

IN THE 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.

Case No. 1:20-cv-02045

DEFENDANT’S MOTION TO DISMISS

Defendant United States Department of Agriculture, by and through undersigned counsel, hereby moves for dismissal of the Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. In support of this motion, Defendant submits the accompanying Memorandum of Points and Authorities and proposed Order.

Dated this 9th day of October, 2020.

Respectfully submitted,

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

ERIC R. WOMACK
Assistant Branch Director

/s/ Cormac A. Early
CORMAC A. EARLY
D.C. Bar No. 1033835
Trial Attorney, U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20005
Tel.: (202) 616-7420
cormac.a.early@usdoj.gov

Counsel for Defendants

**IN THE 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.)

Case No. 1:20-cv-02045

DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF ITS MOTION TO DISMISS

TABLE OF CONTENTS

INTRODUCTION..... 1

BACKGROUND..... 3

I. FSIS’S IMPLEMENTATION OF THE NEW POULTRY INSPECTION SYSTEM..... 3

II. FSIS’S 2018 LINE-SPEED WAIVER CRITERIA AND ISSUANCE OF WAIVERS..... 6

PROCEDURAL BACKGROUND..... 9

STANDARD OF REVIEW..... 10

ARGUMENT..... 11

I. THE COURT SHOULD DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION BECAUSE PLAINTIFFS LACK STANDING..... 11

A. Plaintiffs’ Allegations Cannot Support Associational Standing..... 12

 1. Plaintiffs’ Failure to Identify an Individual Member Requires Dismissal..... 12

 2. Plaintiffs’ Allegations Fail to Demonstrate a Substantial Likelihood of Injury 13

B. Plaintiff’s Allegations Cannot Support Organizational Standing..... 18

II. THE COURT SHOULD DISMISS FOR FAILURE TO STATE A CLAIM BECAUSE PLAINTIFFS’ ALLEGED INJURIES FALL OUTSIDE THE PPIA’S ZONE OF INTERESTS..... 20

CONCLUSION..... 23

..

TABLE OF AUTHORITIES

<i>Am. Chemistry Council v. Dep't of Transp.</i> , 468 F.3d 810 (D.C. Cir. 2006).....	2, 12
<i>Am. Fed'n of Gov't Empls., AFL-CIO v. Veneman</i> , 284 F.3d 125 (D.C. Cir. 2002).....	4, 5
<i>Am. Federation of Gov't Employees, AFL-CIO v. Vilsack</i> , 672 Fed. Appx. 36, 38 (D.C. Cir. Nov. 1, 2016)	6
<i>Am. Soc'y for the Prevention of Cruelty to Animals v. Feld Entm't, Inc.</i> , 659 F.3d 13 (D.C. Cir. 2011).....	19
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	10
<i>California v. Trump</i> , --- F. Supp. 3d ---, 2020 WL 1643858 (D.D.C. Apr. 2, 2020).....	19
<i>Chamber of Comm. of U.S. v. EPA</i> , 642 F.3d 192 (D.C. Cir. 2011).....	12
<i>Ctr. for Biological Diversity v. EPA</i> , 861 F.3d 174 (D.C. Cir. 2017).....	19
<i>EEOC v. St. Francis Xavier Parochial School</i> , 117 F.3d 621 (D.C. Cir. 1997).....	10
<i>Equal Rights Ctr. v. Post Props, Inc.</i> , 633 F.3d 1136 (D.C. Cir. 2011).....	18
<i>Food & Water Watch, Inc. v. Vilsack</i> , 808 F.3d 905 (D.C. Cir. 2015).....	2, 6, 15
<i>Havens Realty Corp. v. Coleman</i> , 455 U.S. 363 (1982).....	19
<i>Hazardous Waste Treatment Council v. Thomas</i> , 885 F.2d 918 (D.C. Cir. 1989).....	21, 23
<i>Herbert v. Nat'l Acad. of Scis.</i> , 974 F.2d 192 (D.C. Cir. 1992).....	10
<i>Hunt v. Wash. State Apple Advert Comm'n</i> , 432 U.S. 333 (1977).....	11, 12

...

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.