

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

<b>STATE OF NEVADA, <i>et al.</i>,</b>	§	
<b>Plaintiffs,</b>	§	
	§	
<b>VS.</b>	§	<b>CIVIL ACTION NO.: 4:16-CV-731-ALM</b>
	§	
<b>UNITED STATES DEPARTMENT</b>	§	
<b>OF LABOR, <i>et al.</i>,</b>	§	
<b>Defendants.</b>	§	

**PETITIONERS CHIPOTLE MEXICAN GRILL, INC.’S AND  
CHIPOTLE SERVICES, LLC’S OPPOSITION TO EMERGENCY MOTION OF  
RESPONDENTS CARMEN ALVAREZ AND HER COUNSEL FOR INTERIM STAY**

Chipotle Mexican Grill, Inc. and Chipotle Services, LLC (collectively “Chipotle”), through their undersigned counsel, state as follows in opposition to the Emergency Motion of Respondents Carmen Alvarez and Her Counsel for Interim Stay (“Motion”):

1. Respondents assert that an interim stay is necessary to permit them to “seek a stay pending appeal from the U.S. Court of Appeals for the Fifth Circuit,” should this Court deny their request for a stay pending appeal. (Dkt. 133, ¶ 4.)

2. It appears that their basis for that request will mirror that set forth in their presently pending Emergency Motion for Stay Pending Appeal (Dkt. 131). Respondents claim that complying with this Court’s Contempt Order (Dkt. 129) and “withdrawing allegations in the New Jersey action on Monday, March 26, would irreparably harm” them. (Dkt. 133, ¶ 2.)

3. As Chipotle detailed in its Opposition to Respondents’ Emergency Motion<sup>1</sup> (Dkt. 134), Respondents failed to demonstrate the equities “heavily favored them,” given the harm

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<sup>1</sup> Chipotle incorporates by reference the entirety of its Opposition to Respondents’ Emergency Motion for Stay Pending Appeal. (Dkt. 134.)

Chipotle will suffer if a stay is granted. Thus the circumstances here require Respondents to demonstrate “a clear case of hardship to justify a stay.” (Dkt. 134 at 2-5 (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936), among others).) Respondents failed to do so. (*Id.* at 5-9.) Appellate review remains possible, even if Respondents comply with the Contempt Order, and the Attorney Respondents’ remaining arguments concerning the irreparable harm they will face if compliance is forced “are transparent, self-serving, and made without regard for their client, Respondent Alvarez.” (*Id.*)

4. Moreover, Respondents failed to meet their “substantial burden” of demonstrating either that this case involves a “serious legal question” or a “substantial case on the merits.” (*Id.* at 10-15.)

5. Because the underlying request for a stay fails, so too should any request for an interim stay. Respondents do not (and could not) argue that the Fifth Circuit will apply law that differs in any way from what the parties have already presented to this Court. *See Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981) (“Under [Fed. R. App. P.] 8 and precedent, we must consider four factors to determine whether the State has made a sufficient showing for this court to grant a stay of the injunction pending appeal.”). Moreover, a “stay is not a matter of right, even if irreparable injury might otherwise result.” *Ind. State Police Pension Tr. v. Chrysler LLC*, 556 U.S. 960, 961 (2009). Thus the deficiencies Chipotle identified in its Opposition to the request for a stay pending appeal will be equally fatal in the Fifth Circuit.

6. Rather, Respondents’ repeated plea to stay the consequences of their calculated risk in pursuing the allegations concerning the Final Rule in New Jersey should be denied, the compensatory fees and expenses awarded to Chipotle, and the file closed on the Final Rule’s validity.

WHEREFORE, for the reasons set forth above, Chipotle respectfully requests that this Court deny Respondents' Motion.

Dated: March 23, 2017

Respectfully submitted,

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ATTORNEYS FOR PETITIONERS  
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**CERTIFICATE OF SERVICE**

Undersigned counsel certifies that on March 23, 2017, the foregoing **PETITIONERS CHIPOTLE MEXICAN GRILL, INC.'S AND CHIPOTLE SERVICES, LLC'S OPPOSITION TO EMERGENCY MOTION OF RESPONDENTS CARMEN ALVAREZ AND HER COUNSEL FOR INTERIM STAY** was filed electronically with the Clerk of the Court for the U.S. District Court, Eastern District of Texas, by submission through the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to all counsel of record, each of whom have consented to accept said Notice as service of this document by electronic means. Counsel for Respondents will be served by electronic mail as follows:

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**STATE OF NEVADA, *et al.*,  
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**CIVIL ACTION NO.: 4:16-CV-731-ALM**

**PROPOSED ORDER DENYING EMERGENCY MOTION OF RESPONDENTS  
CARMEN ALVAREZ AND HER COUNSEL FOR INTERIM STAY**

The Court, having reviewed the Emergency Motion of Respondents Carmen Alvarez and Her Counsel for Interim Stay, Petitioners' Opposition thereto, the authorities cited therein, and exhibits thereto hereby DENIES the motion. The deadlines set forth in the Memorandum Opinion and Order entered on March 19, 2018 (Dkt. No. 129) for Respondents to withdraw their individual and representative allegations concerning the Final Rule against Chipotle and file with the Court a notice of compliance, and for Chipotle to submit affidavits in support of all attorneys' fees and expenses related to this contempt proceeding remain.