UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

STATE OF TEXAS,
STATE OF MONTANA,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as Secretary of Health and Human Services; MELANIE FONTES RAINER, in her official capacity as Director of the Office for Civil Rights; CENTERS FOR MEDICARE & MEDICAID SERVICES; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendants.

Case No. 6:24-cv-211-JDK

DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR CLARIFICATION

In granting Plaintiffs' motion for preliminary relief, *see* ECF No. 2, the Court could not have been clearer: Its stay of the effective date of the U.S. Department of Health and Human Services ("HHS") Final Rule at issue in this case ("the Rule")[1] pursuant to § 705 of the Administrative Procedure Act ("APA") is limited solely to Plaintiffs "Texas and Montana and all covered entities in those States." Mem. Op. & Order ("Order") at 27, ECF No. 18. Indeed, the Court expressly addressed in its Order the "Geographic Limits" of the relief it was granting. *Id.* at 26. And the Court made clear that "a stay *limited to all covered entities within Texas and Montana* accord[ed] with the record before [it]" and would "preserve the[] . . . rights" of Plaintiffs "while fully insulating them from harm." *Id.* (emphasis added).

Under the guise of a "Motion for Clarification," Plaintiffs now ask the Court to dramatically expand the scope of this party-specific relief—which Plaintiffs nowhere suggest is inadequate "to

[1] *See* Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37,522 (May 6, 2024).

prevent irreparable injury" *to them*, 5 U.S.C. § 705—by staying the Rule "universally." Corrected Pls.' Mot. for Clarification ("Motion") at 3, ECF No. 20. But Plaintiffs' request to "clarify" an already clear Order should be rejected outright. And even treating their Motion for what it is—i.e., an attempt to drastically alter the scope of the Court's geographically (and unambiguously) limited stay—Plaintiffs offer nothing to justify the sweeping relief they seek beyond the suggestion that the Court, in staying the Rule under § 705, did not know what it was doing. Plaintiffs' mislabeled Motion should accordingly be denied.[2]

ARGUMENT

Whether treated as a request to "clarify" the scope of the Court's stay of the Rule or, more accurately, as a request to drastically alter that stay, Plaintiffs' Motion should be denied. *See United States v. Philip Morris USA Inc.*, 793 F. Supp. 2d 164, 168 (D.D.C. 2011) ("The general purpose of a motion for clarification is to explain or clarify something ambiguous or vague, not to alter or amend." (citation omitted)); *see also Austin v. Kroger Tex., L.P.*, 864 F.3d 326, 336 (5th Cir. 2017) (per curiam) (explaining that Federal Rule of Civil Procedure 54(b) "allows parties to seek reconsideration of interlocutory orders" and authorizes the district court to revise such orders "at any time" (citation omitted)); *Providence Title Co. v. Truly Title, Inc.*, No. 4:21-cv-147, 2021 WL 5003273, at *3 (E.D. Tex. Oct. 28, 2021) (reviewing a motion for reconsideration of an order granting a preliminary injunction under Rule 54(b)).[3]

According to their Motion, Plaintiffs purportedly "ha[ve] doubts about the meaning" of the Court's stay and "seek clarification of" its geographic scope. Motion at 1 (quoting *Gulf King Shrimp Co. v. Wirtz*, 407 F.2d 508, 517 (5th Cir. 1969)). But the Court's clear reasoning in its Order confirms

[2] Defendants file this Opposition contemporaneously with their Motion to Reconsider Grant of Motion for Stay of Agency Action (ECF No. 18), in which Defendants respectfully (and forthrightly) request that the Court revise its Order to stay only those "portions of the Rule" that Plaintiffs "*actually challenge[d]*" in their motion for preliminary relief. *Career Colleges & Schs. of Tex. v. U.S. Dep't of Educ.*, 98 F.4th 220, 255 (5th 2024).

[3] Plaintiffs cite Federal Rule of Civil Procedure 60(a) in their Motion, Motion at 1, which provides that a court may "correct a clerical mistake" in an order. Fed. R. Civ. P. 60(a). But because Plaintiffs here are seeking to "expand[] the scope or modif[y] the content of" the Court's Order, that Rule is inapplicable. *Rivera v. PNS Stores, Inc.*, 647 F.3d 188, 199 (5th Cir. 2011)

that there is nothing left for it to clarify on that front. After "determin[ing] that a stay" of the Rule was "necessary under [§] 705," the Court "consider[ed]" the "proper scope" of such a stay and noted that it "should . . . not impose relief that is 'more burdensome to [Defendants] than necessary' to redress" Plaintiffs' asserted injuries. Order at 26 (quoting *Labrador v. Poe ex rel. Poe*, 144 S. Ct. 921, 923 (2024) (Gorsuch, J., joined by Thomas, J., and Alito, J., concurring in the grant of stay)). The Court then explained—in a section titled "Geographic Limits" no less—that while Texas and Montana "ha[d] demonstrated injuries that they and covered providers" in both States were "likely to suffer" as a result of certain facets of the Rule, there was "no evidence of potential imminent harm to other parties." *Id.* In light of the "record before [it]," the Court accordingly stayed the Rule only "as to Texas and Montana and all covered entities in those States." *Id* at 26-27. And the Court made clear that such tailored relief was sufficient to "preserve these States' and their citizens' rights while fully insulating them from harm." *Id.* at 26-27.[4]

Rather than arguing that this reasoning is somehow ambiguous, Plaintiffs instead suggest that the Court failed to grasp the difference between a preliminary injunction and a § 705 stay and that, in entering the latter, the Court unwittingly granted nationwide relief (notwithstanding the Court's clear intentions to the contrary). *See* Motion at 2-3. Unlike Plaintiffs, however, Defendants presume that the Court knew precisely what it was doing, principally because the Court confirmed as much in its Order. Indeed, the Court expressly noted that "staying the effective date of the Final Rule under § 705" was, in its view, "the appropriate remedy" and that, as a result, it would not "issue a temporary restraining order or order a preliminary injunction." Order at 9 n.4. In considering the "proper scope" of its selected "remedy," the Court then expressly limited its § 705 stay to Texas and Montana alone. *Id.* at 26-27; *see also id.* at 26 (citing in support of the Court's geographically limited stay two cases in which the Fifth Circuit reversed a district court's grant of universal relief).

[4] Defendants do not believe that Plaintiffs were entitled to any preliminary relief at all for the reasons explained in Defendants' prior briefing. *See* Defs.' Opp'n to Pls.' Mot. for TRO, Prelim. Inj., and Stay of Agency Action at 8-24, ECF No. 15. Yet while Defendants respectfully disagree with the Court's decision to stay the Rule pursuant to § 705, they underscore here that, per the Court's Order, the geographic scope of that stay is unequivocally clear.

The thrust of Plaintiffs' Motion is that, because "[n]othing in the text of [§] 705 . . . suggests that either preliminary or ultimate relief under the APA needs to be limited to" the parties alone, the Court should "clarify that its Order stays the effective date of the [Rule] universally." Motion at 2-3 (quoting *Career Colleges*, 98 F.4th at 255). Yet the underlying legal premise about § 705 stays that Plaintiffs cite is difficult to square with recent Supreme Court authority. The Supreme Court held just this Term that "[w]hen Congress empowers courts" via statute "to grant equitable relief, there is a strong presumption that courts will exercise that authority in a manner consistent with traditional principles of equity." *Starbucks Corp. v. McKinney*, 144 S. Ct. 1570, 1576 (2024). Addressing the federal statute that was before it, the Court then concluded that "the statutory directive to grant relief when the district court 'deems' it 'just and proper'" should not be read "to jettison the normal equitable rules." *Id.* (quoting 29 U.S.C. § 160(j)).

The reasoning in *Starbucks Corp.* applies with equal force to § 705. By providing that a reviewing court "may" postpone the effective date of an agency action only "to the extent necessary to prevent irreparable injury" and "to preserve status or rights pending conclusion of the review proceedings," § 705 explicitly incorporates traditional equitable principles. *See Alliance for Hippocratic Med. v. FDA*, 78 F.4th 210, 241-42 (5th Cir. 2023), *rev'd on other grounds*, 602 U.S. 367 (2024) (explaining that the "preliminary-injunction factors apply" to "a stay under 5 U.S.C. § 705," which "has the practical effect of an injunction").[5] And one such principle of "equity jurisprudence" is that any court-ordered relief "should be no more burdensome to the defendant than necessary to provide complete relief *to the plaintiffs*." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (emphasis added); *see Louisiana v. Becerra*, 20 F.4th 260, 263 (5th Cir. 2021) (noting that nationwide injunctions are not "required or even the norm"). The House Report that accompanied the APA thus explained that the relief authorized by § 705 "is equitable" and should "normally, if not always, be limited to the *parties complainant*." H.R.

[5] In observing that "[t]he permissive language of § 705 grants [courts] considerable discretion in crafting relief," Order at 26, this Court too recognized the equitable nature of § 705 relief. *See Starbucks Corp.*, 144 S. Ct. at 1577 ("Crafting 'fair' and 'appropriate' equitable relief necessitates the exercise of discretion—the hallmark of traditional equitable practice.").

Rep. No. 79-1980, at 43 (1946) (emphasis added). The Court's party-specific stay here accords with that expectation.

Even assuming for purposes of argument that "preliminary relief under Section 705" need not be "party-restricted," *Career Colleges*, 98 F.4th at 255, that proposition by no means requires, as Plaintiffs claim here, that § 705 relief must necessarily be universal. *See* Motion at 2-3.[6] Put another way, even if § 705 arguably permits a court "to enter universal relief," that does not mean a court "*must* enter" such sweeping relief "any time it finds a regulation likely violates the APA," as such a requirement would be incompatible with the statute's "plain language" indicating that courts have "wide discretion to enter tailored relief." *Texas v. U.S. Dep't of Labor*, No. 4:24-cv-499, 2024 WL 3240618, at *14 n.28 (E.D. Tex. June 28, 2024). Indeed, district courts in the Fifth Circuit routinely grant party-specific preliminary relief in APA cases. *See id.* at *15 (preliminarily enjoining the enforcement of a federal regulation only in Texas because Texas, as the plaintiff, "ha[d] not otherwise offered any evidence of injuries to other entities or individuals"); *see also, e.g.*, *Texas v. Becerra*, 577 F. Supp. 3d 527, 562-63 (N.D. Tex. 2021) (declining to issue nationwide relief and instead limiting its preliminary injunction to the plaintiffs); *Texas v. ATF*, No. 2:24-cv-89, 2024 WL 2967340, at *10 (N.D. Tex. June 11, 2024), *appeal pending*, No. 24-10612 (5th Cir. filed July 2, 2024) (granting preliminary relief only to the plaintiffs). By granting relief only to those parties that had, in its view, "demonstrated" that they would be imminently harmed by the Rule, Order at 26, the Court appropriately exhibited similar restraint.[7]

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[6] The proposition that relief under § 705 need not be party-specific hinges on the assumption that § 706 of the APA authorizes courts to vacate agency rules, and that such vacatur has universal effect. *See Career Colleges*, 98 F.4th at 255; *see also* Motion at 2 ("Unlike injunctions, stays operate like vacatur."). It is the federal government's view, however, that the APA does not authorize vacatur at all. *Accord United States v. Texas*, 599 U.S. 670, 693-99 (2023) (Gorsuch, J., concurring in the judgment).

[7] Even assuming without accepting, moreover, that § 705 stays must necessarily have universal effect, the proper outcome here would not be for the Court to drastically expand the scope of its current stay. Rather, consistent with its conclusion that "[t]here is no evidence of potential imminent harm to other parties" and its intent to enter a "less drastic remedy," Order at 9 n.4, 26, the Court should instead restyle the preliminary relief it is granting as a party-specific preliminary injunction rather than a broader stay under § 705. *See* Motion at 1 (requesting that the Court "issue a . . . preliminary injunction"); *see also, e.g.*, *Mock v. Garland*, 75 F.4th 563, 567, 586-88 (5th Cir. 2023) (confirming that a

At bottom, Plaintiffs' Motion seeks to dramatically expand the Court's deliberately limited stay without even attempting to explain why—despite the Court's conclusion to the contrary—Plaintiffs are even arguably entitled to broader relief. *See* Order at 26 ("There is no evidence of potential imminent harm to other parties."); *cf. Louisiana*, 20 F.4th at 263 ("As is true for all injunctive relief, the scope of [an] injunction must be justified based on the 'circumstances.'"). Nowhere do Plaintiffs suggest, for example, that the Court's stay is somehow inadequate to "preserve" *their* "rights" and "prevent" the "irreparable injur[ies]" *they* will purportedly suffer as a result of certain facets of the Rule. 5 U.S.C. § 705. Plaintiffs also fail to explain why they should otherwise be allowed to seek relief on behalf of other States not before the Court, *see FDA v. Alliance for Hippocratic Med.*, 602 U.S. 367, 374 (2024) ("[A] plaintiff's desire to make a drug less available *for others* does not establish standing to sue."); *Vote.Org v. Callanen*, 39 F.4th 297, 303 (5th Cir. 2022) ("A party must ordinarily assert only 'his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.'" (citation omitted)), especially given that those States are perfectly capable of advancing their own interests in litigation, *see, e.g.*, *Tennessee v. Becerra*, -- F. Supp. 3d --, 2024 WL 3283887, at *1 (S.D. Miss. July 3, 2024) (involving an APA challenge to the Rule brought by 15 other States).

Nor do Plaintiffs explain how other States are imminently and irreparably harmed by the Rule such that they would have standing to challenge it, let alone be entitled to extraordinary preliminary relief. To the contrary, while Texas and Montana claimed that they would be irreparably harmed by the Rule because it will purportedly "compel" them "to perform and pay for" certain gender-affirming care in violation of state law, Pls.' Mot. for TRO, Prelim. Inj., and Stay of Agency Action at 1, ECF No. 2, several other States permit such care, "have adopted laws and policies that combat" discrimination against transgender individuals in the health care context, believe that the Rule confers "many public health benefits," and accordingly support the Rule's "full implementation nationwide." Br. of Amici Curiae California and 19 Other States at 2, ECF No. 16. Texas and Montana make no effort to explain why, especially at this preliminary stage, their views about the Rule should be imposed

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preliminary injunction is an available form of relief in a case involving an APA challenge to a federal regulation and noting that nationwide injunctions "are not required or even the norm" (cleaned up)).

on these States too. *See Louisiana*, 20 F.4th at 263 (staying a nationwide preliminary injunction in part because "the many states that ha[d] not brought suit may well have accepted and even endorsed" the federal rule being challenged).

All Plaintiffs effectively say in their Motion is that because the Court used the term "stay" in its Order, the limited relief it clearly intended to grant must apply universally. *See* Motion at 2-3. But that argument ignores the Court's clear reasoning, assumes the Court did not know what it was doing, and is wrong as a legal matter. Because Plaintiffs offer no valid basis for drastically expanding the Court's party-specific stay of the Rule, their Motion should be denied.

CONCLUSION

The Court should deny Plaintiffs' Motion for Clarification.

DATED: July 22, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

On July 22, 2024, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Eastern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Zachary W. Sherwood
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