

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

STATE OF TEXAS, ET AL.

Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF LABOR;
LORI CHAVEZ DEREMER, in her official capacity
as U.S. Secretary of Labor; DONALD M.
HARRISON, III, in his official capacity as Acting
Administrator of the U.S. Department of Labor's
Wage and Hour Division; and U.S. DEPARTMENT
OF LABOR, WAGE AND HOUR DIVISION,

Defendants-Appellants.

Nos. 24-40777, 25-10349

FLINT AVENUE, LLC,

Plaintiff-Appellee,

v.

UNITED STATES DEPARTMENT OF LABOR;
LORI CHAVEZ-DEREMER, in her official capacity
as U.S. Secretary of Labor; DONALD M.
HARRISON, III, in his official capacity as Acting
Administrator of the U.S. Department of Labor's
Wage and Hour Division,

Defendants-Appellants.

UNOPPOSED MOTION TO HOLD APPEALS IN ABEYANCE

Defendants-Appellants United States Department of Labor, *et al.*,* respectfully move to hold these appeals in abeyance pending the agency's reconsideration of the rule challenged in these cases. This motion is unopposed.

1. These appeals involve challenges to a rule issued by the Department of Labor that defines and delimits a Fair Labor Standards Act exemption for employees “employed in a bona fide executive, administrative, or professional capacity.” 29 U.S.C. § 213(a)(1); *see* 89 Fed. Reg. 32,842 (Apr. 26, 2024). The district courts in these cases held that the rule exceeds the Department's statutory authority and granted summary judgment in favor of plaintiffs. The government's opening brief in *Texas, et al. v. Department of Labor* is currently due, as extended, on May 6, 2025. The government's opening brief in *Flint Avenue v. Department of Labor* is currently due on May 5, 2025.

2. Due to the recent change in administration on January 20, 2025, there is new Department of Labor leadership. The Department has informed undersigned counsel that it intends to reconsider the rule at issue in this litigation. The government therefore respectfully requests that these appeals be placed in abeyance

* Pursuant to Fed. R. App. Proc. 43(c)(2), U.S. Secretary of Labor Lori Chavez-DeRemer is automatically substituted for former Acting U.S. Secretary of Labor Vince Micone and Acting Administrator Donald M. Harrison, III, is automatically substituted for Deputy Administrator Patricia Davidson, who was previously performing the duties of the Acting Administrator of the Wage and Hour Division.

pending the agency's reconsideration of the rule. Abeyance will permit agency leadership time to engage in this decision-making process and will conserve judicial resources. The Department is prepared to provide periodic status updates as ordered by the Court and proposes to update the court with status reports at least every 60 days.

3. Counsel for the appellees has represented that they do not oppose to this request.

CONCLUSION

For the foregoing reasons, the government respectfully requests that these appeals be held in abeyance pending further consideration by the Department of Labor.

Respectfully submitted,

MICHAEL S. RAAB

/s/ Courtney L. Dixon
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APRIL 2025

CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 374 words.

/s/ Courtney L. Dixon
COURTNEY L. DIXON

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2025, I electronically filed the foregoing motion with the Clerk of the Court by using the appellate CM/ECF system.

I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system

/s/ Courtney L. Dixon
COURTNEY L. DIXON