based on the number of visas issued in recent years, a large number of agricultural employers and nonimmigrant workers will be affected by both the recent changes made to the H-2A program and the *N.C. Growers' Ass'n, Inc.* decision.

Further, *N.C. Growers' Ass'n, Inc.* is likely to cause a great deal of confusion in the agriculture industry. Prior to January 17, 2009, the 1987 rule governed the H-2A program. Subsequent to that date, the 2008 Rule applied to this same program. However, prior to the court's decision, it appeared as though the 1987 Rule would again be the governing rule after June 29, 2009 for at least nine months. Nevertheless, the district court's decision again changed the rule applicable to the H-2A program. Understandably, employers and workers in the agriculture industry may not be certain which rule applies in the coming years.

A return to the 2008 Rule permits agricultural employers to pay lower wages in order to keep their wage-associated costs down. Their profits will increase and the costs of agricultural products should not be as high as they would be if the employers were forced to pay higher wages. Furthermore, a decrease in the cost of employing foreign nonimmigrant agricultural workers could reduce the economic incentives for employers to hire undocumented immigrants. However, a return to the 2008 Rule also has implications for the nonimmigrant foreign workers. The lower wages could provide a disincentive for them to come to the United States. Those workers who do come could suffer, among other negative effects, an overall reduction in their quality of life while working in the United States.

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[81] *Id.*
[82] *Id.*
[83] DHS H-2A Program, *supra* note 9.
[84] *Id.*

It is important for attorneys practicing in the immigration field to be apprised of the changes to the H-2A program. This program certainly affects foreign workers and the employers who wish to bring them to the U.S. to work in the farm fields. With each alteration to the program, the rights of both concerned parties in this issue change. Of great importance is the wage rate to which this federal program requires the workers to be entitled. Attorneys must be familiar with the current version of the H-2A program to effectively represent H-2A workers in the event the client's employer fails to act in accordance with the rules of the program.

B. Long-Term Implications

In response to the decision in *N.C. Growers' Ass'n, Inc.*, the Obama DOL published a proposed H-2A rule in the *Federal Register* (2009 Proposed Rule) on September 4, 2009.[85] Comments for this proposed rule were due October 20, 2009.[86] Ultimately, the Obama DOL worked to drastically alter the 2008 Rule because it felt that the rule failed to "provide an adequate level of protection for either U.S. or Foreign workers."[87]

The 2008 Rule, under the Bush administration, "intended to make the H-2A program more usable and efficient."[88] However, the 2009 Proposed Rule provisions added "new and burdensome requirements," and the 2010 Proposed Rule (issued on Feb. 12, 2010) left most of these provisions in place.[89] Among other changes, the 2010 Proposed Rule requires an employer "to reimburse H-2A workers for the cost of travel from their actual home (in their country of origin) to the location of the worksite."[90] The 2008 Rule, however, "only required reimbursement [of] cost[s] for travel from the U.S. consulate to the location of the worksite."[91] Another difference between the two rules is that the 2010 Proposed Rule imposes higher fines for program violations than the 2008 Rule.[92]

On February 11, 2010, the Department of Labor again announced new regulations for the H-2A Program that essentially undo changes to the

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[85] American Horse Council, *supra* note 21.

[86] Josh Waxman, *DOL Extends Comment Period for Proposed Revisions to H-2A Program*, WASHINGTON LABOR AND EMPLOYMENT WIRE, Oct. 1, 2009, 10:04 PM, http://washlaborwire.com/2009/10/01

/dol-extends-comment-period-for-proposed-revisions-to-h-2a-program/ (providing a link with which to view submitted comments).

[87] *Id.*

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] *Id.*

[92] American Horse Council, *supra* note 21 (ranging in amount from $1,000 for the least serious violations to $100,000 for will or repeat violations).

program made by the Bush Administration.[93] These new rules took effect on March 15, 2010.[94] According to the Obama DOL, "Overall benefits of the final rule include increased wages for workers and greater access to the domestic labor market. The new rule ensures that U.S. workers in the same occupation working for the same employer, regardless of date of hire, receive no less than the same wage as foreign workers; provides more transparency by creating a national electronic job registry where job orders will be posted through 50 percent of the contract period; and protects against worker abuses by prohibiting cost-shifting from the employer to the worker for recruitment fees, visa fees, border crossing fees and other U.S. government mandated fees."[95] However, farm employers say these new changes make the program more bureaucratic and expensive.[96] Clearly, changes implemented by the new rules are either appealing or appalling, depending on whether you are an agricultural employer or a nonimmigrant foreign worker participating in the H-2A program.

On April 9, 2010, Judge Osteen of the U.S. District Court for the Middle District of North Carolina held a hearing on the request for a preliminary injunction filed by the North Carolina Growers Association and the American Farm Bureau Federation as part of their lawsuit to overturn the H-2A program regulations issued by Secretary of Labor Hilda Solis.[97] Judge Osteen denied their request and the new rules for the H-2A guestworker program currently remain in effect.[98] Furthermore, North Carolina Growers Association and the American Farm Bureau Federation have dropped the lawsuit altogether.[99]

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[93] *Labor Department Reverses Bush Administration Changes to H-2A Guestworker Program*, FARMWORKER JUSTICE (February 11, 2010), http://www.fwjustice.org/guestworker-programs/h-2a.

[94] *Labor Department Reverses Bush Administration Changes to H-2A Guestworker Program*, FARMWORKER JUSTICE (February 11, 2010), http://www.fwjustice.org/guestworker-programs/h-2a.

[95] *Secretary of Labor Hilda L. Solis Announces Final Rule for H-2A Program*, U.S. DEP'T OF LABOR http://www.dol.gov/opa/media/press/eta/eta20100198.htm

[96] Christine Souza, *Revised Foreign Worker Program Beset by Delays*, CALIFORNIA FARM BUREAU FEDERATION, AG ALERT (June 9, 2010), http://www.cfbf.com/agalert/AgAlertStory.cfm?ID=1555&ck=B2DD140336C9DF867C087A29B2E66034.

[97] *Federal Court Rejects Agribusiness Attack on Obama Administration Rules on Agricultural Guestworkers*, FARMWORKER JUSTICE (April 9, 2010), http://www.fwjustice.org/guestworker-programs/h-2a.

[98] *Federal Court Rejects Agribusiness Attack on Obama Administration Rules on Agricultural Guestworkers*, FARMWORKER JUSTICE (April 9, 2010), http://www.fwjustice.org/guestworker-programs/h-2a.

[99] Barb Howe, *Growers Drop Lawsuit Against Obama Policies on Agricultural Guestworkers*, FARMWORKER JUSTICE (May 25, 2010), http://www.harvestingjustice.org/immigration-labor-rights/526-growers-drop-lawsuit-against-obama-policies-on-agricultural-guestworkers.

V. CONCLUSION

N.C. Growers' Ass'n, Inc. v. Solis is incredibly important and interesting because of its profound financial impact on many individuals, especially agricultural employers and nonimmigrant foreign workers. The district court's decision positively impacted employers as they were permitted to pay lower wages. Unfortunately, the employers' victory may have been at the financial and personal expense of nonimmigrant workers who very often have few advocates to seek enforcement of their rights.

However, this decision also sparked confusion in the agricultural industry over the present state and future of the H-2A Program. This area of the law is in great need of stable and unwavering rules and regulations. The Obama administration has once again altered the H-2A program. Only time will tell if its efforts will prove successful.