

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED FARM WORKERS	)	
	)	
and	)	
	)	
FARMWORKER JUSTICE,	)	
	)	C.A. No. 07-2241 (HHK)
Plaintiffs,	)	
	)	
v.	)	
	)	
DEPARTMENT OF LABOR,	)	
	)	
Defendant.	)	
_____	)	

PLAINTIFFS' STATUS REPORT

Plaintiffs submit this status report to inform the Court of developments after the parties filed their cross motions for summary judgment, and the parties' plan for resolving the remaining issue in the case.

1. This action arose from a series of seven requests that plaintiffs United Farm Workers (UFW) and Farmworker Justice (FJ) made to defendant U.S. Department of Labor (DOL) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* Each of the seven requests sought documents related to employer applications for certification to hire temporary foreign agricultural workers through the H-2A guestworker program, 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a) & 1188. All seven requests sought a fee waiver under 5 U.S.C. § 552(a)(4), and the sixth and seventh requests also sought expedited processing under 5 U.S.C. § 552(a)(6).

2. Plaintiffs filed their original complaint (Doc. 1) on December 13, 2007. At that time,

a) DOL had produced documents responsive to the first and second requests but had denied the fee waiver requests and billed UFW for the documents, and

UFW's administrative appeal with respect to the fee waiver denials was pending;

- b) DOL had not responded to the third and fourth requests;
- c) DOL had denied a fee waiver for the fifth request and had produced no responsive documents; and
- d) DOL had denied expedited processing of the sixth and seventh requests and plaintiffs' administrative appeal of the denial of expedited processing, but DOL had not responded to the fee waiver request and had not produced any responsive documents.

3. On January 16, 2008, the Court adopted the parties' proposed briefing schedule and ordered DOL to respond to plaintiffs' outstanding FOIA requests and administrative appeals by January 31, 2008. On January 31, 2008, DOL denied the administrative appeals of the fee waiver denials for the first, second, and fifth requests, and responded to the third, fourth, sixth, and seventh requests by denying plaintiffs' fee waiver requests. DOL did not produce any documents responsive to the third, fourth, fifth, sixth, or seventh requests, pending resolution of the fee waiver issue.

4. On February 20, 2008, the Court granted plaintiffs' motion for leave to deposit funds to the Court's registry to secure release of the documents responsive to the sixth and seventh requests pending resolution of the fee waiver issue, and ordered DOL to produce the documents. Doc. 9. On February 29, 2008, DOL produced records responsive to plaintiffs' sixth and seventh requests, but the documents produced in response to the sixth request were incomplete in two respects. First, a significant amount of material had been redacted from the documents responsive to the sixth request, even though DOL never asserted that any of the requested material was exempt from disclosure.

Second, DOL did not produce any documents related to H-2A applications in Louisiana, even though the request called for such materials.

5. On March 10, 2008, DOL filed its motion for summary judgment, arguing that plaintiffs were not entitled to a fee waiver. Doc. 12. DOL did not attempt to justify its redactions to the materials produced in response to the sixth request or its failure to produce any documents related to H-2A applications in Louisiana. DOL noted that because it had responded to the sixth and seventh requests, plaintiffs' request for expedited processing was moot.

6. On April 11, 2008, plaintiffs filed their cross motion for summary judgment (Doc. 13) and opposition to DOL's motion (Doc. 14), arguing that DOL violated FOIA by failing to waive fees associated with plaintiffs' seven requests and, with respect to the sixth request, failing to justify its redactions to the documents produced and failing to produce any documents related to Louisiana. Plaintiffs also noted that because DOL had responded to the sixth and seventh requests, the issue of whether plaintiffs were entitled to expedited processing was moot.

7. On April 17, 2008, DOL sent a letter to plaintiffs regarding its production of documents in response to the sixth request. Ex. I (Plick letter of April 17, 2008). In its letter, DOL explained that it had "determined that some of the information was redacted in error" and apologized "for not referencing or explaining the redactions in [its] initial response." *Id.* DOL also explained that it had failed to produce any documents related to Louisiana, although it had identified "a substantial amount" of responsive documents. DOL again apologized for its "oversights" and pledged to produce the materials "as expeditiously as possible." *Id.*

8. On April 25, 2008, DOL sent a letter to plaintiffs announcing that it had "reviewed the arguments you have made in support of your motion for summary judgment in the pending district

court litigation” and had “determined that you have met the requirements for establishing a waiver of fees under 5 U.S.C. § 552(a)(4)(A)(iii) and 29 C.F.R. § 70.41 in all seven of your fee waiver requests associated with this litigation.” Doc. 15-3 (Carlson letter of April 25, 2008). DOL also noted that it was “continuing to reprocess the documents sought in your sixth request for Florida and Virginia H-2A records, which contained improper redactions when initially provided to you[,]” and that it was “also preparing the release of documents from Louisiana, which were not included in the February 29, 2008, production” of materials responsive to the sixth request. *Id.* DOL stated its intention to produce the documents responsive to the sixth request by May 9, 2008, and the documents responsive to the third, fourth, and fifth requests by May 23, 2008. Finally, DOL informed plaintiffs that they should disregard the requests for fees for documents already produced. *Id.*

9. Also on April 25, 2008, DOL filed a brief attaching its letter of the same date and observing that DOL had granted plaintiffs’ request for a fee waiver for all seven requests, was reprocessing its response to the sixth request to cure the deficiencies, and was processing the documents responsive to the third, fourth, and fifth requests. Docs. 15 & 16. DOL requested a stay until all responsive documents had been produced and plaintiffs had determined whether they would challenge any of the redactions that DOL expected to make pursuant to FOIA Exemption 6. On April 30, 2008, plaintiffs filed a reply brief agreeing that the case should be stayed. Doc. 17.

10. On May 9, 2008, DOL produced the materials responsive to the sixth request, correcting the improper redactions and including documents for Louisiana that had been omitted from the earlier response. Ex. II (Carlson letter of May 9, 2008). On May 23, 2008, DOL produced the materials responsive to the third, fourth, and fifth requests. Ex. III (Carlson letter of May 23, 2008). On June

17, 2008, DOL responded to an eighth FOIA request submitted by plaintiffs but not included in this lawsuit, granting a waiver of fees and enclosing the requested documents. Ex. IV (Carlson letter of June 17, 2008).

11. On June 30, 2008, plaintiffs informed DOL that they are satisfied with the materials produced. Thus, the only issue remaining in this case is plaintiffs' claim for costs and attorneys' fees under 5 U.S.C. § 552(a)(4)(E).

12. The parties have agreed to try to settle the attorneys' fees issue. The parties anticipate that, by August 8, 2008, the parties will either report that the issue has been settled and stipulate to dismissal of the action, or file a joint status report identifying the specific items in dispute and proposing a briefing schedule.

Respectfully submitted,

/s/ Michael T. Kirkpatrick

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