

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SUN VALLEY ORCHARDS, LLC,)	
)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. _____
)	
U.S. DEPARTMENT OF LABOR,)	
and MARTIN J. WALSH, in his)	
official capacity as United States)	
Secretary of Labor,)	
)	
<i>Defendants.</i>)	
_____)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AND DEMAND FOR JURY TRIAL**

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** Pro hac motion to be filed*

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Attorneys for Plaintiff Sun Valley Orchards, LLC

LOCAL RULE 10.1 STATEMENT

1. The mailing addresses of the parties to this action are:

Sun Valley Orchards, LLC
29 Vestry Road
Swedesboro, NJ 08085

Department of Labor
200 Constitution Avenue N.W.
Washington, D.C. 20001

Martin J. Walsh, U.S. Secretary of Labor
200 Constitution Avenue N.W.
Washington, D.C. 20001

INTRODUCTION

2. Sun Valley Orchards, a family farm in New Jersey, has spent nearly five years in proceedings before agency judges, attempting to contest the U.S. Department of Labor's decision to subject the farm to over half a million dollars in liability. The bulk of that assessment—over \$320,000—is related to a paperwork violation: When filling out paperwork to participate in a DOL visa program for migrant farm workers, the farm indicated that it would give workers access to a kitchen when, in fact, it offered a meal plan under which workers could purchase food at a cost of approximately \$3.75 per meal. The farm was in its first year participating in the H-2A visa program when it made that mistake, and DOL's only complaint about the meal plan was that it was not accurately described in the farm's paperwork; in subsequent years, the farm has offered the same meal plan without DOL raising any objections.

3. DOL in this case has appointed itself prosecutor, judge, and jury. The monetary award was first assessed by DOL inspectors, was then affirmed by a DOL administrative law judge after an administrative hearing, and was finally affirmed by an appellate panel of DOL judges. DOL wrote the governing regulations with only minimal congressional guidance, and

DOL invented an agency adjudicatory process with *no* congressional authorization. The agency made the law and found the facts, and then the agency decided the penalty.

4. The Complaint in this case raises a claim under Article III of the U.S. Constitution. If an agency wants to impose this kind of financial liability, then the agency should be required to proceed before a real federal judge in a real federal court. At a minimum, an agency should not be able to take over the judicial function without a clear direction from Congress providing for adjudication in an agency court.

5. The Complaint raises other claims as well. The award was imposed by agency judges who were appointed in violation of the Appointments Clause. And the imposition of hundreds of thousands of dollars in liability for a paperwork violation also separately violates the Excessive Fines Clause. Indeed, even under the Administrative Procedure Act's deferential standard of review, the DOL's award is unsupported by substantial evidence, an abuse of discretion, and not in accordance with law. Five years after this administrative odyssey began, the DOL's unconstitutional award should be set aside.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201, 2202 and 5 U.S.C. § 702.

7. Venue lies in this Court pursuant to 28 U.S.C. § 1391(e). Sun Valley Orchards is located at 29 Vestry Road, Swedesboro, NJ 08085, which is within Gloucester County and the Camden vicinage of the United States District Court for the District of New Jersey. Plaintiff Sun Valley Orchards resides at that address, and a substantial part of the events giving rise to the governmental enforcement action at issue in this case also occurred at those premises.

THE PARTIES

8. Plaintiff Sun Valley Orchards, LLC is a family-owned limited liability company organized under the laws of New Jersey. Joseph Marino is the Managing Partner of Sun Valley Orchards, and he owns and operates the company together with his brother Russell Marino. Sun Valley Orchards operates a vegetable farm in southern New Jersey, growing crops including peppers, squash, eggplant, cucumbers, and asparagus.

9. Defendant U.S. Department of Labor (“DOL”) is the federal administrative agency responsible for bringing enforcement actions against employers for alleged violations of the rules and regulations of the H-2A visa program. The enforcement proceeding at issue in this case was initiated by DOL personnel, tried by DOL attorneys, heard and decided by a DOL judge, and then affirmed by a panel of DOL appellate judges.

10. Defendant Martin J. Walsh is sued in his official capacity as the U.S. Secretary of Labor. In that capacity, he is responsible for the oversight, administration, and enforcement of the H-2A visa program.

REGULATORY BACKGROUND

The Statutory Framework

11. The H-2A visa program was created by Congress in 1986, as part of the Immigration Reform and Control Act, Pub. L. No. 99-603, 100 Stat 3359. The H-2A program allows for employment of foreign nationals as temporary agricultural workers in circumstances where an employer’s needs cannot be met out of the domestic labor pool. *See* 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a); 1188(a).

12. Congress has enacted express provisions to govern the debarment of H-2A employers who allegedly violate H-2A regulations. Under these provisions, DOL may debar an

employer for up to three years if the employer “substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers.” 8 U.S.C. § 1188(b)(2). If an employer contests its debarment, the statute also expressly provides for “a de novo administrative hearing respecting the denial or revocation.” *Id.* § 1188(e).

13. By contrast, Congress has *not* authorized agency judges to impose monetary penalties for violations of the H-2A program through agency adjudication.

14. DOL’s statutory authority to impose monetary penalties for H-2A violations is found in a single, vague provision: “The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.” 8 U.S.C. § 1188(g)(2).

15. Notably, while Section 1188(g)(2) authorizes the Secretary of Labor to impose “appropriate penalties,” the statute says nothing at all about imposing such penalties in administrative proceedings before agency judges.

16. To the contrary, Congress has specifically provided that “[w]henver a civil fine, penalty or pecuniary forfeiture is prescribed for the violation of an Act of Congress without specifying the mode of recovery or enforcement thereof, it may be recovered in a civil action.” 28 U.S.C. § 2461(a). When Congress authorized the Secretary of Labor to impose penalties for violations of H-2A violations, Congress thus authorized the Secretary of Labor to impose those penalties “in a civil action”—not an administrative proceeding before an administrative judge.

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