UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

STATE OF TEXAS, *et al.*	)	
	)	
Plaintiffs	)	
	)	
v.	)	Civil Action No. 7:15-cv-00056-O
	)	
UNITED STATES OF AMERICA, *et al.*	)	
	)	
Defendants	)	

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISSOLVE PRELIMINARY INJUNCTION AND OPPOSITION TO PLAINTIFFS' MOTION TO EXPAND PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

FEDERAL STATUTES

FEDERAL RULES

OTHER AUTHORITIES

PRELIMINARY STATEMENT

Defendants' Motion to Dissolve Preliminary Injunction (Defs.' Mot.), ECF No. 40, explained why the March 26 preliminary injunction should be dissolved: There is no reason to read the laws of the plaintiff states as prohibiting compliance with the Department of Labor's February 2015 rule, and the Supreme Court has warned federal courts against "seeking out conflicts between state and federal regulation where none clearly exists." *Arizona v. United States*, 132 S. Ct. 2492, 2510 (2012) (quoting *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440, 446 (1960)). The plaintiffs also rely on mistaken interpretations of federal law; there is no basis for concluding that the February 2015 rule conflicts with 28 U.S.C. § 1738C, *United States v. Windsor*, 133 S. Ct. 2675 (2013), or the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. § 2601 *et seq.*, itself. The plaintiffs' Response in Opposition to Defendants' Motion to Dissolve Preliminary Injunction (Pls.' Resp.), ECF No. 41, does not meaningfully respond to the defendants' motion. Many of the defendants' arguments are not addressed at all in the plaintiffs' response. Where the plaintiffs do offer counterarguments, they misstate the law or respond to points other than the ones the defendants have made, without meeting the real substance of the defendants' arguments. The plaintiffs have not established that a preliminary injunction is warranted, and they certainly have not presented any good reasons for expanding the preliminary injunction. The defendants' motion should be granted, and the March 26 preliminary injunction should be dissolved.

ARGUMENT

I. Plaintiffs cannot establish subject matter jurisdiction.

A. Texas cannot meet the "injury in fact" requirement of standing.

The defendants explained in their motion to dissolve that the plaintiffs have not met their burden to establish standing because they have not shown any "actual or imminent" injury. *Lujan*

v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). None of the plaintiffs has shown that it has received or is about to receive a request for leave under the FMLA from any state employee who qualifies for FMLA leave under the February 2015 rule but would not have qualified under the rule previously in effect. The plaintiffs fail to refute this point.

Because the plaintiffs have not alleged that any of their employees is likely to take advantage of the rule change in the immediate future, they have not established that they will suffer any "actual or imminent" harm in connection with the direct costs of providing benefits. The plaintiffs alternatively contend that they will incur costs associated with "changing policies, educating employees, [and] researching other states' and nations' laws," Pls.' Resp. 1; *see also* Definition of Spouse Under the Family and Medical Leave Act, 80 Fed. Reg. 9989, 9998 (Feb. 25, 2015) (describing various costs that employers may incur). But those are all ordinary costs that employers must incur regardless of what rules are in effect, and the plaintiffs have not alleged specific facts suggesting that the new rule actually increases those costs. *Cf. Crane v. Johnson*, 783 F.3d 244, 252 (5th Cir. 2015) (holding that the state of Mississippi lacked standing to challenge a federal program because it failed to allege specific facts indicating that it would incur increased costs attributable specifically to that program).[1] For example, an employer that has routine procedures for monitoring regulatory developments, updating internal policies, and

[1] Recently, in *Texas v. United States*, No. 15-40238, 2015 WL 3386436 (5th Cir. May 26, 2015), the Fifth Circuit held that the state of Texas was likely to establish standing to challenge the same federal policy that Mississippi had sought to challenge in *Crane*. *See Texas v. United States*, 2015 WL 3386436, at *2 n.17, *7. But the decision in *Texas v. United States* depended on a conclusion that Texas had submitted acceptable "proof of the costs" it would incur. *Id.* at *3. Texas has not submitted any evidence of increased costs in this case, so this case is more like *Crane*. *See Texas v. United States*, 2015 WL 3386436, at *2 n.17 (explaining that in *Crane*, the plaintiff state "lacked standing because it failed to allege facts indicating that its costs had increased or would increase as a result of" the challenged policy).

training employees—as many large employers do—may not incur any additional costs when laws are changed.[2]

In response to the defendants' arguments, the plaintiffs have pointed only to a need to make a minor modification to a Texas state government intranet site. Even assuming that making a correction would impose some nonroutine cost on Texas (an assumption that may not be warranted), that cost is not the result of the new rule. The page was inaccurate even under the earlier place-of-residence rule, because it incorrectly suggested that FMLA rights would always track the Texas Family Code, which would not have been true for Texas state government employees who resided outside Texas. *See* Defs.' Mot. 6. Because the intranet page was inaccurate both before and after the rule change, any need to correct the page is due solely to Texas's own error when it first published the page.

More fundamentally, costs associated with studying or providing notice of a new rule do not have a "nexus to the substantive character of the . . . regulation at issue" and cannot support standing to challenge the validity of the regulation. *Diamond v. Charles*, 476 U.S. 54, 70 (1986); *see also Johnson v. U.S. Office of Pers. Mgmt.*, 783 F.3d 655, 661–63 (7th Cir. 2015) (holding that administrative burdens associated with complying with a rule did not support standing to challenge aspects of the rule unrelated to the imposition of an administrative burden).

[2] In fact, as the Department of Labor explained when it announced the February 2015 rule, the February 2015 rule *decreases* the burden on employers of researching the laws of other jurisdictions. Under the new rule, an employer evaluating the FMLA rights of an employee who is a resident of a state that denies recognition to marriages between persons of the same sex no longer has to go through the extra work of investigating whether the employee's spouse is of the opposite sex or the same sex. *See* Defs.' Opp'n to Pl.'s Appl. for a Prelim. Inj. (Defs.' Prelim. Inj. Opp'n) 24, ECF No. 11; *see also* Definition of Spouse Under the Family and Medical Leave Act, 80 Fed. Reg. 9989, 9992 (Feb. 25, 2015).

The plaintiff states also cannot establish standing based on any supposed interference with the states' enforcement of their own laws. As the defendants have explained, the February 2015 regulation does not interfere at all with state law or the enforcement of state law. None of the plaintiff states' laws can be readily interpreted as restricting actions taken in compliance with the federal FMLA.

Nor does potential exposure to future lawsuits amount to injury in fact. As noted above, the plaintiff states have not established that they are imminently likely to receive any requests for leave from employees seeking to take advantage of the rule change. The plaintiffs certainly have not established that they are likely to face a lawsuit in connection with such a request, and, in any event, an injunction in this case would not resolve any future lawsuit. *See* Defs.' Mot. 8 (citing *Calderon v. Ashmus*, 523 U.S. 740, 749 (1998)).

In another lawsuit led by the state of Texas, *Texas v. United States*, No. 15-40238, 2015 WL 3386436 (5th Cir. May 26, 2015), a divided panel of the Fifth Circuit reasoned (in the context of a preliminary evaluation of standing for purposes of assessing a stay motion) that *Massachusetts v. EPA* supported extending "special solicitude" to a state government in determining whether it had standing to challenge federal action. *See Texas v. United States*, 2015 WL 3386436, at *5–6. But the panel relied in large part on a view that the challenged federal action affected "quasi-sovereign" interests by interfering with enforcement of state law, specifically, by requiring Texas to change its driver's license regime to avoid incurring additional costs. *Id.*; *see id.* at *5–6 & nn. 38–39. The panel noted that "a state may not always be entitled to" such special solicitude "when seeking review under the APA." *Id.* at *5 n.38. In this case, the challenged February 2015 rule does not require a state to change its existing laws or interfere with the enforcement of those laws, and it affects states only in their capacity as employers, not

in their sovereign capacity. *See* Defs.' Prelim. Inj. Opp'n 16–17. Consequently, the factors that the panel majority found compelling in the other *Texas v. United States* case are missing here.

B. Even if Texas can establish standing to challenge the February 2015 rule based on a supposed conflict with Texas law, the other plaintiff states are required to separately establish standing to bring similar claims based on supposed conflicts with their state laws.

The defendants explained that because a plaintiff in federal court must demonstrate standing for each claim it seeks to bring, the plaintiffs in this case must show that at least one plaintiff has standing to bring each claim advanced in this lawsuit. Some of the plaintiffs' claims are founded on supposed requirements of state law. Because each state's law is different, each plaintiff state must independently establish standing to bring those claims.

The plaintiffs assert that in *Massachusetts v. EPA*, 549 U.S. 497 (2007), the Supreme Court "accepted the standing of all of the petitioner States" based on a showing of injury by one petitioner, Massachusetts. Pls.' Resp. 5. The plaintiffs are misreading the case. The Court did not conclude that all of the states in the action had standing; rather, it found that it was only necessary to examine whether one of the states had standing. *Massachusetts v. EPA*, 549 U.S. at 518 ("Only one of the petitioners needs to have standing to permit us to consider the petition for review."). That was appropriate in *Massachusetts v. EPA* because the petitioners in that case relied exclusively on the requirements of federal law and were not raising arguments based on interactions between federal law and their own states' laws. *See* 549 U.S. at 510–14 (describing the claims at issue). In this case, however, each of the plaintiff states is seeking relief based in part on supposed conflicts with its own state laws—Texas is claiming a conflict with Texas law; Arkansas is claiming a conflict with Arkansas law, and so on. Each state must separately establish standing to bring these claims, for the reasons the defendants explained in their motion

to dissolve. *See* Defs.' Mot. 8–9 (citing *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008)).

C. Federal courts cannot hear suits brought by state authorities seeking to establish that their own laws are not preempted by federal law.

As the defendants explained in their motion to dissolve, the Supreme Court's decision in *Franchise Tax Board of California v. Construction Laborers Vacation Trust*, 463 U.S. 1 (1983), prevents district courts from hearing suits brought by state authorities seeking to establish that their own laws are not preempted by federal law. The plaintiffs assert that the defendants' reliance on *Franchise Tax Board* is "flawed," Pls.' Resp. 5, but they fail to present any foundation for that assertion or cite any supporting authority.

The judicial review provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551–559, 701–706, do not provide an avenue for resolving whether a federal regulation validly preempts state law. The APA authorizes a reviewing court to set aside unlawful agency action, 5 U.S.C. § 706(2), but it does not authorize a free-floating judicial inquiry into whether a particular federal regulation preempts a particular state law. The lawfulness of a regulation and the preemptive effect of the regulation are two separate issues—a regulation may be lawful and valid even if it does not preempt state law. *See* Defs.' Mot. 10. So the authority to hold regulations unlawful under the APA does not include broad authority to resolve preemption disputes. Indeed, the plaintiffs have not cited any past case in which a federal court permitted a plaintiff to bring a claim under the APA to obtain a determination that a federal regulation invalidly preempted state law. Nor have the plaintiffs cited any case in which any court has held that the APA provides a way to circumvent the strictures of *Franchise Tax Board*.

II. The plaintiffs have not offered any meaningful support for their novel interpretations of state law.

As the defendants explained in their motion to dissolve, the plaintiffs' assertions that the laws of their states prohibit compliance with the February 2015 rule are not supported by state court decisions or other authorities—if anything, those authorities undermine the plaintiffs' assertions. The plaintiffs are "seeking out conflicts between state and federal regulation where none clearly exists." Defs.' Mot. 15 (quoting *Arizona v. United States*, 132 S. Ct. 2492, 2510 (2012)).

If state law did forbid states from complying with the demands of the February 2015 rule, state law would be preempted to that extent, and the states would have to comply with the February 2015 rule. In *Mutual Pharmaceutical Co. v. Bartlett*, 133 S. Ct. 2466 (2013), the Supreme Court reaffirmed that when it is strictly impossible for a private party to comply with both state and federal requirements, the federal requirement prevails, and "no inquiry into congressional design" is necessary. Defs.' Mot. 11 (quoting *id.* at 2473). The plaintiffs assert that this rule is applicable only when federal law "expressly preempt[s]" state law and the intent to preempt state law is "apparent on the face of the statute." Pls.' Resp. 9. But that assertion is directly contradicted by the Supreme Court's opinion in *Mutual Pharmaceutical.* The opinion makes it clear that the rule applies in situations where a state law is "*impliedly* preempted," "*in the absence of* an express pre-emption provision." 133 S. Ct. at 2473 (emphasis added); *see also Commerce Park at DFW Freeport v. Mardian Constr. Co.*, 729 F.2d 334, 339–40 (5th Cir. 1984) (noting that "where compliance with both federal and state regulation is a physical impossibility," preemption is "automatic" and "requires no inquiry into congressional design" (quoting *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–43 (1963))).

No preemption issues arise in this case, however, because nothing in the laws of the plaintiff states indicates that they would restrict state authorities from complying with the February 2015 rule. Indeed, the defendants cited several authorities weighing against the plaintiffs' interpretation of state law, and the plaintiffs have not meaningfully addressed these authorities. *See* Defs.' Mot. 10–15.

The plaintiffs are correct that federal courts typically accept states' own interpretations of state laws. But federal courts look to state *courts* for guidance in interpreting state law. Defs.' Mot. 11 (quoting *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975)). They do not ordinarily treat a state attorney general's interpretations of state law as authoritative. *See Stenberg v. Carhart*, 530 U.S. 914, 940 (2000) ("[O]ur precedent warns against accepting as 'authoritative' an Attorney General's interpretation of state law when 'the Attorney General does not bind the state courts or local law enforcement authorities.'" (quoting *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 395 (1988))). Neither of the cases cited by the plaintiffs supports adopting the views advanced by the attorneys general of the plaintiff states in this litigation. The interpretation at issue in *Seaton v. Procunier*, 750 F.3d 366 (5th Cir. 1985), came from a state court. *Id.* at 368 ("We will take the word of *the highest court on criminal matters of Texas* as to the interpretation of its law . . . ." (emphasis added)). And the interpretation at issue in *Florida Power & Light Co. v. Costle*, 650 F.2d 579 (5th Cir. Unit B June 1981), came from a state administrative agency that was "charged with implementing the statute" and therefore had special authority to interpret the statute. *Id.* at 588.

Indeed, the plaintiffs have not identified any formal attorney general opinions that are in step with their litigation positions. The 2013 Texas Attorney General opinion cited in the defendants' motion, Attorney General of Texas, Opinion No. GA-1003 (Apr. 29, 2013), *available*

at https://www.texasattorneygeneral.gov/opinions/opinions/50abbott/op/2013/pdf/ga1003.pdf, only undermines Texas's position. Texas cites the opinion's conclusion that Texas law bars political subdivisions from "creating a legal status of domestic partnership." Pls.' Resp. 9 (quoting *id.* at 6). But Texas fails to acknowledge that the Attorney General reserved judgment on a narrower question that is more relevant to this case: whether a political subdivision can merely provide health benefits without "creating" a domestic partnership status. Opinion No. GA-1003 at 3 n.5. The Attorney General opinion thus itself recognized that that narrower question may have a different answer.

III. The plaintiffs' claims also misconstrue the pertinent provisions and principles of federal law.

The plaintiffs' claims are also flawed for the further reason that they are premised on mistaken interpretations of federal law.

The Supreme Court's decision in *United States v. Windsor*, 133 S. Ct. 2675 (2013), does not support the plaintiffs' claims; rather, it supports upholding the February 2015 rule. The Court in *Windsor* reaffirmed "the constitutionality of limited federal laws that regulate the meaning of marriage in order to further federal policy," *id.* at 2690, and cited examples of several federal statutes that prescribed marriage-based rules that did not correspond exactly with state-law definitions of marriage. *See* Defs.' Prelim. Inj. Opp'n 13–14 (discussing *id.*); Defs.' Mot. 19–20 (same). The plaintiffs disregard this portion of the *Windsor* opinion. This Court, of course should not do the same; it should hold that the February 2015 rule is consistent with *Windsor* and the principles espoused in that decision.

There is also no basis for the plaintiffs' contention that the FMLA mandates exclusion of married same-sex couples from the spousal benefits defined by the statute, *see* Pls.' Resp. 8, 12. Nothing in the terms of the FMLA restricts the definition of the term "spouse" to opposite-sex

couples, and nothing in the terms of the FMLA requires that the term "spouse" be defined by reference to state laws as they existed in 1993 instead of present-day state laws. Indeed, this Court should not carve out a new rule under which federal statutes pertaining to marriage are presumed to exclude same-sex couples. The Supreme Court in *Windsor* held that Congress could not adopt such a rule through legislation. *See* 133 S. Ct. at 2695. It would not be any more proper for a court to adopt such a rule through judicial action. The February 2015 rule is not foreclosed by the FMLA and should be upheld based on a straightforward application of the two-step analysis prescribed by *Chevron U.S.A. Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984), as explained in the defendants' motion. The FMLA does not dictate which state's law should take precedence with respect to FMLA rights when the laws of an employee's state of marriage, state of residence, and state of employment point in different directions. It therefore falls to the Department of Labor to resolve that issue, and the place-of-celebration rule adopted by the Department resolves the issue in a reasonable way.

The February 2015 rule does not conflict with section 2 of the Defense of Marriage Act, 28 U.S.C. § 1738C. As the defendants explained earlier, the provision should be read narrowly. At most, it speaks only to whether a state, in its capacity as a sovereign, may be required to accord full faith and credit to an out-of-state marriage—that is, whether states must treat other states' marriages "as they would their own." Defense of Marriage Act, H.R. Rep. No. 104-664, at 26 (1996), *available at* http://www.gpo.gov/fdsys/pkg/CRPT-104hrpt664/pdf/CRPT-104hrpt664.pdf. This narrow reading is supported by the House of Representatives report cited in the defendants' earlier papers. *Id.* at 25 ("The Committee would emphasize the narrowness of this provision. Section 2 merely provides that, in the event [any state] permits same-sex couples to 'marry,' other States will not be obligated or required, by operation of the Full Faith and Credit

Clause of the United States Constitution, to recognize that 'marriage,' or any right or claim arising from it.").

This narrow reading is also compatible with dictionary definitions of the term "effect." One authoritative dictionary provides a definition of "effect" as "[t]he condition of being in *full force* or execution; operativeness." *The American Heritage Dictionary of the English Language* 569 (5th ed. 2011) (emphasis added). Another authoritative dictionary offers a similar definition: "the quality or state of being operative . . . ; [specifically]: *operation.*" *Webster's Third New International Dictionary of the English Language Unabridged* 724 (2002). And there is no principle of law that requires courts to give statutory terms their broadest possible interpretation. *See Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 772 (1983) (declining to rely on the "broadest possible definition" of a statutory term). Thus, 28 U.S.C. § 1738C need not and should not be read as prohibiting federal regulations that require state authorities to afford limited *federal* rights (as distinguished from state-law spousal rights or full state recognition under the Full Faith and Credit Clause of the Constitution, U.S. Const. art. IV, § 1) to persons whose marriages are recognized under the laws of the states in which they celebrated their marriages.

IV. The Court should not expand the preliminary injunction to restrict application of the February 2015 rule to additional local-government entities beyond those covered by the present injunction.

For the reasons explained above and in the defendants' motion to dissolve, the Court should vacate the March 26 preliminary injunction entirely. If it leaves the injunction in place, however, it should not expand the injunction to cover "local government[s]" as requested by the plaintiffs, because the plaintiffs have not shown that any expansion of the preliminary injunction is either necessary or appropriate. If there are local-government entities that unquestionably must be treated as part of state government for purposes of a court order, they are already covered by

the terms of the present preliminary injunction. But local government entities whose status is unclear or subject to dispute should not be brought within the scope of the preliminary injunction absent any justification for expanding the injunction to include them, which the plaintiffs have not provided.

The exact legal status of a local government entity, and its relation to state government, are complicated issues that depend on the nature of the entity and the context in which the issue arises. *See, e.g.*, *Harris Cnty. v. CarMax Auto Superstores*, 177 F.3d 306, 318 (5th Cir. 1999) ("[T]he [Texas] attorney general does not represent all district and county attorneys in the state when he makes decisions regarding the conduct of litigation."); *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977) (explaining that whether an entity is treated as an arm of the state entitled to Eleventh Amendment immunity or as a political subdivision not entitled to Eleventh Amendment immunity depends in part "upon the nature of the entity created by state law").

Any local-government entity that is entirely indistinguishable from state government is already protected by the preliminary injunction as presently written. If the plaintiffs believe the injunction should be expanded to cover additional entities whose status is less clear, the plaintiffs bear the burden of showing that an expansion is necessary, justified, and proper under the standards governing preliminary injunctive relief. *See Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam) ("[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." (quoting 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948 (2d ed. 1995))). The plaintiffs have not even identified particular local

government entities they believe should be brought within the injunction, much less shown that an expansion is warranted. The injunction therefore should not be expanded.[3]

CONCLUSION

Because the plaintiffs have not shown any likelihood of success on the merits, have not demonstrated any possibility of irreparable harm, and have failed to establish the other factors necessary to justify preliminary relief, the preliminary injunction entered March 26 should be dissolved. In any event, the preliminary injunction should not be expanded.

Date: May 28, 2015

Respectfully submitted,

BENJAMIN C. MIZER

[3] The plaintiffs also suggest that the preliminary injunction, as currently written, restricts application of the February 2015 rule to anyone, not just the plaintiff states. *See* Pls.' Resp. 14–16. But the Court stated in its preliminary injunction order that it was issuing relief "to prevent the Department from mandating enforcement of its Final Rule *against the states*." Mem. Op. and Order 24, ECF No. 18. The Court also noted at the April 10 hearing that it was hesitant to issue relief beyond the plaintiff states at the moment. Tr. of Mots. Hr'g 8–21, ECF No. 29. That hesitancy is justified, and it is consonant with Fifth Circuit case law establishing that preliminary injunctive relief should be drawn narrowly and should not extend beyond the plaintiffs in the case. *See Lion Health Servs., Inc. v. Sebelius*, 635 F.3d 693, 703 (5th Cir. 2011) ("As a general principle, 'injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.'" (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979))); *Hernandez v. Reno*, 91 F.3d 776, 781 (5th Cir. 1996) (holding that in the absence of class certification, injunctive relief extended only to the named plaintiff); *see also* Defs.' Mot. 20–21 (citing cases establishing that preliminary relief should be drawn as narrowly as possible). Moreover, as the defendants explained in their earlier papers, the plaintiff states lack standing to seek invalidation of the February 2015 rule on behalf of their citizens, and many of the plaintiffs' legal arguments pertain exclusively to state governments, and not to private parties. *See* Defs.' Prelim. Inj. Opp'n 9, 12 n.4. And while the Fifth Circuit recently denied a request to narrow the scope of a nationwide preliminary injunction in *Texas v. United States*, No. 15-40238, 2015 WL 3386436 (5th Cir. May 26, 2015), that decision was based on considerations specific to the context of immigration. *See id.* at *16.

The plaintiffs further hint that the preliminary injunction should be redrawn to compel the City of Fort Worth to revise its employee benefits policies to conform to the Texas Attorney General's view of Texas law. *See* Pls.' Resp. 16 n.5. The City of Fort Worth is not a party to this case, and a suit against the Federal Government is not a proper vehicle for resolving any dispute that the Texas Attorney General may have with the City of Fort Worth. *See* Fed. R. Civ. P. 65(d)(2) (specifying that an injunction may bind only the parties to the action and persons acting in concert with them).

Principal Deputy Assistant Attorney General

JOHN R. PARKER
Acting United States Attorney

JUDRY L. SUBAR
Assistant Branch Director

s/ JAMES C. LUH
JAMES C. LUH (N.Y. Bar)
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave NW
Washington DC 20530
Tel: (202) 514-4938
Fax: (202) 616-8460
E-mail: James.Luh@usdoj.gov
Attorneys for Defendants

CERTIFICATE OF SERVICE

On May 28, 2015, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Rule 5(b)(2) of the Federal Rules of Civil Procedure.

s/ JAMES C. LUH
JAMES C. LUH
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave NW
Washington DC 20530
Tel: (202) 514-4938
Fax: (202) 616-8460
E-mail: James.Luh@usdoj.gov
Attorney for Defendants