UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL No. 227, *et al.*, *Plaintiffs*, v. UNITED STATES DEPARTMENT OF AGRICULTURE, *Defendant*.	Civil Action No. 20-2045 (TJK)

MEMORANDUM OPINION AND ORDER

Plaintiffs, five local labor unions and their international affiliate, sue the Department of Agriculture under the Administrative Procedure Act to challenge a waiver program for line speeds at poultry processing plants. Under the program, plants where Plaintiffs' members work are operating at speeds faster than the maximum rate set by regulation, which Plaintiffs say increases workers' risk of injury. Before the Court is Defendant's motion to dismiss under Rule 12(b)(1) for lack of standing and under Rule 12(b)(6) for failure to state a claim because, it argues, worker safety falls outside the zone of interests protected by the governing statute. For the reasons explained below, the Court holds that Plaintiffs have standing and fall within the zone of interests. Thus, it denies the motion.

I. Background

The U.S. Department of Agriculture ("USDA") regulates poultry producers through its Food Safety Inspection Service ("FSIS") under the Poultry Products Inspection Act ("PPIA"). The PPIA was enacted to protect the health and welfare of consumers "by assuring that poultry products distributed to them are wholesome, not adulterated, and properly marked, labeled, and

packaged." 21 U.S.C. § 451. During processing, workers perform repetitive tasks, such as hanging chickens on lines and using saws, knives, scissors, and other tools to debone the birds, while working on lines that carry chicken carcasses through the plant. ECF No. 1 ("Compl.") ¶¶ 16–18. Line speed, or the speed at which the carcasses move, is quantified by the number of birds per minute (bpm), which reflects the time it takes a carcass to be inspected. *Id.* ¶ 27.

Under its current poultry inspection system, the FSIS established a maximum line speed of 140 bpm. *Id.* ¶¶ 28–29, 32–33. After at first proposing 175 bpm, the FSIS ultimately chose the lower speed after considering comments, including some about worker safety. *Id.* ¶¶ 29, 31, 33. In 2018, the FSIS denied a petition from the National Chicken Council, an industry trade association, to increase maximum line speeds. *Id.* ¶¶ 41–45. Instead, the FSIS announced a waiver program to allow some poultry producers to operate at speeds up to 175 bpm if they satisfied certain criteria, such as a history of regulatory compliance. *Id.* ¶¶ 46–50. A plant that receives a waiver must routinely operate at least one line at speeds above 140 bpm on average. *Id.* ¶ 59. As of March 20, 2020, the FSIS is no longer accepting waiver applications, but to date it has granted line-speed waivers to 35 chicken processing plants. *Id.* ¶¶ 63–64.

Plaintiffs represent employees who work on poultry processing lines at plants that have received waivers. *Id.* ¶¶ 1, 65. Plaintiffs bring claims under the Administrative Procedure Act ("APA"), asserting that the USDA enacted the wavier program without the required notice and comment rulemaking procedures, and that its decision to do so was both arbitrary and capricious and otherwise unlawful. *Id.* ¶ 76–90. Defendant, the USDA, has moved to dismiss under Rules 12(b)(1) and 12(b)(6). Defendant argues Plaintiffs lack standing because they have not shown that an increase above 140 bpm causes a substantial increase in the risk of injury. ECF No. 9 at 3. In the alternative, Defendant argues that Plaintiffs fail to state a claim because the PPIA is

concerned with consumer, not worker, safety, and thus their claims thus fall outside the statute's zone of interests. *Id.*

II. Legal Standard

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) "presents a threshold challenge to the court's jurisdiction." *Haase v. Sessions*, 835 F.2d 902, 906 (D.C. Cir. 1987). As federal courts are courts of limited jurisdiction, it is "presumed that a cause lies outside this limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). Thus, when faced with a motion to dismiss under Rule 12(b)(1), "the plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence." *Moran v. U.S. Capitol Police Bd.*, 820 F. Supp. 2d 48, 53 (D.D.C. 2011) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). In reviewing such a motion, while the Court is not limited to the allegations in the complaint and may consider materials outside the pleadings, the Court must "accept all of the factual allegations in [the] complaint as true." *Jerome Stevens Pharm., Inc. v. FDA*, 402 F.3d 1249, 1253 (D.C. Cir. 2005) (alteration in original) (*quoting United States v. Gaubert*, 499 U.S. 315, 327 (1991)).

To survive a motion to dismiss under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Court must "accept the well-pleaded factual allegations as true and draw all reasonable inferences from those allegations in the plaintiff's favor." *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015). But "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

III. Analysis

A. Associational Standing

An association like Plaintiffs may have standing "to redress its members' injuries, even without a showing of injury to the association itself." *United Food & Commercial Workers Loc. 751 v. Brown Grp., Inc.*, 517 U.S. 544, 552 (1996). At the motion to dismiss stage, the association "must plausibly allege or otherwise offer facts sufficient to permit the reasonable inference (1) that the plaintiff has at least one member who 'would otherwise have standing to sue in [her] own right'; (2) that 'the interests' the association 'seeks to protect are germane to [its] purpose'; and (3) that 'neither the claim asserted nor the relief requested requires the participation of [the] individual members in the lawsuit.'" *Pub. Citizen, Inc. v. Trump*, 297 F. Supp. 3d 6, 17–18 (D.D.C. 2018) (quoting *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)).

Plaintiffs have met all three requirements, even if it is not a slam dunk for them. As explained in more detail in a separate section below, Plaintiffs have established that workers on poultry lines with increased line speeds would otherwise have standing to sue in their own right. And in turn, Plaintiffs have no trouble showing that they have "at least one member" who works on such a line. *Pub. Citizen*, 297 F. Supp. 3d at 17. Indeed, Plaintiffs represent workers who work on poultry processing lines at plants that have received FSIS waivers allowing the plants to increase line speeds from 140 bpm to 175 bpm, and have submitted declarations from such workers. *See* Compl. ¶¶ 9–14; ECF No. 11 at 20–21 (citing declarations of workers). And because a plant that receives a waiver must routinely operate at least one line at speeds above 140 bpm on average, or risk having its waiver revoked, these members have been subjected to

the faster line speeds and the associated increased risk of injury.[1] Compl. ¶ 59; ECF No. 11-5 ("Lewis Decl.") ¶¶ 11–13 (reporting faster line speeds); ECF No. 11-14 ("Foster Decl.") ¶ 8 (same). Plaintiffs satisfy the germaneness element as well because they seek to protect the safety and health of workers, which is not merely germane, but central, to a union's purpose. Finally, the asserted APA claims do not require the individual members' participation in this lawsuit. This third element "focus[es] on matters of administrative convenience and efficiency, not on elements of a case or controversy." *Loc. 751*, 517 U.S. at 557. Individual union members are unnecessary parties here because, as Plaintiffs point out, the merits of the APA claims asserted turn only on the administrative record, and not their particular circumstances. *See* ECF No. 11 at 20.

B. Article III Standing

The core of the associational standing analysis in this case turns on whether the workers have standing to otherwise sue in their own right under the familiar, three-part Article III standing test. To establish standing, a plaintiff must show that (1) he has "suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical," (2) "a causal connection" exists between the injury and the challenged conduct, and (3) a favorable decision will likely redress the injury. *Lujan*, 504 U.S. at 560–61 (citations and internal quotation marks omitted).

[1] Defendant is correct that Plaintiffs must show "that at least one specifically identified member has suffered an injury-in-fact." *See* ECF No. 9 at 12 (quoting *Am. Chem. Council v. Dep't of Transp.*, 468 F.3d 810, 815 (D.C. Cir. 2006)). But to the extent Defendant suggests Plaintiffs must have done so in the complaint, that is not required. Declarations suffice, such as those submitted by Plaintiffs. *See Am. Chem. Council*, 468 F.3d at 820 (contemplating that plaintiff organization could have submitted evidence identifying members specifically harmed); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 61 (D.D.C. 2019) (declarations supported injury in fact).

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