

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH 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, 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,)

Plaintiffs,)

v.)

HILDA L. SOLIS, in her)
official capacity as United)
States Secretary of Labor,)
UNITED STATES DEPARTMENT OF)
LABOR, JANET NAPOLITANO, in)
her official capacity as)
United States Secretary of)
Homeland Security, and)
UNITED STATES DEPARTMENT OF)
HOMELAND SECURITY,)

Defendants.)

1:09CV411

MEMORANDUM OPINION AND ORDER

OSTEEN, JR., District Judge

Presently before the court is Applicant Interveners' Motion to Intervene as Parties Defendant (Doc. 37) pursuant to Rule 24 of the Federal Rules of Civil Procedure. All parties have submitted briefs (Docs. 38, 42, 63, 65, and 69), and this motion is now ripe for decision. For the reasons set forth herein, Applicant Interveners' Motion to Intervene as Parties Defendant is granted pursuant to Rule 24(b).

Rule 24(b) allows the court to permit intervention, upon timely motion, of any party who "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). Applicant Interveners' filings thus far raise several issues with such common questions of law and fact. Those common questions include allegations of the lack of irreparable harm to Plaintiffs in the absence of an injunction, the existence of harm caused by the injunction if issued, and the defense that the rules promulgated by the Department of Labor are valid. (App. Int.'s Resp. Br. (Doc. 39) 10-17); (App. Int.'s Br. (Doc. 54) 1-4.) See Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1110 (9th Cir. 2002) (upholding intervention of defendant environmental groups under Rule 24(b) in suit against Secretary of Agriculture to challenge regulations). Unlike Rule 24(a), Rule 24(b) permissive intervention has no "requirement that the

intervenor shall have a direct personal or pecuniary interest in the subject of the litigation," Kootenai at 1108 (quoting SEC v. U.S. Realty & Improvement Co., 310 U.S. 434, 459 (1940)). Even though Applicant Intervenors allege a personal or pecuniary interest in this litigation, a finding to that effect is not required for intervention under Rule 24(b), and this court does not reach that issue.

In determining whether to grant a motion to intervene, "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). Having considered the parties' arguments and any potential delay or prejudice, this court finds that the motion to intervene was timely filed on June 18, 2009. This court further finds that intervention will not unduly delay or prejudice the proceedings. Therefore, Applicant Intervenors' Motion to Intervene as Parties Defendant will be granted. Because the motion to intervene will be granted pursuant to Rule 24(b), this court does not reach the issue of whether Applicant Intervenors should be allowed to intervene as of right pursuant to Rule 24(a) of the Federal Rules of Civil Procedure.

For the reasons set forth herein, it is hereby ORDERED that Applicant Intervenors Motion to Intervene as Parties Defendant (Doc. 37) is GRANTED.

This the 3rd day of December 2009.

William L. Ostro, Jr.
United States District Judge