

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

BLAKE J. WATTERSON,

Plaintiff,

v.

BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES et al.,

Defendants.

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Civil Action No. 4:23-cv-00080
Judge Mazzant

ORDER

Pending before the Court is Plaintiff’s Motion for Relief Under 5 U.S.C. § 705 or, Alternatively, for a Preliminary Injunction (Dkt. #7). Having considered the motion and relevant pleadings, the Court finds that Plaintiff’s Motion for Relief Under 5 U.S.C. § 705 or, Alternatively, for a Preliminary Injunction (Dkt. #7) should be **GRANTED in part**.

Plaintiff Blake Watterson (“Watterson”) filed the pending action against Defendants, challenging the legality of a rule promulgated by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) on January 31, 2023, entitled “Factoring Criteria for Firearms With Attached ‘Stabilizing Braces’” 88 Fed. Reg. 6,478 (Jan. 31, 2023) (“the Final Rule”). Watterson asserts the Final Rule violates the Constitution because it disregards Article I and separation-of-powers principles and runs afoul of the Second Amendment (Dkt. #1). Furthermore, Watterson claims that the Final Rule violates the Administrative Procedure Act (Dkt. #1). On February 2, 2023, Watterson filed the pending motion, requesting that the Court stay the Final Rule, or alternatively, issue a preliminary injunction enjoining Defendants from enforcing the rule.

The Final Rule has sparked litigation across the country, including in the Fifth Circuit. *E.g., Texas v. U.S. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 6:23-CV-00013, 2023

WL 3763895, at *1 (S.D. Tex. May 31, 2023); *Mock v. Garland*, No. 4:23-CV-00095-O, 2023 WL 2711630, at *1 (N.D. Tex. Mar. 30, 2023); *Miller v. Garland*, No. 1:23-CV-195, 2023 WL 3692841, at *3 (E.D. Va. May 26, 2023). In *Mock v. Garland*, a court in the Northern District of Texas dealt with a similar challenge to the one presented here on a motion for preliminary injunction or for a stay of the Final Rule. 2023 WL 2711630, at *1. There, the plaintiffs raised similar legal challenges to the ones raised by Watterson, and the court denied the plaintiffs' motion. *Id.* at *1–8. The plaintiffs subsequently appealed the decision, and a motions panel for the Fifth Circuit enjoined the Final Rule as to the plaintiffs in the case pending an expedited appeal. *Mock v. Garland*, No. 23-10319, Dkt. No. 52 (5th Cir. May 23, 2023). Following the Fifth Circuit's decision, a court in the Southern District of Texas enjoined the Final Rule as to the plaintiffs in its case, noting that its plaintiffs make similar legal challenges to the ones presented in *Mock* and the Fifth Circuit's decision will ultimately "affect, if not control," the court's opinion. *Texas*, 2023 WL 3763895, at *1.

At this juncture, the Court finds that similar relief should be afforded to Watterson. The Fifth Circuit's upcoming opinion will likely answer pertinent legal issues that face the Court. In light of the Fifth Circuit's injunction in *Mock*, the Court believes the proper recourse is to issue an injunction that enjoins Defendants from enforcing the rule against Watterson pending the Fifth Circuit's decision. *See Texas*, 2023 WL 3763895, at *1–4.

It is therefore **ORDERED** that Plaintiff's Motion for Relief Under 5 U.S.C. § 705 or, Alternatively, for a Preliminary Injunction (Dkt. #7) is hereby **GRANTED in part**.

It is further **ORDERED** that Defendants are **ENJOINED** from enforcing the Final Rule against Plaintiff in this case. The preliminary injunction shall remain in effect pending resolution of the Fifth Circuit's decision in *Mock v. Garland*.

It is further **ORDERED** that the parties shall submit briefing within fourteen (14) days of this Order addressing whether the Court should stay this action until the Fifth Circuit's decision in *Mock v. Garland*.

IT IS SO ORDERED.

SIGNED this 7th day of June, 2023.

A handwritten signature in black ink that reads "Amos Mazzant". The signature is written in a cursive style with a horizontal line underneath it.

AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE