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' SUR-REPLY IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLARIFICATION

In opposing Plaintiffs' Motion for Clarification ("Motion"), ECF No. 19, Defendants provided multiple reasons why that mislabeled Motion—which seeks to dramatically expand the scope of the Court's geographically limited stay of the Final Rule ("the Rule") at issue in this case—should be denied. *See* Defs.' Opp'n to Pls.' Mot. for Clarification ("Opposition"), ECF No. 22; *see also* Mem. Op. & Order ("Order") at 27, ECF No. 18. Plaintiffs' Reply, ECF No. 29, responds to almost none of those arguments.

For instance, Plaintiffs once again make no effort to explain how their Motion can be reconciled with the Court's unequivocally clear intention to limit the scope of the preliminary relief it granted "to all covered entities within Texas and Montana" alone. Order at 26. They once again offer no counter to the Court's stated reasons for granting that limited relief. *See id.* ("There is no evidence of potential imminent harm to other parties."); *id.* (explaining that a geographically limited stay "accord[ed] with the record before the Court" and would "preserve" Plaintiffs' "and their citizens'

rights while fully insulating them from harm"). And they once again provide no response to the Court's express statement that it was granting relief under 5 U.S.C. § 705; its express recognition that § 705 "grants [courts] considerable discretion in crafting relief"; and its express conclusion that the preliminary relief it decided to grant would be properly crafted if limited to Plaintiffs alone. *Id.* at 9 n.4, 26-27. Plaintiffs' Reply, much like their Motion, instead just summarizes in the abstract various cases addressing the relief that courts may grant under the Administrative Procedure Act ("APA")—nearly all of which were available to the Court at the time it entered its Order. Yet the Court still granted the relief that it did, presumably with the understanding that such relief was wholly consistent with those same authorities.

The fact that the scope of the relief the Court granted is so unambiguous and the Court's basis for granting that limited relief so clear confirms that Plaintiffs' "Motion for Clarification" is instead a mislabeled effort to drastically alter the Court's Order. Indeed, Plaintiffs' Reply drops all pretense of needing further "clarification" regarding what exactly the Court's Order did; it instead acknowledges what the Order did—i.e., "stay[] the effective date of the Final Rule" in a "limited" fashion—and then argues that the Court should have done something else altogether—i.e., stay the Rule "universally." Reply at 1. Plaintiffs are thus asking the Court to reconsider, not clarify, the scope of its stay of the Rule, and why Plaintiffs continue to obscure the nature of their request remains unclear.

Plaintiffs double down on that request in their Reply, arguing that any relief awarded pursuant to § 705 must be universal in scope. *See id.* at 4-5. And they attempt to support that assertion with a compilation of citations to cases addressing the form and scope of relief available under the APA. But the propositions that Plaintiffs purport to extract from those cases are either overstated or plainly inaccurate. They first contend that *Career Colleges & Schools of Texas v. U.S. Department of Education*, 98 F.4th 220 (5th Cir. 2024), which concluded that preliminary relief granted under § 705 need not be "specific to the plaintiff," *id.* at 255, applies to this case, and that *Starbucks Corp. v. McKinney*, 144 S. Ct. 1570 (2024), does not because the latter "considered the scope of a preliminary injunction, not the scope of a stay." Reply at 1. But looking beyond that surface-level factual distinction, *Starbucks* made clear that when a federal statute authorizes courts to grant equitable relief, "there is a strong

presumption that [those] courts will exercise that authority in a manner consistent with traditional principles of equity." 144 S. Ct. at 1576. And that reasoning clearly applies to § 705. *See* H.R. Rep. No. 79-1980, at 43 (1946) (explaining that the relief authorized by § 705 "is equitable"); *see also Fed'n of Ams. for Consumer Choice, Inc. v. U.S. Dep't of Labor*, -- F. Supp. 3d --, 2024 WL 3554879, at *9 (E.D. Tex. July 25, 2024) ("The APA provides that 'the reviewing court' may issue equitable relief . . . ." (quoting 5 U.S.C. § 705)). Accordingly, any relief granted under § 705 should, consistent with longstanding principles of equity jurisprudence, "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). To the extent *Career Colleges* suggests otherwise, the applicability of that lower-court decision to this case, rather than the Supreme Court's reasoning in *Starbucks*, is what should be in doubt.

Plaintiffs next cite cases explaining that under § 706 of the APA, vacatur is the "default" remedy at final judgment in an APA case and that such a remedy is "inherently universal." Reply at 2-3 (citations omitted). Regardless of what § 706 says about permanent remedies, however, § 705 authorizes a court to issue preliminary relief "to the extent necessary to prevent irreparable injury," 5 U.S.C. § 705, and the irreparable-injury inquiry is inherently party-specific. *See, e.g.*, *Career Colleges*, 98 F.4th at 233 (explaining that, "[i]n deciding a motion for a preliminary injunction," a court must consider whether there is "a substantial threat of irreparable harm *to the movant* absent the injunction" (emphasis added)). Even assuming, moreover, that § 706 authorizes a vacatur remedy that effectively "erase[s]" an agency action "from the books" and thus "cannot logically be limited to the plaintiffs," Reply at 2 (citation omitted), that in no way compels the conclusion that preliminary relief under § 705 must necessarily be universal in scope as well. To the contrary, such a proposition is incompatible with the well-settled principle that preliminary relief is "an extraordinary remedy that may only be awarded upon a clear showing that *the plaintiff* is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (emphasis added). And unlike Plaintiffs' characterization of vacatur, there is nothing logically inconsistent about "postpon[ing] the effective date of any agency action" as to one party or in one jurisdiction but not another if doing so adequately "prevent[s]" the "irreparable injury"

being claimed and "preserve[s] status or rights pending conclusion of the review proceedings" in question. 5 U.S.C. § 705.

Plaintiffs nevertheless assert that in *Career Colleges*, the Fifth Circuit "rightly held that § 705 relief is 'not party-restricted'" and "is instead inherently universal." Reply at 4. But Plaintiffs distort that case's plain language. The *Career Colleges* court stated that because "the scope of *ultimate relief under [§] 706* . . . is not party-restricted," preliminary relief under § 705 does not "*need[] to be*" party-restricted either. 98 F.4th at 255. That is very different from saying that relief under § 705 *cannot be* party-restricted. *Accord Texas v. U.S. Dep't of Labor*, No. 4:24-cv-499, 2024 WL 3240618, at *14-*15 (E.D. Tex. June 28, 2024) (explaining that § 705 "neither requires nor prohibits relief that is nationwide in scope" and granting preliminary relief only to the plaintiff). Contrary to what Plaintiffs erroneously claim, then, nowhere does *Career Colleges* suggest (let alone hold) that § 705 relief *must be* universal. *See Mock v. Garland*, 75 F.4th 563, 586-88 (5th Cir. 2023) (noting that a group of plaintiffs seeking preliminary relief from a federal regulation in an APA case would not necessarily be entitled to "nationwide" preliminary relief on remand); *cf. Cargill v. Garland*, 57 F.4th 447, 472 (5th Cir. 2023) (en banc) (noting that even final relief under § 706 can be "more limited" than universal vacatur).

Plaintiffs' discussion of § 705 stays being a "less drastic" remedy than preliminary injunctions is similarly misleading. Reply at 3-4 (citation omitted); *see id* (claiming that "temporarily postpon[ing]" a regulation's effective date "is the least burdensome means of maintaining the status quo"). However true that proposition might be in theory, it certainly is not true in practice here. One cannot seriously claim that a universal stay of the Rule—which would effectively prevent Defendants from enforcing the Rule anywhere in the country—would be less drastic and less burdensome than the party-specific stay the Court issued, which only prevents Defendants from enforcing the Rule for the time being against "Texas and Montana and all covered entities in those States," Order at 27, or than a party-specific preliminary injunction, which would have the same practical effect as the Court's limited stay.[1]

[1] As Defendants noted in their Opposition, because the universal stay Plaintiffs seek would be far more drastic that the party-specific preliminary relief the Court granted, the Court should at most restyle that relief as a party-specific preliminary injunction rather than enter a much broader (and more burdensome) stay. *See* Opposition at 5 n.7.

Finally, Plaintiffs cite at the end of their Reply two Texas district court cases that issued § 705 stays that were not limited to the plaintiffs in each case. *See* Reply at 5. But both of those courts issued their respective stays only after concluding that such broad relief was warranted by several factors, including the fact that limiting relief to the plaintiffs alone would have "prove[d] unwieldy" and would not have afforded them complete relief. *Fed'n of Ams.*, 2024 WL 3554879, at *17; *see Ams. for Beneficiary Choice v. U.S. Dep't of Health & Human Servs.*, No. 4:24-cv-439, 2024 WL 3297527, at *7 (N.D. Tex. July 3, 2024) (noting that relief limited to the plaintiffs "would likely distort the market" and "prove unwieldy"). But Plaintiffs make no effort to show that those same factors are even arguably applicable here. Indeed, unlike Texas and Montana, several other States welcome the Rule's protections, *see* Br. of Amici Curiae California and 19 Other States, ECF No. 16, and thus do not claim to be harmed by the Rule in any way. *Cf. Fed'n of Ams.*, 2024 WL 3554879, at *17 (granting broad preliminary relief in part because, according to the court, non-party investment professionals "similarly situated" to the plaintiffs would also be "irreparably harmed" by the regulation at issue). And Plaintiffs nowhere explain how the limited relief the Court granted inadequately "prevent[s] irreparable injury" to them specifically, 5 U.S.C. § 705, or is otherwise incomplete.

At bottom, Plaintiffs contend that the Court's party-specific stay of the Rule *must be* universal in effect, notwithstanding the Court's clear intentions to the contrary, despite Plaintiffs' inability to cite precedential authority supporting that categorical proposition, and irrespective of the fact that Plaintiffs do not even attempt to show why they might be entitled to such sweeping relief. Their attempt to drastically alter the Court's Order and to obtain preliminary relief far beyond what is warranted should therefore be denied.

CONCLUSION

For the reasons provided above and in Defendants' Opposition, Plaintiffs' Motion for Clarification should be denied.

DATED: August 5, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

On August 5, 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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