

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

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

DEFENDANTS' REQUEST FOR HEARING

I. The defendants request an April 13, 2015, hearing on the preliminary injunction entered by the Court.

In accordance with the Court's March 26, 2015, Memorandum Opinion and Order, ECF No. 18, the defendants request a hearing on the preliminary injunction that has been entered by the Court, at a time convenient for the Court on April 13, 2015. Specifically, the defendants seek an opportunity to present argument that the preliminary injunction should not have issued and now should be dissolved.

If a hearing is set, the defendants intend to rely on their previously submitted papers and do not believe any further briefing is necessary unless additional briefing would be helpful to the Court. However, if the plaintiffs are permitted to file an additional brief, the defendants request that they be permitted an opportunity to respond.

II. The defendants' compliance with the preliminary injunction

In the meantime, the defendants have taken immediate steps to comply with the preliminary injunction entered by the Court. Specifically, while the preliminary injunction remains in effect, the defendants do not intend to take any action to enforce the provisions of the Family and Medical Leave Act (FMLA), 29 U.S.C. § 2601 *et seq.*, or the Department of Labor's

FMLA regulations, against the states of Texas, Arkansas, Louisiana, or Nebraska, or officers, agencies, or employees of those states acting in their official capacity, in a manner that employs the definition of the term “spouse” contained in the February 25, 2015, final rule, Definition of Spouse Under the Family and Medical Leave Act, 80 Fed. Reg. 9989 (Feb. 25, 2015) (to be codified in scattered sections of 29 C.F.R. pt. 825), and would have been inconsistent with the previous definition employing a “place of residence” rule, *see* 29 C.F.R. § 825.102, .122(b) (2014).

The defendants’ understanding is that the Court’s order was not intended to preclude enforcement of the provisions of the FMLA under the new rule to the extent that such enforcement would have been consistent with the earlier “place of residence” rule. *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))). The defendants further understand that the Court’s order was not intended to preclude enforcement of the provisions of the FMLA under the new rule against persons other than the named plaintiffs in this action, and thus applies only to the state governments of the states of Texas, Arkansas, Louisiana, and Nebraska. *See 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). The defendants would of course stand ready to address the scope of the Court’s order at any hearing that may occur.

Though not specifically required by the Court’s order, the Wage and Hour Division of the Department of Labor has also posted notice of the Court’s ruling and preliminary injunction on the Family and Medical Leave Act section of its Web site. *See* Wage and Hour Div., Dep’t of

Labor, Family and Medical Leave Act, <http://www.dol.gov/whd/fmla/> (last visited Mar. 31, 2015).

Date: March 31, 2015

Respectfully submitted,

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s/ JAMES C. LUH

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CERTIFICATE OF SERVICE

On March 31, 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

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