

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

**JOSE MANUEL REQUENA and)
OSCAR REQUENA, Individually and)
On Behalf of the Estate of Maria Hernandez,)**

Plaintiffs,)

vs.)

Case No. _____

PILGRIM’S PRIDE CORPORATION,)

Defendant)

**DEFENDANT PILGRIM’S PRIDE CORPORATION’S
NOTICE OF REMOVAL**

Defendant Pilgrim’s Pride Corporation (“Pilgrim’s”) files its Notice of Removal to remove this action to the United States District Court for the Eastern District of Texas, Lufkin Division, pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446. Plaintiffs Jose Manuel Requena and Oscar Requena, individually and on behalf of the Estate of Maria Hernandez (collectively, “Plaintiffs”), originally filed this action in the 217th Judicial District Court of Angelina County, Texas, where the action is currently pending.

I. NATURE OF THE ACTION

1. This is a wrongful death and survival action filed by the sons of a deceased employee of Pilgrim’s Lufkin, Texas poultry processing plant who allegedly contracted COVID-19. (*See generally* Plaintiff’s Original Petition (“Pet.”) attached hereto as Exhibit (“Ex.”) A.)

2. The sons, Plaintiffs Jose Manuel Requena and Oscar Requena, claim their mother, Maria Hernandez, was “instructed to report to work in the Shipping and Labeling department” of Pilgrim’s meat processing facility “to fill in for Pilgrim’s workers who were absent due to a COVID-19 outbreak.” (*Id.* ¶¶ 5, 18.)

3. Ms. Hernandez's sons allege Pilgrim's committed negligence by sending Ms. Hernandez to work in a section of the meat processing facility without allegedly providing her with adequate warnings, personal protection equipment, and without taking reasonable steps to render the area safe. (*Id.* ¶¶ 24-32.)

4. Ms. Hernandez's sons also blame Pilgrim's for not shutting down the Lufkin meat processing facility like "other employers." (*Id.* ¶ 8.)

5. Although Ms. Hernandez's last day at the Pilgrim's Lufkin meat processing plant was Monday, May 4, 2020 (*id.* ¶ 19), Plaintiffs do not allege Ms. Hernandez tested positive for COVID-19 on or before that date. (*See generally* Pet.; *see also id.* ¶ 21.)

6. The lawsuit also does not allege Ms. Hernandez worked alongside any Pilgrim's employee infected with COVID-19 or any employee that Pilgrim's knew was infected with COVID-19. (*See generally id.*)

7. On May 8, 2020, Ms. Hernandez passed-away allegedly "of complications related to COVID-19" (*Id.* ¶ 22.)

8. Approximately one month after Ms. Hernandez died, Plaintiffs filed this lawsuit against Pilgrim's in an Angelina County, Texas state court seeking "over \$1,000,000" in damages for Ms. Hernandez's death. (*Id.* ¶ 32.)

9. Plaintiffs allege negligence and gross negligence causes of action against Pilgrim's. (*Id.* ¶¶ 24-32, 34-36.)

II. REMOVAL IS TIMELY

10. On June 9, 2020, Plaintiffs filed their Original Petition ("Petition") in the 217th Judicial District Court of Angelina County, Texas, styled *Jose Manuel Requena and Oscar*

Requena, individually and on behalf of the Estate of Maria Hernandez v. Pilgrim's Pride Corporation, Cause No. CV-00296-20-06. (See Pet.)

11. Service was made on Pilgrim's on June 11, 2020. (See Ex. A.)

12. Pursuant to 28 U.S.C. § 1446(a), a copy of the Petition and all process and pleadings served upon Pilgrim's are attached to this notice as Exhibit "A."

13. Pursuant to 28 U.S.C. § 1446(b), this Notice is filed within thirty (30) days of the date Pilgrim's was served with the Petition.

III. REMOVAL IS PROPER

14. Removal is proper pursuant to 28 U.S.C. § 1332 because complete diversity exists between Plaintiffs and Defendant Pilgrim's, and the amount-in-controversy exceeds \$75,000.00.

15. Additionally, removal is proper under 28 U.S.C. § 1331 because this action arises under the Constitution, laws, or treaties of the United States.

16. Each basis for jurisdiction will be addressed in turn.

A. Complete Diversity Exists and the Amount-in-Controversy Exceeds \$75,000.00.

17. Plaintiff Jose Manuel Requena is alleged to be a resident of Texas. (Pet. ¶ 1.)

18. Plaintiff Oscar Requena is alleged to be a resident of Texas. (Pet. ¶ 2.)

19. The deceased, Ms. Hernandez, is alleged to have been a resident of Texas. (Pet. ¶ 16, 19; see also *id.* ¶¶ 1-2.)

20. Defendant Pilgrim's is a Delaware corporation with its principal place of business in Colorado. (*Id.* ¶ 3.)

21. If liability is imposed and damages are awarded in this case (which is contested), Plaintiffs allege "they are seeking monetary relief over \$1,000,000." (*Id.* ¶ 32.)

22. Based on the foregoing, the Petition demonstrates that the amount-in-controversy exceeds the sum or value of \$75,000.00 and is between the citizens of different states as required under 28 U.S.C. § 1332.

B. Federal Question Jurisdiction Exists Over This Dispute.

23. This Court also has federal question jurisdiction under 28 U.S.C. § 1331 and *Grable & Sons Metal Products, Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005). Plaintiffs' state-law claims "necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Gunn v. Minton*, 568 U.S. 251, 258 (2013) (citing *Grable*, 545 U.S. at 314). "Where all four of these requirements are met . . . jurisdiction is proper because there is a 'serious federal interest in claiming the advantages thought to be inherent in a federal forum.'" *Gunn*, 568 U.S. at 258 (quoting *Grable*, 545 U.S. at 313–14).

24. One essential question is embedded in each of Plaintiffs' claims: In the midst of a presidentially declared national emergency, how must America's meat processing facilities balance the interests of safeguarding workplace health and safety with their ongoing obligation to feed the American people? Any duty ascribed to Pilgrim's unavoidably implicates President Trump's explicit directive regarding the safe operation of meat processing facilities during the pandemic, as well as federal policies governing the nation's food supply, national security, and economy. *See* Exec. Order No. 13917, "Delegating Authority Under the Defense Production Act With Respect to Food Supply Chain Resources During the National Emergency Caused by the Outbreak of COVID-19," 85 Fed. Reg. 26313 (Apr. 28, 2020) ("Food Supply Chain Order") (invoking authority under the Defense Production Act, 50 U.S.C. § 4501 *et seq.*). All four of the

Grable factors are satisfied here because the remedy Plaintiffs seek threatens to interfere with federal policies over matters of uniquely national importance.

i. Plaintiffs' Claims Necessarily Raise A Federal Issue.

25. The Supreme Court has “recognized for [more than] 100 years that in certain cases federal question jurisdiction will lie over state-law claims that implicate significant federal issues.” *Grable*, 545 U.S. at 312. Federal question jurisdiction may arise from an issue “embedded” in state-law claims, and does not require an asserted statutory violation. *See id.* at 316–19.

26. The exercise of jurisdiction is warranted in a variety of contexts where the application of state law may interfere with a federal interest in “getting the Government’s work done.” *See Boyle v. United Techs. Corp.*, 487 U.S. 500, 505, 509 (1988). In keeping with this principle, courts have recognized such supervening federal interests in an array of cases, including those that concern the design and procurement of military equipment,¹ responding to national emergencies,² and ensuring the integrity of interstate waterways.³

27. The Food Supply Chain Order dispels any doubt that a unique federal interest is implicated here. Pilgrim’s supplies “a scarce and critical material essential to the national defense,” as defined by the Defense Production Act of 1950. *See* 85 Fed. Reg. 26313, 26313 (meat and poultry suppliers constitute “critical infrastructure during the national [COVID-19] emergency”). Indeed, Plaintiffs *concede* that Pilgrim’s “distributes chicken and chicken products under various brands.” (Pet. ¶ 9.)

¹ *See Boyle*, 487 U.S. at 505, 509 (finding a “uniquely federal interest” in contracts for military helicopters); *see also Scrogin v. Rolls-Royce Corp.*, No. 3:10-CV-442, 2010 WL 3547706, at *3 (D. Conn. Aug. 16, 2010) (denying motion to remand under *Grable* where military helicopters contract implicated a “uniquely federal interest”); *McMahon v. Pres. Airways, Inc.*, 410 F. Supp. 2d 1189 (M.D. Fla 2006).

² *See In re World Trade Ctr. Disaster Site Litig.*, 521 F.3d 169, 197 (2d Cir. 2008) (extending *Boyle*’s rationale “to the disaster relief context due to the unique federal interest in coordinating federal disaster assistance and streamlining the management of large-scale disaster recovery projects”).

³ *Illinois v. City of Milwaukee*, 406 U.S. 91, 105 (1972) (pollution in interstate streams).

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