IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

ADAM P. FAUST, *et al.*, *Plaintiffs*, v. THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture, *et al.*, *Defendants*.	)	Civil Action No. 21-cv-548-WCG

DEFENDANTS' RESPONSE TO PLAINTIFFS' SUPPLEMENTAL MEMORANDUM

On June 24, 2021, this Court held a status conference to discuss the status of Plaintiffs' pending motion for a preliminary injunction in light of the nationwide injunction entered by the U.S. District Court for the Middle District of Florida in *Wynn v. Vilsack*, No. 21-514-MMH-JRK (M.D. Fla. June 23, 2021). As indicated during the status conference, there is no legal basis for the entry of a preliminary injunction in this case (or the extension of the temporary restraining order currently in place) because Plaintiffs cannot establish irreparable harm—as they must—to warrant such relief.

Plaintiffs' theory of irreparable harm is that they suffer irreparable injury by virtue of the U.S. Department of Agriculture (USDA) providing debt relief to minority farmers under Section 1005 of the American Rescue Plan Act (ARPA). As noted during the status conference, in addition to the reasons stated in Defendants' Opposition to Plaintiffs' Motion for a Preliminary Injunction, ECF No. 35, Plaintiffs cannot establish irreparable harm based on USDA providing debt relief under Section 1005 where another court has enjoined USDA from providing any such relief. *See,*

e.g., Nat'l Urban League v. DeJoy, No. 20-cv-2391, 2020 WL 6363959, at *11 (D. Md. Oct. 29, 2020) (denying preliminary injunction because plaintiffs had failed to demonstrate irreparable harm where there was no apparent distinction between the relief they sought and injunctions already entered); *Maine Family Planning v. U.S. HHS*, 1:19-cv-00100-LEW (D. Me. Apr. 26, 2019), ECF No. 65 at 2 ("Because the Washington Order's nationwide injunction temporarily stops the Rule from going into effect altogether until further order of that Court . . . there is no longer an imminent threat of irreparable harm to Plaintiffs necessitating a preliminary injunction from this Court."); *cf. Washington v. Trump*, No. C17–0141, 2017 WL 4857088, at *6 (W.D. Wash. Oct. 27, 2017) (because another district court had "already provide[d] Plaintiff States with virtually all the relief they seek," plaintiffs will not incur "any significant harm" by the court's staying consideration of their TRO motion); *Int'l Refugee Assistance Project v. Trump*, No. 17–cv–0361, 2017 WL 1315538, at *2 (D. Md. Apr. 10, 2017) ("[I]n light of the current nationwide injunction of Section 6 by the United States District Court of the District of Hawaii, a stay would not impose any hardship on Plaintiffs or result in irreparable harm."); *Hawai'i v. Trump*, 233 F. Supp. 3d 850, 853 (D. Hawaii 2017) ("[T]he Western District of Washington's nationwide injunction already provides the State with the comprehensive relief it seeks in this lawsuit. As such, the State will not suffer irreparable damage . . . if the Court were to grant Defendants' motion to stay."); *Pars Equality Ctr. v. Trump*, No. 17-cv-255 (D.D.C.), ECF No. 84 at 2 (May 11, 2017) (staying resolution of preliminary-injunction motions and noting that "[t]he existence of two other nationwide injunctions temporarily casts uncertainty on the issue of whether the harms Plaintiffs allege are actually imminent or certain"). The extraordinary equitable power to enter a preliminary injunction is to be reserved for those circumstances necessary to avert irreparable harm. As the above-listed courts have recognized, where the action allegedly leading to Plaintiffs' irreparable

harm cannot be expected to occur, there is no legal basis for the entry of a preliminary injunction.

In their Supplemental Memorandum in Support of Motion for Preliminary Injunction, ECF No. 44, Plaintiffs make three arguments in support of this Court entering a second preliminary injunction: (i) that such injunctions were "commonplace" during the Trump administration; (ii) that the injunction in *Wynn* could be appealed, mooted out, and vacated by the Eleventh Circuit; and (iii) that decisions from multiple district courts and circuits are important "in a case and program of this importance." Pl.'s Supp'l Mem. 2-3. None of these arguments supports entry of a duplicative preliminary injunction. First, irrespective of whether overlapping injunctions were "commonplace" during the Trump administration, the frequency with which such injunctions were entered does not make them legally supportable. Second, Plaintiffs' argument that the injunction in *Wynn* could be mooted out or appealed and vacated by the Eleventh Circuit shows that Plaintiffs cannot establish any imminent harm, where the Government must first decide whether to appeal, the parties must submit briefing on appeal, and the Eleventh Circuit must issue a decision—in the Government's favor—all before Plaintiffs could possibly suffer the irreparable injury they allege. *See Henke v. Dep't of Interior*, 842 F. Supp. 2d 54, 59 (D.D.C. 2012) ("Injury that is hypothetical or speculative does not rise to the level of irreparable harm."); *accord In re Excel Innovations, Inc.*, 502 F.3d 1086, 1098 (9th Cir. 2007) ("Speculative injury cannot be the basis for a finding of irreparable harm."). If those factual prerequisites were to occur, such that it became possible that the *Wynn* injunction might be stayed, Plaintiffs could argue at that time that they face imminent harm, and Plaintiffs give no reason this Court could not wait to consider those arguments then. And third, this Court is not precluded from issuing at some point, and Plaintiffs from ultimately obtaining, a merits decision in this case or having multiple courts issue decisions with respect to the program at issue. Plaintiffs are simply not entitled to preliminary relief based on an alleged

irreparable injury stemming from an action that Plaintiffs, this Court, and the Government all concede is not occurring and is not imminently about to occur.

CONCLUSION

For the foregoing reasons, and those set forth in Defendants' Opposition to Plaintiffs' Motion for a Preliminary Injunction, the Court should deny Plaintiffs' motion for a preliminary injunction.

Dated: June 25, 2021

Respectfully submitted,

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