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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

United Farm Workers, *et al.*,

Plaintiffs,

v.

U.S. Department of Labor, *et al.*,

Defendants.

Case No. 1:25-cv-1614-KES-SKO

BRIEF OF THE NORTH CAROLINA CHAMBER AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND § 705 STAY

INTEREST OF THE *AMICUS CURIAE*

The North Carolina Chamber ("Chamber") is a nonpartisan, nonprofit corporation[1] organized to promote and improve North Carolina's business climate.[2] As is the case in many states across the United States, agriculture and agribusiness are significant contributors to North Carolina's economy and the state has been among the largest states for employment of foreign nationals with an H-2A visa throughout the history of the H-2A program. Many of the Chamber's member employers rely on the H-2A program to supplement their domestic workforce and for that reason they, along with the 26 entities identified below that provided funding to support this filing, have an interest in ensuring the H-2A program provides farmers reliable and timely access to the labor they need to support American agricultural production, which in turn provides safe, affordable, and domestically grown food for the American consumer. The President and CEO of the Chamber has authorized the filing of this brief.

INTRODUCTION

The purposes of this amicus brief are to further the interests of employer participants in the H-2A program who seek to ensure their time-sensitive farming operations are not disrupted by Plaintiffs whose standing and claimed harm resulting from the Department of Labor's ("DOL") decisions have not been proven. Defendants brief (ECF 28) in opposition to the Plaintiffs' Motion for Preliminary Injunction and Stay (ECF 21) catalogues many reasons why the requested relief is

[1] The Chamber has no parent corporation, and no stockholders.

[2] No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. In addition to *amicus curiae* and its members, the following entities contributed money intended to fund preparing and submitting this brief: Agriculture Workforce Management Association, American Farm Bureau Federation, AmericanHort, Baucom's Nursery, Georgia Fruit & Vegetable Growers Association, Grower Shipper Association of Central California, International Fresh Produce Association, Metrolina Greenhouses, Michigan Asparagus Association, New York Farm Bureau, North American Blueberry Council, North Carolina Agribusiness Council, North Carolina Farm Bureau Federation, North Carolina Growers Association, North Carolina Sweetpotato Commission, Northwest Horticultural Council, National Council of Farmer Cooperatives, Texas Farm Bureau, Tobacco Associates, U.S. Apple Association, USA Farmers, Virginia Agricultural Growers Association, Virginia Farm Bureau, Washington State Tree Fruit Association, WAFLA, and Western Growers Association.

not warranted. Accordingly, this amicus brief seeks to highlight key issues, not fully discussed by Defendants, illustrating how Plaintiffs fail to satisfy Article III standing requirements and fail to meet their burden on the factors for preliminary relief; and further, to demonstrate that Defendants properly balanced the relevant interests in promulgating the Interim Final Rule ("IFR").[3]

ARGUMENT

Preliminary relief is not warranted because Plaintiffs do not have standing to obtain the relief they seek and because Plaintiffs failed to meet their burden on each of the factors described in *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20-22 (2008).

I. Plaintiffs have not established standing.

Plaintiffs claim that the IFR violates the Administrative Procedure Act ("APA") because DOL, in issuing the IFR, did not properly consider "(i) whether the IFR's new [AEWR] methodology would protect *U.S. farmworker* wages from the adverse effects of H-2A labor and (ii) the reliance interests of *U.S. farmworkers*." Plaintiffs' Brief in support of their Motion (ECF 21-1) (hereinafter "P. Br.") at 9 (emphasis added). Plaintiffs, however, have failed to establish that they "have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013). Without a "clear showing of each element of standing," including "an injury in fact that is concrete and particularized and actual or imminent," Plaintiffs cannot obtain preliminary relief. *Yazzie v. Hobbs*, 977 F.3d 964, 966 (9th Cir. 2020).

A. Plaintiffs UFW and UFW Foundation.

Plaintiff UFW is a labor union and not a "U.S. farmworker." *See* Compl. (ECF 1) ¶18. The UFW has not demonstrated that it has standing in its own right (organizational standing) to assert the claims in Plaintiffs' Motion. To the extent that the UFW seeks to assert claims on behalf of its members (associational standing), it has not so indicated, nor has it demonstrated that any of its members have standing to sue in their own right. *See Fleck & Assocs., Inc. v. City of Phoenix*,

[3] Pursuant to L.R. 133(k) this brief does not exceed fifteen pages and therefore does not include an indexed table of contents.

471 F.3d 1100, 1105-06 (9th Cir. 2006). Moreover, no individual Plaintiffs asserts in the Complaint that he or she is a member of, or in any way associated with, the UFW. *See* Compl. (ECF 1) ¶¶20-37. Nor do any of the six declarations of individual Plaintiffs submitted with the Motion contain any facts demonstrating that any is a member of, or in any way associated with, the UFW. *See* Grimaldo Decl. (ECF 21-3); Cruz Decl. (ECF 21-4); Lopez Decl. (ECF 21-5); Serrano Decl. (ECF 21-6); Garcia Decl. (ECF 21-7); Mendoza Decl. (ECF 21-8). The UFW therefore has not satisfied the requirements of associational standing.

Plaintiff UFW Foundation is a nonprofit organization and not a "U.S. farmworker." *See* Compl. (ECF 1) ¶19. Just like Plaintiff UFW, The UFW Foundation has not demonstrated that it has standing in its own right (organizational standing) to assert the claims in Plaintiffs' Motion. To the extent that the UFW Foundation seeks to assert claims on behalf of its members (associational standing), just like Plaintiff UFW, it has not so indicated, nor has it demonstrated that any of its members have standing to sue in their own right. Moreover, no individual Plaintiff asserts in the Complaint that he or she is a member of, or in any way associated with, the UFW Foundation. *See* Compl. (ECF 1) ¶¶20-37. Nor do any of the six declarations of individual Plaintiffs submitted with the Motion contain any facts demonstrating that any of them is a member of, or in any way associated with, the UFW Foundation. *See* Grimaldo Decl. (ECF 21-3); Cruz Decl. (ECF 21-4); Lopez Decl. (ECF 21-5); Serrano Decl. (ECF 21-6); Garcia Decl. (ECF 21-7); Mendoza Decl. (ECF 21-8). The UFW Foundation therefore also has not satisfied the requirements of associational standing.

B. Individually Named Plaintiffs.

None of the individual Plaintiffs has identified an "actual or imminent" injury resulting from the IFR; each individual's claimed injury is "conjectural or hypothetical" and therefore insufficient for Article III standing. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). In their Complaint, none of the individual Plaintiffs alleged, let alone demonstrated, that he or she is currently employed in a position and currently being paid a wage that results in an injury traceable to the IFR. Nor has any individual Plaintiff demonstrated that he or she will be

employed in 2026 and will receive a wage rate that results in an injury traceable to the IFR.

Instead, these individual Plaintiffs just generally allege that at some undefined point in the future "his [or her] hourly wage could be cut" or that he or she will experience "anticipated cuts to my wages due to the IFR." *See* Compl. (ECF 1) ¶¶ 20-24, 27, 28, 30, 34, 36 and 37; Grimaldo Decl. (ECF 21-3) ¶10, Cruz Decl. (ECF 21-4) ¶8, Lopez Decl. (ECF 21-5) ¶8, Serrano Decl. (ECF 21-6) ¶10, Garcia Decl. (ECF 21-7) ¶10, Mendoza Decl. (ECF 21-8) ¶11. Without evidence of current or future employment at a wage rate resulting in an injury traceable to the IFR, their claims are wholly speculative and are the same type of vague claim of injury rejected by the Court in *Lujan*. *See Lujan*, 504 U.S. at 563-64 (finding no actual or imminent injury where plaintiff had no definitive plans to travel to Sri Lanka to see elephants or leopards but merely hoped and intended to do so at some point in the future).

II. Plaintiffs have not shown they are entitled to a Preliminary Injunction.

A movant for preliminary relief must meet all of the *Winter* factors. Because Plaintiffs fail to satisfy any of the *Winter* factors, let alone all four, the Court should deny their motion.

A. Plaintiffs have not shown a likelihood of success on the merits.

The Plaintiffs have not demonstrated that the IFR is arbitrary or capricious. The IFR represents the reasoned judgment and expertise of the Secretary acting within the bounds of the significant discretion afforded to her by Congress. The IFR presents DOL's robust analysis of policy options and alternatives and the Secretary clearly explained the basis for her decisions. Plaintiffs' disagreements with the Secretary's policy choices appear to reflect a misapprehension about the Secretary's role and authority under the Immigration and Nationality Act ("INA"). In any event, Plaintiffs' disagreements with the Secretary's policy choices do not render the IFR arbitrary and capricious in violation of the APA.

1. DOL has discretion in choosing how to guard against adverse effect.

The INA grants broad authority to the Secretary of Homeland Security, the Attorney

General,[4] and the Secretary of State to carry out their duties in making immigration determinations. *See* 8 U.S.C. §§ 1103(a)(3), 1103(g)(2), 8 U.S.C. § 1104(a). In contrast, the Secretary of DOL has no authority to make immigration determinations and instead has a limited role to perform discrete functions serving as a consultant to the Attorney General. *See* 8 U.S.C. § 1184(c) ("the question of importing any alien . . . shall be determined by the Attorney General, after consultation with appropriate agencies of government" and defining DOL and USDA as appropriate agencies with regard to H-2A visas); *see also* 8 U.S.C. § 1188(a)(2), (c)(4), (e)(1).

One of those discrete functions requires the DOL Secretary, upon application by an employer that anticipates needing to hire foreign nationals with an H-2A visa, to certify (or not) the existence of two specific propositions, namely that:

> (A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition; and
> (B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

8 U.S.C. § 1188(a)(1). Within this inch-wide grant of consulting authority, the Secretary's policymaking discretion runs a mile deep. In the INA, Congress declined to "define adverse effect and left it in the Department's discretion how to ensure that the importation of farmworkers met the statutory requirements." *AFL-CIO v. Dole*, 923 F.2d 182, 184 (D.C. Cir. 1991).

Courts have repeatedly recognized that Congress's grant of discretion to the Secretary to decide *how* to guard against the potential for adverse effect creates substantial latitude for the agency to apply its expertise to determine the appropriate methodological approach to meet the statutory mandate. *See, e.g.*, *United Farm Workers v. Solis*, 697 F.Supp.2d 5, 8-11 (D.D.C. 2010) (rejecting plaintiffs' arguments that the 2008 Rule was an abuse of discretion because it utilized wage data from the OES program to set the AEWR and established a four-level skill system). The INA "grants discretion to the DOL to implement a regulatory regime to address" adverse effect,

[4] Many of the Attorney General's functions under the INA were transferred to the Secretary of Homeland Security through the Homeland Security Act of 2002. *See* Pub. L. 107-296, title XI, § 1102 (Nov. 25, 2002), Pub. L. 108-7, Div. L, § 105(a)(1), (2) (Feb. 20, 2003).

does not "define the term similarly employed," and "does not direct the DOL how to determine whether the employment of an H-2A worker will adversely affect the wages and working conditions of domestic workers" similarly employed. *Teche Vermilion Sugar Cane Growers Ass'n Inc. v. Su*, 749 F.Supp.3d 697, 723 (W.D. La. 2024).

2. Plaintiffs misunderstand the AEWR's purpose and DOL's role.

Plaintiffs' complaint that "the IFR conflicts with the INA because it creates the very 'adverse effects' on U.S. worker wages that Congress requires DOL to prevent," reveals a misunderstanding of the AEWR's intended function within the H-2A program. P. Br. (ECF 21-1) at 18. Congress's mandate in § 1188(a) requires the Secretary to certify that "*the employment of the alien* in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed." (emphasis added). Decades ago, DOL devised the AEWR *as a tool* to help it achieve the narrow mandate it was charged by Congress with fulfilling—namely, that it must certify that an employer's prospective employment of foreign workers will not result in adverse effect.

Plaintiffs' suggestion that DOL must set an AEWR at a level that is equal to or higher than it was the year before to avoid adverse effect is legally incorrect and overlooks the reality that the statute does not require the Secretary to issue an AEWR at all. Indeed, given the Secretary's broad discretion in carrying out her narrow mandate, she could abandon the AEWR altogether and replace it with some other data set or criteria to guide DOL in determining whether the proposed employment of foreign nationals with an H-2A visa would result in adverse effect. The statute provides the Secretary with significant discretion in carrying out her mandate, constrained only by her duty to balance the interests of farmers and workers and to sufficiently explain her rationale.

Plaintiffs' argument boils down to an apparent belief that the AEWR must operate like a one-way ratchet to deliver consistent wage increases to workers year after year, and that an adverse effect necessarily results from a failure to deliver such increases. There is no basis in law for Plaintiffs' contention, Congress did not mandate such a result and no court has ever reached such a

conclusion.[5] To the contrary, it has long been understood that:

> [t]he Secretary has no authority to set a wage rate on the basis of attractiveness to workers. His authority is limited to making an economic determination of what rate must be paid all workers to neutralize any "adverse effect" resultant from the influx of temporary foreign workers.

Williams v. Usery, 531 F.2d 305, 306 (5th Cir. 1976). Plaintiffs are simply wrong to suggest that within the structure of the H-2A program, an AEWR methodology that results in a wage rate in one year being lower than in the previous year necessarily results in an "adverse effect on workers in the United States similarly employed."

3. DOL properly balanced the interests of farmers and workers.

In *Dole*, the D.C. Circuit explained that DOL's role in administering the H-2A program is to serve "the interests of both farmworkers and growers—which are often in tension." *Dole*, 923 F.2d at 187. And "[t]hat is why Congress left it to DOL's judgment and expertise to strike the balance." *United Farm Workers v. U.S. Dep't of Labor*, 509 F.Supp.3d 1225, 1238 (E.D. Cal. 2021) (quoting *Dole*). Similarly, another district court recently recognized that DOL's obligation to "balance the competing goals of the statute—providing an adequate labor supply and protecting the jobs of domestic workers," and that DOL's "choice of [an AEWR] methodology" to achieve those goals "is really a policy decision taken within the bounds of a rather broad congressional delegation." *Kansas v. U.S. Dep't of Labor*, 749 F.Supp.3d 1363, 1374 (S.D. Ga. Aug. 26, 2024) (citing *Dole*).

Plaintiffs fail to acknowledge the important interests that farmers have in the H-2A program and the AEWR. Fortunately for farmers in North Carolina and in other states, when promulgating the IFR, DOL met its obligation to consider the interests of farmers in addition to the interests of workers. Plaintiffs argue that instead of utilizing the H-2A program, "farms could also address any labor shortage by doing what employers generally do in that circumstance: increase wages in order to draw more U.S. workers." P. Br. (ECF 21-1) at 21. DOL refuted this argument

[5] Plaintiffs' suggestion that this Court previously enjoined a DOL Rule because it resulted in a lower AEWR, misrepresents the basis for relief granted in that case. *See* P. Br. (ECF 21-1) at 4.

in the IFR by observing that recent wage increases did not result in more U.S. workers filling these jobs. *See* 90 Fed. Reg. at 47924. DOL also recognized that farms are constrained by numerous economic pressures, including dramatically increasing labor costs, with little to no control over the sale price of their crops. DOL concluded "that the current methodology for determining the AEWRs is an unworkable barrier to securing a legal agricultural workforce." *See* 90 Fed. Reg. at 47924. DOL properly evaluated and addressed concerns about the prior AEWR methodology and explained its rationale for changing the methodology.

DOL also addressed the impact on farmers from the cost of providing housing to H-2A employees. The decision to include a housing cost adjustment in the AEWR methodology reflects a long overdue recognition by DOL of the substantial costs to farmers in providing a housing benefit to H-2A employees—one that other employers typically do not provide to workers in the U.S. similarly employed. *See* 90 Fed. Reg. at 47948 ("Given the evidence presented that U.S. workers face an adverse compensation effect relative to the employment of H-2A workers, who are provided housing at no charge, the Department is adopting a standard adjustment factor to the AEWRs that accounts for this non-monetary compensation benefit."). The IFR provides an extensive and detailed analysis, including discussion of several published studies of farmworker housing issues, to explain DOL's reasoned analysis for this change.[6] *See* 90 Fed. Reg. 47947.

The IFR established a new AEWR methodology that relies on wage data collected in the OEWS program of the Bureau of Labor Statistics, the government's principal fact-finding agency in the field of labor economics and statistics. DOL determined that in absence of the availability of wage data from the U.S. Department of Agriculture after the September 2025 discontinuation of the Farm Labor Survey ("FLS"), data from the OEWS program was an appropriate replacement. DOL noted the OEWS data was even more appropriate to use at this time because, unlike the FLS, it gathers wage data from farm labor contractors who now employ more than 40 percent of H-2A

[6] The IFR makes clear that the housing adjustment factor applies only to the AEWR *that H-2A workers receive* and Plaintiffs have failed to prove that any individual Plaintiff has standing to challenge this aspect of the IFR. *See* 90 Fed. Reg. at 47949 ("hourly adjustment factor will only apply to the AEWR established separately for the H-2A workers.").

workers. *See* 90 Fed. Reg. 47931. As DOL explained in the IFR, the OEWS data has long been used as a wage resource in other visa programs and had even previously been used in the H-2A program.[7] *See* 90 Fed. Reg. 47929-30. DOL also noted that due to farmers' critical need for labor through the H-2A program, it needed to promptly devise a new methodology "to avoid imminent widespread disruption across the U.S. agricultural sector." 90 Fed. Reg. 47924. Plaintiffs may not favor the OEWS wage data or the methodology selected by DOL, but those are policy choices well within the Secretary's discretion and the IFR adequately explains her rationale for selecting them.

B. Plaintiffs' claimed "harm" is speculative.

A preliminary injunction cannot issue on a mere possibility of injury. Claimed injuries like Plaintiffs'—injuries that are remote, speculative, or dependent on future contingencies—cannot justify such relief. *Winter*, 555 U.S. at 22 ("Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.").

Contrary to Plaintiffs' claim that DOL failed to consider the possible reliance interests of U.S. farmworkers, DOL provided a detailed analysis that accounts for the IFR's potential impact on four groups that DOL determined may have "potential reliance interests": agricultural employers, U.S. workers, non-U.S. workers, and U.S consumers. *See* 90 Fed. Reg. 47927-28. Through that analysis, DOL met its legal obligation to "assess the existence and strength of any reliance interests, and weigh them against competing policy concerns." *Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 140 S. Ct. 1891, 1899 (2020).

Although DOL adequately assessed any potential reliance interests that workers may have, the individual Plaintiffs nonetheless have failed to demonstrate that they have a true reliance interest in a specific wage rate or a specific AEWR methodology. To begin, a worker has no "reliance interest" in the former AEWR methodology that depended on the availability of data that

[7] A district court upheld use of OES (as program was then known) data, rather than FLS data, to set the AEWR. *See United Farm Workers v. Solis*, 697 F.Supp.2d 5, 8-11 (D.D.C. 2010).

is no longer available. Because of USDA's announcement of its decision to discontinue the FLS, there is no longer complete data available from USDA for DOL to rely on in setting an AEWR for 2026 and beyond.[8] A worker cannot possibly have a reliance interest based on an agency's discretionary past practice of collecting data that the agency no longer collects.

Under the H-2A program, no worker has a legally cognizable "reliance interest" in a particular wage rate unless perhaps in the circumstance where that worker is *then employed* pursuant to the terms of an H-2A Job Order (as are foreign nationals with an H-2A visa) or in a position that the H-2A regulations require be paid the AEWR (*i.e.*, as is a U.S. worker in "corresponding employment" with an H-2A worker).[9] But in either case, to the extent a reliance interest exists, it could exist only for the duration of the contract or for the period of employment that was subject to the AEWR.

Throughout the history of the H-2A program, individual AEWRs change every year and vary widely based on the particular agricultural occupation, state, or crop. AEWRs based on FLS data have even decreased from one year to the next in some states. In some instances, the AEWR is not even the applicable minimum wage rate because it is exceeded by a collective bargaining wage, a state or federal minimum wage, a prevailing piece rate wage applicable to a particular crop or task, or some higher rate *the employer chooses to pay* to secure the labor it needs. *See* 20 C.F.R. § 655.120(a).

Plaintiffs' averments in their Complaint and their Declarations demonstrate this reality. Most Plaintiffs' averments do not precisely describe the past wages they received by year, location, and crop or occupation, nor indicate whether their work was subject to the AEWR. Even so, the Complaint's allegations illustrate a wide variety of wage rates all across the nation based on

[8] If DOL sought to continue setting AEWR, it had no choice but to find a new data source. DOL determined the OEWS data was preferable to relying on partial year 2025 FLS data that would no longer be collected or revised. *Cf. UFW v. U.S. Dep't of Labor*, 509 F.Supp.3d at 1237 (invalidating new AEWR methodology and explaining "the Final Rule severs the relationship between the AEWR and *current* farm labor market conditions") (emphasis added).

[9] Outside of the H-2A program, a worker may have a reliance interest in a particular wage rate based on some other employment contract or collective bargaining agreement that is then in effect—but not after its termination.

location, agricultural occupation, crop and employer. *See* Compl. (ECF 1) ¶¶ 20-37 (describing prior work in variety of agricultural crops and different agricultural occupations in California, Georgia, Michigan, Minnesota, Missouri, Texas, Washington, and Wisconsin, wages from $17.50 to $30.58 per hour, including wage rates that exceed the applicable AEWR, and with multiple Plaintiffs noting that they traveled to other states for work); *see also* Grimaldo Decl. (ECF 21-3) ¶ 7 (stating willingness to travel to different states for work); Mendoza Decl. (ECF 21-8) ¶8 (same); Cruz Decl. (ECF 21-4) ¶5 (stating employer paid wage rate *higher* than AEWR); Lopez Decl. (ECF 21-5) ¶5 (same); Serrano Decl. (ECF-21-6) ¶5 (same).

There simply is no basis for any employee to have a reasonable expectation, let alone a true reliance interest, in continuing to receive a specific wage from an H-2A employer beyond the term of their present employment. As noted above, no individual Plaintiff has even demonstrated that he or she is presently employed in such a position and receiving a wage rate traceable to the IFR.

Moreover, a foreign national who is employed in the U.S. through the H-2A program in any one year has no guarantee that he or she will be so employed in a subsequent year.[10] Similarly, employers must demonstrate eligibility to employ workers through the H-2A program on a seasonal or temporary basis each year, and approval to participate in the H-2A program in one year does not guarantee approval in a future year by either DOL or the Department of Homeland Security. *See* 20 C.F.R. § 655.130; 8 C.F.R. § 214.2 (h)(5).

Generally, workers in agriculture and other economic sectors have no guarantee of future employment, given the prevailing at-will employment standard across the country. In advance of each new growing season a worker has several options, including choosing where to seek employment, in what agricultural occupation or crop, and for what wage, among other considerations. The representations of Plaintiffs in the Complaint and Declarations illustrate that many have worked in a variety of crops, agricultural occupations, in different states, and for a

[10] And regardless of any desire to secure H-2A employment, an applicant must establish eligibility for the visa each year, and the individual's entry to the United States is dependent upon a series of discretionary government acts for which there is no review, including being issued a visa by the State Department, and granted entry into the U.S. by Customs and Border Protection.

variety of wages over the years. *See* Compl. (ECF 1) ¶¶20-34; *see also* Declarations (ECF 21-3 through ECF 21-8). The employer, too, has options in advance of each new season, including whether to participate in the H-2A program, what crops it will grow, and what wages and other terms of employment it will offer. In the H-2A program, neither the worker nor the employer is obligated to resume the same employment relationship that existed in a prior year, let alone at the same wage or a higher wage. In addition, if an employer participates in the H-2A program in one year, but the next year chooses to *not* participate in the H-2A program, the employer's pay obligations related to the AEWR are wholly irrelevant. Thus, Plaintiffs have no reliance interest in any specific future wage rate based on a wage that may have been applicable in the past.

C. The public interest and balance of harms do not favor an injunction.

With every passing week, DOL approves hundreds (and cumulatively, thousands) of labor certification applications from farmers who wish to participate in the H-2A program in 2026. Those applications also require the submission of "job orders" specifying the wage rate offered. Due to the current applicability of the IFR, many farmers already have wage rates set through approved job orders and labor certifications. If the Court were to grant the preliminary relief that Plaintiffs seek—a stay or an injunction prohibiting DOL's implementation of the IFR and requiring a different AEWR methodology—substantial hardship would result for the scores of farmers that have already made irrevocable business decisions based on approved job orders and labor certifications from which they have calculated, budgeted and secured operating capital to meet their labor costs in 2026. The brunt of the chaos and harm resulting from the relief sought by Plaintiffs would fall on America's farmers that rely on the H-2A program to supplement their domestic workforce and ensure time-critical agricultural work is completed. That disruption of the H-2A program and labor-intensive agricultural production also risks significant harm to the domestic food supply and the U.S. consumer, concerns DOL repeatedly explained it was seeking to address when issuing the IFR. *See, e.g.,* 90 Fed. Reg. 47920, 47959.

IV. Plaintiffs' requested relief is not appropriate.

As explained in Sections I and II, *supra*, Plaintiffs have not demonstrated the requisite

standing entitling them to relief, nor have they met the *Winter* requirements for preliminary relief. If any relief were warranted at this stage, it must be limited to those who clearly satisfy Article III standing requirements and proved their entitlement to preliminary relief. Following *Trump v. CASA, Inc.*, 606 U.S. 831, 842-44 (2025), the nationwide preliminary injunction sought by Plaintiffs is not available. Moreover, even if the UFW could be said to have associational standing to assert claims on behalf of its members, it has not shown the requisite harm with specificity entitling it to relief in all 50 states. *See* Romero Decl. (ECF 21-2) ¶3-4 (naming only five states, California, Arizona, Oregon, Washington and New York, in which the union has members and otherwise stating that it has non-dues paying members in "a majority of states").

CONCLUSION

Instead of granting preliminary relief that would throw the 2026 growing season into chaos for America's farmers, the Court should deny Plaintiffs' Motion.

Respectfully submitted,

By: /s/

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