

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI**

<b>IVAN MUÑOZ MARTINEZ, et al.,</b>	:	<b>Case No. 1:07-cv-722</b>
	:	
<b>Petitioners/Plaintiffs,</b>	:	<b>Judge: Dlott</b>
	:	
<b>v.</b>	:	<b>Magistrate Judge: Hogan</b>
	:	
<b>MR. MICHAEL CHERTOFF, et al.,</b>	:	
	:	
<b>Respondents/Defendants.</b>	:	

**PLAINTIFF-INTERVENOR'S MOTION FOR A TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY INJUNCTION**

Now comes Plaintiff-Intervenor, Koch Foods of Cincinnati, LLC (Koch Foods), by and through counsel, and respectfully moves this Court for a temporary restraining order and preliminary injunction preventing the defendants from facilitating the removal or deportation of any of the Koch Foods Workers who were arrested, until the Plaintiff-Intervenor's attorneys have had a reasonable opportunity to interview them to determine if they possess information that is favorable and material to Koch Foods' defense in any criminal prosecution that may arise out of the government's investigation.

Respectfully submitted,

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Attorneys for Plaintiff-Intervenor, Koch Foods

**MEMORANDUM IN SUPPORT**

**I. BACKGROUND**

Koch Foods of Cincinnati, LLC (Koch Foods), is a limited liability company and wholly owned subsidiary of Koch Meat Co., Inc., located in Fairfield, Ohio that specializes in poultry processing. On August 28, 2007, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) executed a search warrant at the Koch Foods' facility in Fairfield, Ohio and arrested more than 160 workers. ICE has publically stated that all workers who were arrested have been identified as illegal immigrants. While Koch Foods has cooperated with the authorities in this investigation and complied with the laws relating to the hiring of workers, it has been told that criminal charges may nevertheless be filed. The investigation is ongoing.

On August 31, 2007, an Emergency Petition for Writ of Habeas Corpus, Writ of Mandamus, Complaint for Declaratory and Injunctive Relief, and Motion for a Stay of Removal, was filed in the above-captioned case by two of the detained workers and on behalf of the other detained workers. This Court held a hearing on August 31, 2007 and an informal agreement was reached between the parties that no detained workers would be immediately deported or moved to a jail outside of the Greater Cincinnati area.

On September 4, 2007, Koch Foods delivered a letter to AUSA Jeb Terrien, requesting the names and locations of the detained workers so that Koch Foods could interview them in order to determine whether they have information that is material and favorable to Koch Foods in a criminal prosecution.

On September 6, 2007, AUSA Terrien provided counsel with a list of names and locations of the detained workers. (Ex. E to Motion to Intervene, Letter). The list made clear that the

government has already violated the informal agreement reached by the parties in this case by moving several detained workers to the Seneca County Jail, more than three hours north of Cincinnati. AUSA Terrien also advised that at least some of the detained workers could be deported by DHS as early as Tuesday, September 11, 2007.

## II. ARGUMENT

Preliminary injunctive relief is appropriate under Federal Rule of Civil Procedure 65 where: 1) there is a likelihood of plaintiff's success on the merits; 2) the plaintiff will suffer irreparable harm without the injunction; 3) issuance of the injunction would not cause substantial harm to others; and 4) the injunction would serve the public interest. *See Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 432 (6<sup>th</sup> Cir. 2004). "[T]he four considerations applicable to preliminary injunctions are factors to be balanced and not prerequisites that must be satisfied. These factors simply guide the discretion of the court; they are not meant to be rigid and unbending requirements." *In re Eagle-Pincher Industries, Inc.*, 963 F.2d 855 (6<sup>th</sup> Cir. 1992) (citations omitted). Further, no single factor is dispositive of the outcome and a court may view each factor in light of the compelling circumstances of the case. *See Frisch's Restaurant v. Shoney's Inc.*, 759 F.2d 1261 (6<sup>th</sup> Cir. 1985).

Intervenor-Plaintiffs are likely to prevail on the merits because the law is clear that the government must provide potential criminal defendants with the opportunity to interview illegal immigrant witnesses who are facing deportation to determine if they possess information that is favorable and material to the defense. In *United States v. Valenzuela-Bernal*, the Supreme Court held that "the immigration policy adopted by Congress justifies the prompt deportation of illegal-alien witnesses *upon the Executive's good-faith determination that they possess no evidence*

*favorable to the defendant in a criminal prosecution.*” 458 U.S. 858, 872 (1982) (Emphasis added). “[P]rompt deportation deprives the defendant of an opportunity to interview the witnesses to determine precisely what favorable evidence they possess.” *Id.* at 873. Furthermore, facilitation of an illegal alien’s voluntary departure from the United States is equivalent to involuntary deportation. *See United States v. McLernon*, 746 F.2d 1098, 1121 (6<sup>th</sup> Cir. 1984). Counsel must be given sufficient opportunity to interview witnesses before the government facilitates their departure from the United States. *See id.*

It cannot be disputed that in the absence of preliminary injunctive relief, Intervenor-Plaintiffs will suffer irreparable harm. This element weighs heavily in favor of granting the requested relief. Koch Foods has recently learned that in spite of the informal agreement reached between Plaintiffs and Defendants in this case on August 31, 2007, the government is going to begin deporting detained workers as soon as September 11, 2007. While Koch Foods received a list of names and locations of the detained workers on September 9, 2007, it will be impossible for Koch Foods’ attorneys to interview these people before the government facilitates their deportation starting September 11, 2007. Most of the detained workers do not speak fluent English and Koch Foods will have to hire interpreters. Furthermore, many of the detained workers are represented by attorneys or are in the process of retaining attorneys and Koch Foods will have to find out who represents each worker and contact the attorneys before they can even begin interviewing the workers.

In light of the fact that the government is going to begin facilitating the deportation of these workers in a matter of days, Koch Foods certainly does not have a fair opportunity to interview the 160 workers before they are forced to leave the country. Furthermore, Koch Foods can not be certain that when the government interviewed the detained workers, it sought to elicit information that is

not only favorable to the prosecution, but also to Koch Foods.

If the detained employees are deported to locations beyond the range of compulsory process without giving Koch Foods the opportunity to determine whether these workers are material and favorable witnesses, Koch Food's right to a fair trial and right to present evidence in its defense will be violated.

Issuance of the preliminary injunction will not cause substantial harm to others and will serve the public's interest in preserving a potential criminal defendant's constitutional rights.

### **III. CONCLUSION**

For the foregoing reasons, Koch Foods respectfully requests that the Court grant the preliminary injunctive relief requested herein.

Respectfully submitted,

/s/ Martin S. Pinales

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Attorneys for Plaintiff-Intervenor, Koch Foods

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon Jan Holtzman, Esq. and Jeb Terrien, Esq. Assistant United States Attorneys, via fax and personal delivery and Firooz T. Namei, via the Court's electronic filing system on the 7th day of September, 2007.

/s/ Martin S. Pinales

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