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11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
13 **FRESNO DIVISION**

14 <i>United Farm Workers et al.,</i>	)	) No. 1:25-cv-1614-KES-SKO
15 Plaintiffs,	)	) <b>OPPOSITION TO PLAINTIFFS'</b>
16 v.	)	) <b>MOTION FOR A PRELIMINARY</b>
17 <i>U.S. Department of Labor et al.,</i>	)	) <b>INJUNCTION AND § 705 STAY</b>
18 Defendants.	)	
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1 INTRODUCTION

2 Plaintiffs seek a nationwide injunction of DOL’s October 2, 2025, Interim Final Rule, *Adverse*  
3 *Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range*  
4 *Occupations in the United States*, 90 Fed. Reg. 47914 (Oct. 2, 2025) (“the IFR”) because they claim it  
5 causes them irreparable harm by possibly reducing their wages. But they cannot demonstrate standing or  
6 irreparable harm. Plaintiffs also seek to maintain the “status quo” by requiring DOL to do things the way  
7 they have always been done. But that is impossible. The very reason for the IFR is that the “status quo”  
8 as Plaintiffs describe it, no longer exists by reason of the actions of third parties, and DOL must respond  
9 to the new state of affairs in a new way.  
10

11 At the threshold, Plaintiffs cannot show a concrete and particularized, imminent injury to establish  
12 standing. Plaintiffs allege that their wages might decrease but have not yet applied for any jobs with a  
13 reduced wage. Plaintiffs allege they may need to seek another type of employment but have not done so  
14 yet. To date, Plaintiffs’ injury is entirely speculative and based on the wage they believe employers may  
15 offer them in the future.  
16

17 Plaintiffs also fail to meet all prongs of the *Winter* test for a preliminary injunction. They cannot  
18 show irreparable injury because the injury they allege is purely speculative. They cannot show a likelihood  
19 of success on the merits of their claims that the IFR violates the APA, because each aspect of it is  
20 reasonably explained and DOL established good cause for using the well-established IFR process. And  
21 they cannot show that the merged factors of the balance of harms and public interest weigh in their favor  
22 because the rule serves to mitigate other harms to farmers, and the public interest weighs in favor of  
23 predictability in the H-2A program.  
24

25 Finally, the injunction Plaintiffs seek is improper in its nationwide scope and its request for  
26 affirmative, mandatory relief.  
27

28 Thus, for the reasons set forth more fully below, Plaintiffs’ motion for a preliminary injunction

1 should be denied, and the Complaint should be dismissed for lack of standing.

## 2 BACKGROUND

### 3 I. STATUTORY AND REGULATORY BACKGROUND

#### 4 A. Overview of the H-2A Temporary Nonimmigrant Worker Program

5 The H-2A visa program permits agricultural employers in the United States to hire foreign workers  
6 on a temporary basis “to perform agricultural labor or services ... of a temporary or seasonal nature.” 8  
7 U.S.C. § 1101(a)(15)(H)(ii)(a). To hire a temporary agricultural worker through the H-2A program, an  
8 employer must file a visa petition with the Department of Homeland Security (“DHS”). But before an  
9 employer can file such a visa petition, they must seek a temporary labor certification from DOL that (1)  
10 there “are not sufficient workers” able, willing, and qualified to perform the labor at issue and (2)  
11 employment of the H-2A worker “will not adversely affect the wages and working conditions of workers  
12 in the United States similarly employed.” 8 U.S.C. § 1188(a)(1)(A), (B); *see also* 8 C.F.R. §  
13 214.2(h)(5)(i)(A). In enacting the H-2A program, Congress directed DOL to strike a balance between the  
14 “competing goals” of “providing an adequate labor supply” and “protecting the jobs of domestic workers.”  
15 *AFL-CIO v. Dole*, 923 F.2d 182, 187 (D.C. Cir. 1991).

16  
17  
18 Setting the Adverse Effect Wage Rate (“AEWR”) “is one of the primary ways DOL meets its  
19 statutory obligation to certify that the employment of H-2A workers will not have an adverse effect on the  
20 wages of agricultural workers in the United States similarly employed.” 90 Fed. Reg. at 47916.<sup>1</sup> The  
21 AEWR is the minimum wage an H-2A worker must be paid to avoid depressing wages of those similarly  
22 employed in the United States. 8 C.F.R. § 214.2(h)(5)(i)(A); *see North Carolina Growers’ Ass’n v. United*  
23 *Farm Workers (NCGA)*, 702 F.3d 755, 759 (4th Cir. 2012). “DOL has used a number of methods for  
24 calculating the AEWR over the years[.]” *UFW v. Chao*, 227 F. Supp. 2d 102, 108 n.13 (D.D.C. 2002).

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28 <sup>1</sup> A history of the various AEWR methodologies established by DOL is included in the IFR. 90 Fed. Reg. at 47916-19.

1 The AEW R “is designed to prevent the potential wage-depressive impact of foreign workers on the  
2 domestic agricultural workforce.” 75 Fed. Reg. 6884, 6891 (Feb. 12, 2010). In designing the AEW R  
3 methodology, DOL sets a “rate [that] will neither ratchet wages upward, driving growers out of business  
4 nor perpetuate wage depression.” *Dole*, 923 F.2d at 187. Congress has not set a method for calculating the  
5 AEW R; rather, “calculating AEW Rs has been left entirely to [DOL’s] discretion.” *AFL-CIO v. Brock*, 835  
6 F.2d 912, 915 (D.C. Cir. 1987); *Kansas, et al. v. U.S. Department of Labor* 749 F. Supp. 3d 1363, 1374–  
7 75 (S.D. Ga. 2024). Employers who wish to employ temporary foreign agricultural workers must offer,  
8 advertise in their recruitment, and pay a wage that is the highest of the AEW R, the prevailing wage (if one  
9 has been issued by DOL), the agreed-upon collective bargaining wage, the federal minimum wage, or the  
10 state minimum wage. *See* 20 C.F.R. §§ 655.120(a), (c), 655.122(l).

#### 11 12 **B. DOL’s Interim Final Rule**

13  
14 In August 2025, a number of events occurred, necessitating the IFR. First, DOL’s prior AEW R  
15 Rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in*  
16 *Non-Range Occupations in the United States*, 88 Fed. Reg. 12760 (Feb. 28, 2023), was permanently  
17 enjoined and vacated. *Teche Vermilion Sugar Cane Growers Ass’n Inc. v. Chavez-Deremer*, No. 6:23-  
18 CV-831, 2025 U.S. Dist. LEXIS 167276, at \*1 (W.D. La. Aug. 25, 2025). As a result, the AEW R  
19 methodology reverted to the last rule in effect, which was the 2010 Rule. 90 Fed. Reg. at 47919. The 2010  
20 Rule relied on USDA’s Farm Labor Survey (“FLS”) to calculate the AEW R. *Id.* at 47917. However,  
21 USDA discontinued the FLS as of August 31, 2025. *Id.* at 47920. *See also* 90 Fed. Reg. 42560 (Sept. 3,  
22 2025) (explaining discontinuation of FLS and another survey and reasons for it). While DOL had some  
23 data from which to calculate AEW Rs in the short-term, USDA’s discontinuation of the FLS data created  
24 a “regulatory gap” and a new AEW R methodology was required. *Id.*

25  
26 Those immediate problems were not the only impetus for the IFR. Indeed, the need for a revised  
27 AEW R methodology is detailed in the IFR. *See* 90 Fed. Reg. 47919-26. The IFR explains that “the lack  
28

1 of a reasonable and viable AEW method, when combined with the current and imminent labor  
2 shortage exacerbated by the near total cessation of the inflow of illegal aliens, increased enforcement of  
3 existing immigration law, and global competitiveness pressures ..., presents a sufficient risk of supply  
4 shock-induced food shortages to justify immediate implementation of this IFR.” *Id.* at 47919. It explains  
5 that these changes are “structural, not cyclical.” *Id.* at 47920. Those structural changes include “lack of an  
6 available legal workforce” and “loss of the mobile illegal alien workforce” resulting from increased  
7 immigration enforcement efforts. *Id.* Such changes pose “immediate dangers to the American food  
8 supply” including “significant disruptions to production costs” and “threatening the stability of domestic  
9 food production and prices for U.S. consumers” while also “caus[ing] or exacerbate[ing] imminent and  
10 significant economic harm to employers in the U.S. agricultural Sector[.]” *Id.*

12 As a result, the IFR was created to fill the regulatory gap left by the absence of data and to address  
13 the structural changes to the agricultural labor market. In doing so, the IFR also chose a methodology that  
14 brings the wage determinations for H-2A workers more in line with the determinations for other similarly  
15 employed workers, including temporary foreign workers. *Id.* at 47933, 47936-37.

17 Like prior rules, the IFR relies upon Standard Occupational Code (“SOC”) numbers. DOL or the  
18 State Workforce Agency assigns an “SOC” number to the job based on the job duties described by the  
19 employer. *Id.* at 47937. SOC numbers are standardized codes “used by federal agencies to classify workers  
20 into occupational categories for the purpose of collecting, calculating, or disseminating data.” *See*  
21 <https://www.bls.gov/soc/> (last visited Jan. 22, 2026). DOL also relies upon a nationwide wage survey from  
22 the Bureau of Labor Statistics (“BLS”), the Occupational Employment and Wage Statistics (“OEWS”) survey,  
23 to determine the market-based wages paid for any particular SOC code.

25 The IFR applies one of two skill levels within each SOC code, based upon the education and  
26 experience required by the employer for a particular job. 90 Fed. Reg. at 47926. At the most basic level,  
27 jobs requiring less skill or experience have a lower AEW and thus pay less, and jobs requiring more skill  
28

1 or experience have a higher AEW and thus pay more. *Id.* The IFR explains that “[t]he wages presented  
2 at different points within an occupational wage distribution positively correlate to important worker  
3 characteristics such as education and experience.” *Id.* at 47934.

4 Wages also vary depending on the SOC code and state. *See* <https://flag.dol.gov/wage->  
5 [data/adverse-effect-wage-rates](https://flag.dol.gov/wage-data/adverse-effect-wage-rates) (last visited Jan. 22, 2026); 90 Fed. Reg. at 47935. In implementing two  
6 skill levels, DOL acknowledged that by using a single hourly wage based upon FLS data in prior AEW  
7 methodologies without regard to job offer requirements or a worker’s time spent on a specific duty, the  
8 prior methodologies set the AEW floor too high for the majority of workers. *Id.* at 47920. The IFR  
9 remedies that concern, explaining that using a two-tier wage methodology better approximates “the  
10 average of wages paid to U.S. workers similarly employed in the occupation and geographic area based  
11 on the qualifications contained in the employer’s job offer.” *Id.* at 47936.

12  
13  
14 The methodology in the IFR changed the data source that DOL will use to set the AEWs because  
15 FLS data has been discontinued. The IFR methodology uses only data from the nationwide OEWS wage  
16 survey. 90 Fed. Reg. at 47928-29. OEWS is a robust survey that collects data from 1.1 million  
17 establishments over a three-year period which “allows the production of data at detailed levels of  
18 geography, industry, and occupation and accounts for approximately 57 percent of employers in the  
19 United States.” *Id.* at 47929. OEWS data is the best available data now and can establish “more precise  
20 skill-based AEWs covering all job opportunities specific to each state” than the FLS could. *Id.* at 47926.  
21 FLS, on the other hand, suffered from certain flaws including that “the FLS provides wage estimates only  
22 for field and livestock worker (combined) occupations and does not reflect wages paid by farm  
23 establishments for agricultural labor or services provided by workers who are employed by farm labor  
24 contractors, or non-farm support establishments, or any wage information for farm establishments in  
25 Alaska or the U.S. territories.” *Id.* at 47930. Nonetheless, the IFR also includes a plan for BLS to begin  
26 conducting a survey similar to what USDA did with the FLS in 2026, and to integrate that data with OEWS  
27  
28

1 data, so that by 2027, there will be a more comprehensive set of data available from which to determine  
2 an AEW. Such a dataset has never existed before. *Id.* Until that time, however, DOL reasonably  
3 explained that OEWS data is the best available data source because it is the only data source that provides  
4 “state or region-level wage estimates for agricultural occupations” now that FLS has been discontinued.  
5 *Id.* at 47930.

6  
7 Accordingly, at a high level, the AEW methodology set forth in the IFR determines AEWs for  
8 H-2A job opportunities using “the annual average hourly gross wage in the U.S. state or territory according  
9 to two skill or qualification levels: Skill Level I (Entry-Level) and Skill Level II (Experience-Level).” *Id.*  
10 at 47932. The IFR explains that the “Skill-Level I AEW is computed at the equivalent of the 17th  
11 percentile of the occupational wage distribution” for the SOC Code, while Skill Level II will be computed  
12 at “the equivalent of the 50<sup>th</sup> percentile of the occupational wage distribution.” *Id.* at 47933. Both are  
13 “similar to the skill-based prevailing wages for other nonimmigrant and immigrant visa programs.” *Id.* at  
14 47932-33. Skill Levels are assigned “based on the totality of the circumstances of an employer’s job offer”  
15 and designed to “more closely align the wage standard in the H-2A program with the wage standards in  
16 other employment-based immigration programs which use skill-based wage levels.” *Id.* at 47933.

## 18 **II. PROCEDURAL HISTORY**

19 DOL issued its IFR on October 2, 2025, and it took effect immediately. *Id.* at 47914. Plaintiffs  
20 filed their complaint November 21, 2025. ECF 1. They then waited until December 22, 2025, to file the  
21 motion for a preliminary injunction. ECF 21.

22  
23 Plaintiffs’ complaint raises three APA claims for relief. Count I alleges that the IFR is contrary to  
24 8 U.S.C. § 1188. Compl. ¶¶ 111-118. Count II alleges that the IFR is arbitrary and capricious because its  
25 wage calculation, skill levels, housing-related AEW adjustment, and OEWS data usage are all improper  
26 and further it failed to consider reliance interests. *Id.* ¶¶ 120-137. Count III alleges that DOL did not  
27 establish good cause to proceed via an IFR. *Id.* ¶¶ 138-146. Plaintiffs seek a preliminary injunction  
28

1 preventing enforcing the IFR (which is already in effect), a mandatory injunction requiring DOL to impose  
 2 a different method to determine AEWRS, a universal injunction, and vacatur of the IFR. *Id.* ¶¶ 147-150.

### 3 STANDARD OF REVIEW

#### 4 A. Standing

5 Standing requires that a “a litigant must have suffered, or be threatened with, an actual injury  
 6 traceable to the defendant and likely to be redressed by a favorable judicial decision.” *Chafin v. Chafin*,  
 7 568 U.S. 165, 172 (2013). The Plaintiff, as the party invoking jurisdiction, has the burden to show  
 8 standing. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citation omitted). At the preliminary  
 9 injunction stage, the plaintiff “must make a clear showing of each element of standing,” including “an  
 10 injury in fact that is concrete and particularized and actual or imminent” *Yazzie v. Hobbs*, 977 F.3d 964,  
 11 966 (9th Cir. 2020).

#### 12 B. Preliminary Injunction

13 A preliminary injunction is “an extraordinary and drastic remedy” which “should not be granted  
 14 unless the movant, by a clear showing, showing carries the burden of persuasion” on four required factors.  
 15 *Mazurek v. Armstrong*, 529 U.S. 968, 972 (1997) (per curiam) (citations/quotations omitted); see *All. for*  
 16 *the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). “To obtain a preliminary injunction, a  
 17 plaintiff must establish that (1) it is likely to prevail on the merits of its substantive claims, (2) it is likely  
 18 to suffer imminent, irreparable harm absent an injunction, (3) the balance of equities favors an injunction,  
 19 and (4) an injunction is in the public interest.” *All. for the Wild Rockies v. Petrick*, 68 F.4th 475, 490 (9th  
 20 Cir. 2023) (citing *Winter v. Natural Resource Def. Council*, 555 U.S. 7, 20 (2008)).<sup>2</sup> “[T]he factors  
 21 considered in determining whether to postpone agency action pursuant to § 705 substantially overlap with  
 22  
 23  
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 25

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26  
 27 <sup>2</sup> Plaintiffs do not invoke the Ninth Circuit’s “serious questions” on the merits combined a hardship balance  
 28 that tips “*sharply*” toward the plaintiff and thus the court need not consider it. *Id.* (emphasis added).

1 the *Winter* factors for a preliminary injunction.” *Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 986 (9th  
2 Cir. 2025). For both a preliminary injunction and a § 705 stay, the proper focus as to scope is whether it  
3 will afford “complete relief to the *plaintiffs before the court*” not to “*everyone* potentially affected.”  
4 *Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 995 (9th Cir. 2025) (denying nationwide § 705 stay)  
5 (quoting *Trump v. CASA*, 606 U.S. 831, 852 (2025) (emphasis original)).  
6

## 7 ARGUMENT

### 8 I. PLAINTIFFS LACK STANDING

9 Plaintiffs United Farm Workers (“UFW”) and UFW Foundation lack standing because they have  
10 not suffered an injury in fact. *See East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663–64 (9th Cir.  
11 2021) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). They are organizations that  
12 represent farmworkers nationwide. Compl. ¶ 18. Organizations can “assert standing either on behalf of its  
13 members (i.e., associational standing), or directly on its own behalf (i.e., organizational standing).”  
14 *Northwest Ass’n of Indep. Schs. v. Labrador*, 776 F. Supp. 3d 837, 857 (D. Idaho 2025) (citing *East Bay*  
15 *Sanctuary Covenant*, 993 F.3d at 663). The organizational standing analysis uses the usual standards for  
16 injury in fact, causation, and redressability that apply to individuals. *Food and Drug Admin. v. All. for*  
17 *Hippocratic Med., L.L.C.*, 602 U.S. 367 (2024) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363,  
18 378–79 (1982)). Associational standing requires a plaintiff to show that “(a) its members would otherwise  
19 have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s  
20 purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual  
21 members in the lawsuit.” *United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.*, 517 U.S.  
22 544, 553 (1996) (quotations/citations omitted). Plaintiffs do not (and cannot) satisfy the requirements  
23 under either theory.  
24

25  
26 Plaintiffs cannot establish a sufficiently concrete injury in fact for organizational standing, as  
27 opposed to “merely an abstract social interest.” *Hippocratic Med.*, 602 U.S. at 395 (quoting *Havens*, 455  
28

1 U.S. at 379). Plaintiffs allege the IFR will cause organizational injury by forcing them to divert resources  
2 and by interfering with their core missions. Compl. ¶¶ 18-19. This is insufficient. A central component of  
3 UFW’s mission is “improv[e] wages, working conditions, and economic stability for agricultural  
4 workers.” *Id.* ¶ 18. And “UFW Foundation provides immigration services, emergency assistance, worker-  
5 rights education, and support for families experiencing financial instability, housing insecurity, food  
6 insecurity, or workplace abuses.” *Id.* ¶ 19. Thus, the alleged injuries consist of each organization executing  
7 their respective missions as opposed to the obstruction of their ability to carry out the same. *See Nat’l*  
8 *Treas. Employees Union v. United States*, 101 F.3d 1423, 1429 (D.C. Cir. 1996) (“[C]onflict between a  
9 defendant’s conduct and an organization’s mission is alone insufficient to establish Article III standing.  
10 Frustration of an organization’s objectives is the type of abstract concern that does not impart standing.”);  
11 *see also Our Watch with Tim Thompson v. Bonta*, 682 F. Supp. 3d 838, (E.D. Cal. 2023) (“Frustration of  
12 mission cannot just be a setback to an organization’s values or interests, it must result in an actual  
13 impediment to the organization’s real-world efforts on behalf of such principles.”). Harm that consists of  
14 advocacy, education, or outreach undertaken in response to a challenged policy, as opposed to impairment  
15 of existing programs or activities, does not confer standing. *Valle de Sol Inc. v. Whiting*, 732 F.3d 1006,  
16 1018 (9th Cir. 2013).

17  
18  
19 Plaintiffs’ diversion-of-resources theory is also entirely speculative. UFW alleges that “[a] lower  
20 AEWR *will* directly undermine its ability to achieve this objective by providing more leverage to  
21 employers in those negotiations,” Compl. ¶ 18 (emphasis added), which depends on a chain of independent  
22 decisions by employers, the course of future negotiations, and the ultimate effect of those negotiations on  
23 wages. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410, 414 (2013) (rejecting standing where alleged  
24 injury relied on a “speculative chain of possibilities”). Likewise, UFW Foundation alleges that “[t]he IFR  
25 *will* significantly increase the demand for UFW Foundation’s services,” *id.* ¶ 19, but does not plead facts  
26 showing that any such increase is certain or already occurring, as opposed to merely anticipated. *See*  
27  
28

1 *Lujan*, 504 U.S. at 560. The IFR took effect on October 2, 2025; injury should not be speculative at this  
2 point.

3 Plaintiffs also cannot show associational standing, which requires a showing that “at least one of  
4 its members would have standing to sue in [their] own right.” *Fleck & Assocs., Inc. v. City of Phoenix*,  
5 471 F.3d 1100, 1105 (9th Cir. 2006). Although Plaintiffs submitted declarations from individual members,  
6 those declarations fail to show a concrete, particularized, imminent injury for standing because all  
7 speculate about future wage reductions, without any concrete evidence. *See, e.g.*, Grimaldo Decl., ECF  
8 No. 21-3, ¶¶ 7, 9, 10; Cruz Decl. ECF 21-4, ¶¶ 6-8; ECF 21-5, ¶¶ 6-8; Serrano Decl., ECF 21-6, ¶ 6-11;  
9 Garcia Decl., ECF 21-7, ¶¶ 7-10; Mendoza Decl. ECF 21-8 ¶¶ 8-13. Each plaintiff claims a plan to seek  
10 work as a farmworker in the future. *Id.* Each also alleges that he or she anticipates a decrease in wages  
11 based upon a decrease in the AEW. *Id.* No Plaintiff submitted facts to show that he or she had already  
12 suffered a decrease in wages. *Id.* Much of their complaints rest on the assumption that job opportunities  
13 they will apply and be selected for will be assigned a Skill Level I wage, but that is speculative given that  
14 they have not yet applied for any job opportunities since the IFR took effect and the job duties are  
15 unknown. *See id.* Similarly, UFW alleges that without an injunction, members’ incomes “would  
16 destabilize” and it “would also divert” resources to respond to member requests, but not that such harms  
17 have occurred since the IFR has been in effect. ECF 21-2 ¶ 6. This is not a “clear showing” of injury. *See*  
18 *Yazzie*, 977 F.3d at 966.  
19  
20  
21

## 22 **II. THE MOTION MUST BE DENIED BECAUSE PLAINTIFFS HAVE NOT SHOWN A** 23 **LIKELIHOOD OF IRREPARABLE INJURY**

24 Without a showing of a likelihood of irreparable injury, a preliminary injunction (or § 705 stay)  
25 cannot be issued. *Winter*, 555 U.S. at 20. Plaintiffs have failed to make that showing.

26 First, just as Plaintiffs failed to show standing, they have failed to show a sufficiently concrete  
27 injury for irreparable harm. Plaintiffs describe only *potential future* economic effects, not immediate or  
28

1 unavoidable injury. Forward looking concerns of this kind do not establish irreparable harm warranting  
2 emergency relief. *Winter*, 555 U.S. at 22 (rejecting notion that a preliminary injunction can issue on a  
3 mere possibility of injury). Injuries that are remote, speculative, or dependent on future contingencies do  
4 not justify such relief. *Id.*; *see also Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983) (holding that speculative  
5 claims of future injury fail to satisfy the irreparable harm requirement for equitable relief); *Cottrell*, 632  
6 F.3d at 1131. Here, as explained above, Plaintiffs claim they “anticipate” seeking employment, and the  
7 “anticipated cuts” to wages will harm them, and UFW claims without an injunction it “would” suffer  
8 certain alleged harms, but no one alleges such harms have occurred. *See, generally*, ECF 21-2 through 21-  
9 8. Further, they rely on assumptions, including that they will only qualify for a Skill Level I job. *See id.*

11 Second, Plaintiffs’ delay in seeking preliminary relief undercuts any irreparable harm. *Oakland*  
12 *Tribune, Inc. v. Chronicle Publ’g Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985); *Lydo Enters., Inc. v. City of*  
13 *Las Vegas*, 745 F.2d 1211, 1213-14 (9th Cir. 1984). The IFR took effect October 2, 2025, but Plaintiffs  
14 did not seek a preliminary injunction until December 22. Moreover, even if at that time, they could not  
15 show concrete harm. Further, Plaintiffs’ request for an order enjoining the “implementation” of the IFR is  
16 moot because the IFR has been in effect for over three months. Plaintiffs motion must be denied on this  
17 ground alone.

19 **III. THE MOTION MUST BE DENIED BECAUSE PLAINTIFFS HAVE NOT SHOWN**  
20 **A LIKELIHOOD OF SUCCESS ON THE MERITS**

21 **A. The IFR is Not Arbitrary and Capricious**

22 **1. Applicable Law**

23 As relevant here, courts may set aside a final agency action under the APA only if that action was  
24 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §  
25 706(2)(A); *accord League of Wilderness Defenders Blue Mountains Biodiversity Project v. Allen*, 615  
26 F.3d 1122, 1130 (9th Cir. 2010). This is a deferential standard, under which courts review agency actions  
27  
28

1 to determine if the agency “articulated a rational connection between the factual findings and its decision.”  
2 *Fence Creek Cattle Co. v. Forest Serv.*, 602 F.3d 1125, 1132 (9th Cir. 2010). “[T]he standard is narrow  
3 and the court should not substitute its judgment for that of the agency.” *Motor Vehicle Mfrs. Ass’n v. State*  
4 *Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (hereinafter “*State Farm*”); *see also Transp. Div. of the*  
5 *Int’l Ass’n of Sheet Metal, Air, & Transp. Workers v. FRA*, 988 F.3d 1170, 1178 (9th Cir. 2021). Instead,  
6 the court should “assess only whether the decision was based on a consideration of the relevant factors  
7 and whether there has been a clear error of judgment.” *Dep’t of Homeland Sec. v. Regents of the Univ. of*  
8 *Cal.*, 591 U.S. 1, 16, (2020) (citations/quotations omitted). Courts reverse agency decisions as arbitrary  
9 or capricious only if the agency relied on factors Congress did not intend for it to consider, entirely failed  
10 to consider an important aspect of the case, offered an explanation that ran counter to the evidence before  
11 the agency, or offered an explanation that was so implausible that it could not be ascribed to a difference  
12 in view or the product of agency expertise. *State Farm*, 463 U.S. at 43.

## 15 2. The AEW Methodology of the IFR is Consistent with the Requirements of § 1188

16 Plaintiffs argue that the IFR’s AEW methodology conflicts with Section 1188(a) of the INA  
17 because it creates rather than protects against adverse effects on the wages of U.S. workers similarly  
18 employed. *See, e.g.*, Compl. ¶ 114 (the IFR *creates* those adverse wage effects. By admission, it lowers  
19 the AEWs...”); Br. 9 (IFR “deliberately slashes AEWs” thereby “creating” adverse effects); Br. 18  
20 (“the IFR conflicts with the INA because it creates ... ‘adverse effects’”). These arguments fail at the  
21 outset.

22  
23 To start, Plaintiffs misunderstand Section 1188(a), which requires DOL to certify that the  
24 *employment of H-2A workers* is the condition that will not “adversely affect the wages and working  
25 conditions” of U.S. workers similarly employed. 8 U.S.C. § 1188(a). Historically, the Department’s  
26 primary means to satisfy this obligation is through establishment and enforcement of the AEW. 90 Fed.  
27 Reg. at 47916. Courts have consistently held that Congress did not dictate *how* DOL must carry out its  
28

1 statutory mandate to protect against adverse effect nor how to determine the AEW. *Brock*, 835 F.2d at  
2 915 (“calculating AEWs has been left entirely to [DOL’s] discretion”); *Dole*, 923 F.2d at 187 (observing  
3 DOL was given “a rather broad congressional delegation”); *Rowland v Marshall*, 650 F.2d 28, 30 (4th  
4 Cir. 1981) (recognizing DOL’s “broad discretionary authority” in determining AEW methodology). In  
5 carrying out that statute’s mandate, DOL must strike a balance between the “competing goals” of  
6 “providing an adequate labor supply and protecting the jobs of domestic workers.” *Dole*, 923 F.2d at 187;  
7 *see also Caraballo v. Reich*, 11 F.3d 186, 190 (D.C. Cir. 1993) (“The H-2A program is thus designed to  
8 balance two competing interests: ‘to assure [employers] an adequate labor force on the one hand and to  
9 protect the jobs of citizens on the other.’”) quoting *Rogers v. Larson*, 563 F.2d 617, 626 (3d Cir. 1977),  
10 *cert. denied*, 439 U.S. 803 (1978). DOL could not, for example, set the AEW unreasonably high to attract  
11 U.S. workers into agricultural jobs. *Williams v. Usery*, 531 F.2d 305, 306 (5th Cir. 1976) (“[t]he Secretary  
12 has no authority to set a wage rate on the basis of attractiveness to workers. [Her] authority is limited to  
13 making an economic determination of what rate must be paid all workers to neutralize any ‘adverse effect’  
14 resultant from the influx of temporary foreign workers.” (emphasis added)). But how DOL ultimately  
15 chooses to “stri[k]e that balance” between employers and workers, within the bounds of § 1188, is “a  
16 judgment call which Congress entrusted to the Department of Labor.” *Dole*, 923 F.2d at 187.

17  
18  
19 Contrary to Plaintiffs’ assertions, the methodology in the IFR is designed to meet DOL’s obligation  
20 under the INA by establishing AEWs that more accurately track the wages paid to similarly employed  
21 workers in the U. S. and consistent with the competing goals of the program. 90 Fed. Reg. at 47916.  
22 Plaintiffs assert that the decrease in the AEWs under the new methodology is sufficient to find that the  
23 Department is violating the INA requirements. However, there is no statutory requirement for the AEW  
24 to increase, or for past wages to dictate future wages, nor is there a statutory prohibition on adopting an  
25 AEW methodology that has the effect of lowering wages. *See* 8 U.S.C. § 1188(a). In *Dole*, the D.C.  
26 Circuit upheld an AEW methodology that *decreased* wages. *Dole*, 923 F.2d at 187. There, as in *Brock*,  
27  
28

1 DOL chose to abandon a prior methodology that increased the AEWR to offset past wage depression. *Id.*  
2 The court held that “[i]t is clear that it is within the Department’s discretion to end the enhancement  
3 policy” and doing so was “well within the range of reasonable methodological choices open to the  
4 Department.” *Id.*

5 Here, DOL implemented a methodology to avoid adverse effects to the wages and working  
6 conditions of workers in the United States similarly employed, and it explained the bases and reasons for  
7 that decision. That is all the statute requires. *See Dole*, 923 F.2d at 187. Plaintiffs’ argument that the IFR  
8 methodology is contrary to § 1188 thus fails, and Plaintiffs are not likely to succeed on the merits of  
9 Count I.

10  
11 **3. The Two-Tier System is Not Arbitrary and Capricious**

12 Plaintiffs challenge the use of a two-tier system for farmworker wages in which entry level  
13 positions are paid less than experienced positions, arguing that it is a policy change that lacks a reasonable  
14 explanation. Br. 11-12. DOL acknowledged in the IFR that the particular two-tier system of the IFR is a  
15 policy change. 90 Fed. Reg. at 47937. In the 2010 Rule, which took effect again after the 2023 Rule was  
16 vacated, all H-2A and corresponding workers were paid the same average rate regardless of job  
17 requirements or experience. 88 Fed. Reg. at 12761. And contrary to Plaintiffs’ assertions, DOL did explain  
18 the reasons behind the policy change in the IFR. *See* 90 Fed. Reg. 47935-37. DOL explained in the IFR  
19 that an AEWR that “fails to account for the fact that individual jobs within a broad occupational  
20 classification require relatively more or less experience and skill to perform than others and may adversely  
21 affect U.S. workers who are similarly employed performing such jobs.” *Id.* at 47937. It also noted that  
22 using a single wage set at the mean level paid in an occupation “would tend to overstate wages for similarly  
23 employed American agricultural workers with less experience and understate wages for similarly  
24 employed American agricultural workers with more experience.” *Id.* at 47934. Therefore, DOL concluded  
25 that “imposing a single AEWR computed based on all workers paid within the occupation, regardless of  
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1 the qualifications contained in an employer’s job offer is not sufficiently precise to reflect market-based  
2 wages paid to U.S. workers similarly employed.” *Id.* at 47936.

3 The two-tiered system of the IFR is designed to account for such differences. It is similar to the  
4 four-tiered system used in other wage determinations for nonimmigrant (H-1B) and immigrant (PERM)  
5 workers and adopts the first and third levels from that system, “entry level” and “experienced.” *Id.* at  
6 47936-37. DOL determined that two skill levels were adequate based upon its own experience with  
7 agricultural wages. *Id.* at 47937. DOL explained that using these two levels will adequately accomplish  
8 the needs of the H-2A program by approximating, “as accurately as possible and using the best available  
9 information the average of wages paid to U.S. workers similarly employed in the occupation and  
10 geographic area” based on employer qualifications.” *Id.* DOL further explained that by better reflecting  
11 market conditions, the AEWs reflect actual wages prevailing in the occupation and area for the job. *Id.*  
12 Thus, as discussed in the IFR, Skill Level II jobs are at the 50th percentile of OEWS wages for the  
13 particular geography and SOC code, and Skill Level I jobs are set to the 17th percentile. *Id.* Thus the IFR  
14 put forth a reasoned analysis, including the consideration of alternatives, before deciding upon the two-  
15 tiered method of the IFR. *See Regents of the Univ. of Cal.*, 591 U.S. at 51.

16 Plaintiffs also try to refute the tiered system by alleging that DOL previously said a tiered system  
17 would make little sense because there are no material skill-level differences between agricultural jobs. Br.  
18 11 n.7 (citing to the 2010 Rule). As DOL explained in the IFR, the H-2A program has expanded over the  
19 past sixteen years, with job orders that cover more than 60 different occupations, including lower and  
20 higher skilled occupations. DOL explained that available data clearly demonstrates that wage differentials  
21 within lower and higher skilled occupations exist in agricultural occupations. 90 Fed. Reg. at 47934-35.  
22 DOL noted as far back as 2008 that the farm labor market “is not a monolithic entity” but is comprised of  
23 “a number of occupations and skills” distributed across “a matrix of markets” and a “spectrum of  
24 occupations, skill or experience levels.” *Id.* (quoting 2010 Rule, 73 FR at 8550).

1 Plaintiffs argue that for most H-2A job opportunities, Skill Level I represents a decrease in pay  
2 from the prior AEWB that paid the mean wage. Br. 11-12. But as DOL explained, the prior AEWB  
3 methodology set an AEWB that was artificially high for most job opportunities, and the new methodology  
4 is meant to more accurately reflect the wages paid to similarly employed U.S. workers. 90 Fed. Reg. at  
5 47936, 47921. Plaintiffs' disagreement with DOL's policy judgment is not a basis for an injunction. *See*  
6 *Va. Agr. Growers Ass'n, Inc. v. DOL*, 756 F.2d 1025, 1031 (4th Cir. 1985). DOL has "broad discretion to  
7 set AEWBs in accordance with any of a number of reasonable formulas" *Fla. Fruit & Vegetable Ass'n v.*  
8 *Brock*, 771 F.2d 1455, 1460 (11th Cir. 1985) (per curiam) (citations/quotations omitted).

9  
10 Plaintiffs claim that the structure will encourage employers to seek Skill Level I job certifications  
11 for jobs that are Skill Level II, thereby depressing wages. Br. 13. DOL explained that SOC codes and skill  
12 levels will be assigned based on the totality of circumstances in the labor certification application, and  
13 DOL has significant experience doing both. 90 Fed. Reg. at 47937. DOL acknowledged that the now-  
14 vacated 2023 Rule took a different approach by assigning an SOC code based on the highest paid duty,  
15 even if that was a de minimis part of the employee's duties, but reasoned that it no longer believed such a  
16 policy best protected wages. *Id.* at 47938. When an agency "is making predictive judgments about the  
17 likely economic effects of a rule," courts are "particularly loath to second-guess its analysis." *Newspaper*  
18 *Ass'n of Am. v. Postal Regul. Comm'n*, 734 F.3d 1208, 1216 (D.C. Cir. 2013) (cleaned up). DOL expects  
19 employers to accurately reflect the required duties for job for which it seeks to employ H-2A workers to  
20 ensure an accurate test of the U.S. labor market, and DOL explained that its existing mechanisms "to  
21 enforce prohibitions on misclassification of workers are adequate and appropriate" and that there is a "lack  
22 of objective data or other evidence supporting concerns about misclassification of workers or  
23 misrepresentation of a job opportunity." *Id.* Indeed, as Plaintiffs' own exhibits show, the labor  
24 certifications require significant detail and are signed under penalty of perjury with a specific  
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1 acknowledgement that knowingly furnishing materially false information is subject to prosecution under  
2 18 U.S.C. § 1001. *See* Pl. Ex. 1, ECF 21-9.

3 The IFR methodology is designed to bring wages back in line with actual market wages. While  
4 this action may result in a wage reduction for workers, the question for this court is not whether wages are  
5 reduced, but whether DOL’s methodology aligns with its statutory obligation and whether DOL rationally  
6 explained its policy change – the answer to both questions is yes. *See State Farm*, 463 U.S. at 43.

#### 8 **4. The Housing Adjustment Is Not Arbitrary and Capricious**

9 Employers are required to “furnish housing in accordance with regulations.” 8 U.S.C. § 1188(c)(4).  
10 DOL requires employers to provide such housing free of charge to H-2A workers as well as U.S. workers  
11 in corresponding employment who do not live close enough to return home each night. 20 C.F.R. §  
12 655.122(d). Regulations set forth the requirements for such housing, and the housing is subject to  
13 inspection by DOL. *Id.*

14 Pursuant to these requirements, as noted in the IFR, H-2A workers and some corresponding  
15 workers receive non-wage compensation in the form of free housing. 90 Fed. Reg. at 47947. Data showed  
16 that in 2021-2022, many domestic crop workers obtained their own housing and did not use employer-  
17 provided free housing. *Id.* at 47947-48. The cost of such housing may be as much as \$600 per month. *Id.*  
18 Meanwhile, H-2A workers were paid the same rate but received free housing, and thus essentially made  
19 \$600 per month more than corresponding U.S. workers. *Id.* This created a “disparity in compensation”  
20 that the IFR sought to remedy. *Id.* DOL thus imposed a downward adjustment on foreign H-2A worker  
21 wages to account for this adverse disparity, while still requiring that housing be provided free of charge  
22 to H-2A and certain corresponding workers. *Id.* at 47949.

23 The Plaintiffs argue first that the housing adjustment is an unlawful “deduction” that reduces  
24 AEWs because the AEW now accounts for housing for those who use it. Br. 14. As explained, the  
25 housing adjustment is for foreign workers only; corresponding U.S. workers do not have an equivalent  
26  
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1 adjustment to their AEW. 90 Fed. Reg. 47949 n. 179. Thus, it is not clear how Plaintiffs could have  
2 standing to challenge the housing adjustment because Plaintiffs represent U.S. farmworkers, not H-2A  
3 workers, and U.S. workers are not affected by the adjustment at all. *See, e.g.*, Compl. ¶¶ 20-37 (every  
4 individual plaintiff identifies as a U.S. worker); *see generally* ECF 21-3 through 21-8 (declarations do not  
5 discuss housing adjustment and instead reference paying for housing).  
6

7 The Plaintiffs also argue that the housing adjustment calculation is flawed because it assumes H-  
8 2A workers work 40 hours a week. Br. 14. Again, the adjustment has no bearing on Plaintiffs' wages and  
9 thus they cannot show an injury. Furthermore, the IFR relied on 40 hours per week to calculate the  
10 adjustment because that is a standard workweek for the industry and facilitates a uniform application of  
11 the housing adjustment. 90 Fed. Reg. at 47950. Plaintiffs also take issue with basing the fair market value  
12 on a Housing and Urban Development (HUD) unit. While HUD data may not be a perfect data source, the  
13 APA does not require agencies to conduct their own data studies prior to exercising its discretion and  
14 allows agencies to utilize reasonable data sources so long as they are "reasonably explained for purposes  
15 of the APA's deferential arbitrary-and-capricious standard." *FCC v. Prometheus Radio Project*, 592 U.S.  
16 414, 426-427 (2021) (citations omitted). Here, the IFR justifiably explains why the HUD data used is a  
17 reasonable data source from which to determine value of housing for the wage level of farmworkers. 90  
18 Fed. Reg. at 47949.  
19

20 Finally, Plaintiffs argue that the housing adjustment makes H-2A workers more attractive to hire  
21 because they are paid a lower wage. Br. 15. Such an argument fails for two reasons. First, it ignores the  
22 other significant costs associated with the H-2A program, which, as noted in the IFR, include  
23 transportation to and from the home country, daily transportation, and fees which can be burdensome. 90  
24 Fed. Reg. at 47948, 47923. Second, Plaintiffs' argument assumes that there are sufficient U.S. workers to  
25 fill agricultural jobs, but that is simply not the case. *Id.* at 47923. Indeed, the IFR has been in effect since  
26 October 2, 2025, but Plaintiffs have not included any facts to show that U.S. workers are not being hired  
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1 for agricultural jobs.

2 There is no evidence in the record that the housing adjustment of the IFR applies to any of the  
3 individual plaintiffs or any members of the Plaintiff organizations. Thus, Plaintiffs have no injury from it  
4 and lack standing to challenge it, let alone enjoin it. Furthermore, DOL explained its change in policy and  
5 the reasons therefore, in detail. The housing adjustment is not arbitrary and capricious, and Plaintiffs  
6 cannot show a likelihood of success on this basis.  
7

8 **5. The Use of Data from the BLS OEWS Wage Survey Is Not Arbitrary and Capricious**

9 Plaintiffs argue that DOL’s reliance on the OEWS wage survey data is arbitrary and capricious  
10 because, they it “does not even contain wage data from farm establishments.” Br. 15. They claim FLS is  
11 a superior data source for H-2A wages. *Id.* This argument fails for many reasons.

12 First, as explained, the nature of the H-2A program has changed over time. One change involves  
13 the prevalence of farm labor contractors, as opposed to individual farms. While Plaintiffs claim farm labor  
14 contractors pay lower wages and thus are not an accurate wage source, Br. 16, however the reality is  
15 different. While H-2A labor contractors received only 17% of labor certifications in 2011, they now  
16 represent more than 50% of labor certifications representing 42% of the worker positions certified, and  
17 have a significant influence on the current agricultural labor market. 90 Fed. Reg. 47931. OEWS data  
18 captures these contractors, while the FLS did not. *Id.*

19 Second, an agency’s choice of dataset is entitled to deference as long as it is in a zone of  
20 reasonableness. *Kennecott v. U.S. Envtl. Prot. Agency*, 780 F.2d 445, 450 (4th Cir. 1985); ); *see also*  
21 *Prometheus*, 592 U.S. at 426-427. Use of the OEWS is within a zone of reasonableness because it is a  
22 broad government dataset that includes farm labor contractors, which employ agricultural workers in a  
23 broad range of occupations for which employers seek to employ H-2A workers. Indeed, multiple courts  
24 have rejected preliminary injunction bids which argued that DOL’s use of OEWS data was arbitrary and  
25 capricious, or have upheld, methodologies based upon OEWS wages. *See UFW v. Solis*, 697 F. Supp. 2d  
26  
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1 5, 8–11 (D.D.C. 2010); *USA Farm Labor, Inc. v. Su*, 694 F. Supp. 3d 693, 709 (W.D.N.C. 2023); *Teche*  
2 *Vermilion Sugar Cane Growers Ass’n v. Su*, 749 F. Supp. 3d 697, 725 (W.D. La. 2024); Nor do plaintiffs  
3 point to a superior data set, particularly given the inability to use USDA’s FLS data after USDA decided  
4 to discontinue the survey in August of 2025 and the use of the OEWS to set wages in other immigrant and  
5 nonimmigrant programs. 90 Fed. Reg. at 47929.

6  
7 Plaintiffs argue that even DOL believes OEWS data is insufficient because it plans to collect its  
8 own data similar to the FLS in the future. Br. 16. But just because an agency wants to create a more robust  
9 data source does not mean that its current choice of data is arbitrary and capricious, particularly in the  
10 absence of any other viable data source. To the contrary, “[t]he APA imposes no general obligation on  
11 agencies to conduct or commission their own empirical or statistical studies.” *Prometheus*, 592 U.S. at  
12 427.

13  
14 Finally, Plaintiffs argue that setting the SOC code, and therefore the wage, based upon the job that  
15 applies to at least 50% of the job duties will underpay workers who spend under 50% of their time on  
16 duties that should be compensated at a higher rate. Br. 17. The IFR explains that the SOC code will be  
17 assigned based on the duties that represent the majority of the worker’s time. 90 Fed. Reg. at 47937. The  
18 IFR acknowledges the methodology of the 2023 Rule and the concerns it raised, including in litigation,  
19 and concluded that assigning an SOC code based on *any* duty, rather than the majority of duties, led to  
20 inconsistencies in SOC code assignment. *Id.* at 47938. Further, the prior methodology did not align the  
21 required wage with the wages of similarly employed U.S. workers. *Id.* For example, under the 2023 Rule  
22 a worker who spent 10% of their time engaged in a higher wage work and 90% of their time engaged in  
23 lower wage work would be paid the higher wage for all of their work despite their being more similarly  
24 employed to a worker engaged in lower skilled, lower wage work. The IFR addresses this dissonance, and  
25 DOL reasoned that basing the SOC code assignment on the majority of duties will better accomplish the  
26 goal of aligning the wages of H-2A workers with similarly employed workers. *Id.* Ultimately, Plaintiffs’  
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1 complaint amounts to a policy disagreement with DOL about how to assign SOC codes, and a policy  
2 disagreement, without more, cannot support a claim that the IFR is arbitrary and capricious. *See Dole*, 923  
3 F.2d at 187; *Va. Agr. Growers*, 756 F.2d at 1031. Thus, Plaintiffs cannot succeed on their argument that  
4 the use of OEWS wages is arbitrary and capricious.

5  
6 **B. DOL Adequately Addressed Reliance Interests**

7 Plaintiffs do not allege that DOL failed to consider reliance interests, but rather that DOL's  
8 consideration was insufficient. Br. 17 (“the IFR *minimizes* workers’ reliance interests”) (emphasis added).  
9 The Supreme Court explained that an agency must be “cognizant” of “serious reliance interests” in  
10 effecting any policy change and may not “ignore” such interests. *Regents of the Univ. of Cal.*, 591 U.S. at  
11 30. But it also explained that even if an agency “ultimately concludes that the reliance interests rank as  
12 serious, they are but one factor to consider” and the agency may determine “that other interests and policy  
13 concerns outweigh any reliance interests,” which is, as the Supreme Court recognized, a “difficult  
14 decision.” *Id.* at 31-32.

15  
16 Here, DOL considered and was cognizant of alleged reliance interests by workers in corresponding  
17 employment who may experience a lower wage, as well as the reliance interests of others impacted by the  
18 rulemaking. 90 Fed. Reg. at 47928. DOL also considered reliance interests by employers who participate  
19 in the program year after year. *Id.* DOL observed that bringing some level of consistency and stability to  
20 the program, including through a published AEW, is important to employers and workers alike, and that  
21 could not be done without a new methodology based on available data, rather than the FLS. *Id.* DOL also  
22 noted that any reliance interests on FLS data by U.S workers is misplaced because that data no longer  
23 exists. *Id.* Furthermore, the IFR explained that any such reliance interests by U.S. workers are undermined  
24 by the increasing instability of the agricultural labor market. *Id.* As a result of all of these factors, DOL  
25 concluded that any such reliance interests are not “serious reliance interests” within the meaning of the  
26 caselaw. *Id.* Plaintiffs disagree with DOL’s analysis, but they do not provide any concrete data or  
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28

1 information DOL failed to consider that would refute DOL’s analysis. *See Regents of the Univ. of Cal.*,  
2 591 U.S. at 31-32. Plaintiffs argue that the reliance interests were based on market rates, but as explained,  
3 the IFR methodology is designed to more closely align with market rates based on job requirements.  
4 Plaintiffs also argue, briefly, that DOL failed to quantify the impact to corresponding workers. Br. 19-20.  
5 DOL acknowledged the potential harm to U.S. workers by a decreased AEWR, 90 Fed. Reg. at 47928,  
6 and the amount of the decrease is simple to quantify by comparing rates. But ultimately, Plaintiffs fail to  
7 acknowledge that USDA ceased publication of FLS data in August 2025. *Id.* at 47920. There is no FLS  
8 data on which to rely, and DOL’s new AEWR methodology brings clarity and stability to the program.  
9 *Id.* at 47928. Ultimately, DOL explained the facts found and the reasons for its methodology – most  
10 notably that the IFR’s methodology better aligns the AEWRs with wages paid to similarly employed  
11 workers. Nothing more is required. *State Farm*, 463 U.S. at 43.

### 14 C. DOL Established Good Cause for the IFR

15 The APA authorizes agencies to dispense with the notice-and-comment rulemaking procedures  
16 “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons  
17 therefor[e] in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or  
18 contrary to the public interest.” 5 U.S.C. § 553(b)(3)(B). “[N]otice and comment on a rule may be found  
19 to be “impracticable” when “the due and required execution of the agency functions would be unavoidably  
20 prevented by its undertaking public rule-making proceedings.” *N.C. Growers’ Ass’n v. UFW*, 702 F.3d  
21 755, 766 (4th Cir. 2012). Good cause also exists if “notice and comment on a rule are ‘contrary to the  
22 public interest’...[which] connotes a situation in which the interest of the public would be defeated by any  
23 requirement of advance notice.” *Id.* The “inquiry into whether the [Agency] properly invoked ‘good cause’  
24 proceeds case-by-case, sensitive to the totality of the factors at play.” *United States v. Valverde*, 628 F.3d  
25 1159, 1164 (9th Cir. 2010) (quoting *Alcaraz v. Block*, 746 F.2d 593, 612 (9th Cir. 1984)).

28 Good cause exists here. First, as DOL explained in the IFR, there was a need for an immediate

1 AEW rule because there was no viable AEW rule in place. 90 Fed. Reg. at 47920. DOL is statutorily  
2 required to certify that the employment of H-2A workers will not adversely affect the wages and working  
3 conditions of U.S. workers similarly employed, and the AEW is one of the “primary” ways it  
4 accomplishes that task. 8 U.S.C. § 1188; 90 Fed. Reg. 47916. But at the time of the IFR, the Western  
5 District of Louisiana had enjoined and vacated, nationwide, the 2023 Rule, and reverting to the 2010 Rule  
6 was impracticable because USDA discontinued the collection of data on which the 2010 Rule relied. 90  
7 Fed. Reg. 47919-20. Thus, time was of the essence in publishing a workable AEW rule. Furthermore,  
8 “the lack of a reasonable and viable AEW methodology, when combined with the current and imminent  
9 labor shortage exacerbated by the near total cessation of the inflow of illegal aliens, increased enforcement  
10 of existing immigration law, and global competitiveness pressures” created “a sufficient risk of supply  
11 shock-induced food shortages” to justify the IFR and its changed AEW methodology. *Id.* at 47919. DOL  
12 explained its reasoning in detail. *Id.* at 47919-26.

13  
14  
15 Plaintiffs argue that DOL’s reliance on immigration enforcement to show good cause is misplaced  
16 because farms could simply increase wages to attract more workers. Br. 21. The IFR explains that there  
17 are insufficient American workers to do the work. In particular, the IFR explains that “these rising AEW  
18 levels have not resulted in a meaningful increase in new entrants of U.S. workers to temporary or seasonal  
19 agricultural jobs.” 90 Fed. Reg. at 47924. Rather, there are simply insufficient U.S. workers to fill  
20 temporary or seasonal agricultural jobs, regardless of the AEW. *Id.* at 47922 (“domestic applicants are  
21 not applying for agricultural positions in sufficient numbers to meet the temporary or seasonal workforce  
22 needs of employers”). U.S. workers do not pursue such jobs because of factors such as geographic location  
23 and the seasonal nature of the work. *Id.*

24  
25 Plaintiffs also argue that discontinuation of the FLS only suggests, at best, that DOL may select a  
26 new data source. Br. 21. But it is the combination of changes within the H-2A program that necessitate a  
27 new methodology, as the IFR explains. 90 Fed. Reg. at 47919-26. Plaintiffs cannot challenge DOL’s  
28

1 overall good cause analysis by rejecting DOL’s reasoning in a piecemeal fashion because the court must  
2 consider “the totality of the factors at play.” *Valverde*, 628 F.3d at 1164. The totality of circumstances  
3 here includes lack of a viable AEW methodlogy, the fact that immigration enforcement has caused  
4 rapid changes to the agricultural labor market, the relative unavailability of American workers to fill the  
5 jobs, problems with prior AEW methodologies, and DOL’s statutory mandates to both prevent adverse  
6 effects and implement a program that relies on predictable, published AEW rates. 90 Fed. Reg. at 47919-  
7 26. Incidentally, even Plaintiffs agree an AEW methodology needs to be in place. Br. 25. Thus, DOL  
8 established good cause to bypass notice and comment rulemaking here and Plaintiffs are not likely to  
9 succeed on their claim that the IFR is procedurally defective.

11 **IV. THE MOTION MUST BE DENIED BECAUSE PLAINTIFFS HAVE NOT**  
12 **SHOWN THAT THE MERGED FACTORS OF THE BALANCE OF HARDSHIPS**  
13 **AND PUBLIC INTEREST WEIGH IN THEIR FAVOR**

14 In a case against the government, the balance of hardships and public interest factors merge. *Nken*  
15 *v. Holder*, 556 U.S. 418, 435-36 (2009). Plaintiffs have not made the needed showing here.

16 Plaintiffs allege the public interest favors an injunction because there is no public interest in the  
17 enforcement of an unlawful agency action. Br. 23. Such an argument, while commonplace, amounts to  
18 little more than an argument that they are likely to succeed on the merits, which is a separate prong of the  
19 *Winter* test. See *USA Farm Labor, Inc. v. Micone*, No. 23-2108, 2025 WL 586339 at \*4 (4th Cir. Feb. 24,  
20 2025) (referring to such reasoning as “circular” and rendering the merged final factor superfluous). In the  
21 next breath, Plaintiffs claim the public interest favors them because of the alleged lack of an “evidenced-  
22 backed justification” for the “methodological changes” of the IFR, but that too is nothing more than a  
23 restatement of their claim that the IFR is arbitrary and capricious. Br. 23. Even if Plaintiffs could prove a  
24 likelihood of success on the merits, that does not absolve them from separately demonstrating that the  
25 balance of equities and public interest favor them. *Vivid Entm’t, LLC v. Fielding*, 774 F.3d 566, 577 (9th  
26 Cir. 2014). Those factors do not “collapse into the merits” of the claim. *Doe v. Harris*, 772 F.3d 563, 582  
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1 (9th Cir. 2014). Rather, a plaintiff must make a showing on each factor. *Winter*, 555 U.S. at 24. “Crafting  
2 a preliminary injunction ... often depend[s] as much on the equities of a given case as the substance of  
3 the legal issues it presents.” *Trump v. Int’l Refugee Assistance Project*, 582 U.S. 571, 579 (2017). A court  
4 must weigh the equities, the public interest, and irreparable harm before awarding such an “extraordinary  
5 remedy” which is never granted as of right. *Winter*, 555 U.S. at 24. If recasting likelihood of success on  
6 the merits were sufficient to establish the balance of equities and public interest prongs, those prongs  
7 would be rendered meaningless. Such an approach is directly contrary to *Winter*, which explains courts  
8 “must balance the competing claims of injury and must consider the effect on each party of the granting  
9 or withholding of the requested relief” and “should pay particular regard for the public consequences in  
10 employing the extraordinary remedy of an injunction.” *Id.* (citations/quotations omitted).

11  
12 At any rate, the public interest does not favor an injunction here because the injunction Plaintiffs  
13 seek would inject a high degree of uncertainty into the H-2A program and is simply unworkable. It injects  
14 uncertainty because farms will not be able to predict what rate will apply to their workers and whether  
15 that may change based on additional court rulings. 90 Fed. Reg. at 47926 (“such oscillations [in AEW  
16 methodology] on a short-term basis would be disruptive”). *See also USA Farm Labor*, 694 F. Supp. 3d at  
17 714 (uncertainty in H-2A program caused by preliminary injunction weighed in favor of government).

18  
19 An injunction is unworkable because typically if a rule is fully enjoined, the agency reverts to the  
20 last rule in effect, but even Plaintiffs acknowledge that cannot be done here because the 2010 Rule relied  
21 on FLS data which is no longer collected. Br. 25. Thus, it is unclear how that prior rule could be  
22 implemented going forward. Under the 2010 rule, DOL was required to publish updated AEWs annually  
23 based on the FLS data, 20 C.F.R. §§ 655.103(b), 655.120(c), and where FLS data was unavailable for a  
24 particular jurisdiction, no AEW would be set. *See* 90 Fed. Reg. at 47917 (describing 2010 Rule). The  
25 FLS based AEWs in effect for 2025 are stale under the 2010 methodology and there is no alternative  
26 data source that could be used to set the AEWs based on that methodology. Plaintiffs argue that DOL  
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28

1 can use the 2010 Rule and stale FLS data with an upward adjustment, but that would equate to new  
2 rulemaking, again without notice and comment. Plaintiffs proposal assumes that wages would have  
3 increased had the FLS data been collected and published in 2025, but they offer no evidence to support  
4 that assertion, nor do they suggest by how much the wages should be adjusted.<sup>3</sup> Moreover, using the 2010  
5 Rule as a starting point suffers from another flaw: around that time farm labor contractors accounted for  
6 only 17% of H-2A certifications, but today they account for more than 40%, and FLS data does not survey  
7 wages paid by farm labor contractors, calling into question the appropriateness of using that data. *Id.* at  
8 47930-31 n.106. Alternatively, rather than reverting to the old rule, DOL could revert to the other wage  
9 rates in the regulations, namely the “prevailing hourly wage or piece rate, the agreed upon collective  
10 bargaining wage, or the Federal or State minimum wage.” *Id.* at 47925 n.89 (quoting 20 C.F.R. § 655.120).  
11

12  
13 The government also notes that the IFR, though final and currently in effect, will ultimately be  
14 replaced with a final rule that considers the public comments received in connection with the IFR. *See* 90  
15 Fed. Reg. at 47920 n.57. While the timing of the final rule is as yet unclear, an injunction at this stage  
16 promises to inject a high degree of uncertainty into the program, only to have the IFR replaced by a  
17 forthcoming final rule.

18  
19 Plaintiffs argue that the balance of hardships favors them because there is no evidence in the IFR  
20 that a higher AEWR will harm employers, while workers will suffer economic harm from a lower AEWR.  
21 Br. 23. But as explained in the IFR, the agricultural labor market is undergoing rapid change as a result of  
22 immigration enforcement. 90 Fed. Reg. at 47921. Ultimately, however, Plaintiffs cannot show the balance  
23

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24  
25 <sup>3</sup> Plaintiffs incorrectly assert that this court ordered an interim upward adjustment of the 2020 AEWR  
26 rates after it enjoined the Department’s 2020 AEWR rule. *See United Farm Workers v. Dep’t of Labor*, Case No.  
27 1:20-cv-01690-DAD-CDB, ECF 39 (E.D. Ca. Jan. 12, 2021) (rejecting a proposal from plaintiffs to “issue interim  
28 2021 AEWRs calculated by adjusting the 2020 AEWR for each state or multi-state region by the average year-  
over-year rate of increase in that state or region over the last five years” during the period before the 2021  
AEWRs were issued, but reserving the question of backpay based on the difference between the 2020 and 2021  
AEWRs).

1 favors them because economic harm based on the AEW is two sides of the same coin. A higher AEW  
2 inflicts economic harm on employers while a lower AEW inflicts economic harm on workers. *See USA*  
3 *Farm*, 694 F. Supp. 3d at 714 (plaintiffs did not show balance of hardships favored them because “[t]he  
4 requested injunction could cause at least as much harm to these third-party workers, who would be  
5 deprived of wages that they are entitled to under the Final Rule, as a denial would harm the Plaintiffs, who  
6 would potentially avoid having to pay these wages”), *aff’d*, *USA Farm*, 2025 WL 586339 at \*4 (same).  
7 Under Plaintiffs’ theory, the harm does not weigh in favor of either side. *See id.*; *see also Allina Health*  
8 *Servs. v. Sebelius*, 756 F. Supp. 2d 61, 69 (D.D.C. 2010) (“The balance of equities weighs against an  
9 injunction as the alleged irreparable economic injury suffered by the Plaintiffs would be offset by the  
10 corresponding economic injury to the [government] or [third parties].”); *MicroStrategy Inc. v. Motorola,*  
11 *Inc.*, 245 F.3d 335, 339 (4th Cir. 2001) (district court did not abuse its discretion when “the grant of an  
12 injunction would cause at least as much harm to the defendant ... as its denial would to the plaintiff”). If  
13 anything, the balance of harms weighs in favor of the employers because without the IFR, rising labor  
14 costs could result in agricultural employers going out of business, which would also harm their workers.  
15 90 Fed. Reg. at 47922. Any harm to the Plaintiff corresponding U.S. workers, on the other hand, is  
16 mitigated by the fact that they always receive at least the state-wide or Federal minimum wage. *Id.* at  
17 47925 n.89.

18  
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20  
21 In short, the public interest and balance of hardships does not weigh in favor of Plaintiffs. Rather,  
22 it favors the government and third parties who would be harmed by an injunction.

## 23 **V. PLAINTIFFS’ REQUESTED INJUNCTION AND 705 STAY ARE IMPROPER**

24 As recently confirmed by the Supreme Court in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), “the  
25 equitable relief available in the federal courts is that ‘traditionally accorded by courts of equity’ at the time  
26 of our founding.” *Id.* at 856 (citation omitted). Because “[n]othing like a universal injunction was available  
27 at the founding, or . . . for more than a century thereafter,” under the Judiciary Act of 1789, “federal courts  
28

1 lack authority to issue” universal injunctions. *Id.* This same principle forecloses the entry of a universal  
2 declaratory judgment. “Although the Declaratory Judgment Act ‘enlarged the range of remedies available  
3 in the federal courts,’ it ‘did not extend their jurisdiction.’” *Enable Miss. River Transmission, LLC v.*  
4 *Nadel & Gussman, LLC*, 844 F.3d 495, 497 n.2 (5th Cir. 2016) (quoting *Skelly Oil Co. v. Phillips*  
5 *Petroleum Co.*, 339 U.S. 667, 671 (1950)); *see also CASA*, 145 S. Ct. at 2552 (noting that the Supreme  
6 Court has stated that “[n]either declaratory nor injunctive relief . . . can directly interfere with enforcement  
7 of contested statutes or ordinances except with respect to the particular federal plaintiffs”) (citation  
8 omitted). Plaintiffs’ request for a § 705 stay fail for the same reasons. Under § 705, a court may postpone  
9 “the effective date of action” or “preserve status or rights.” 5 U.S.C. § 705. *Immigrant Defs. L. Ctr.*, 145  
10 F.4th at 995 (denying nationwide § 705 stay, instead limiting it to plaintiffs’ members).

11  
12 Plaintiffs suggest that this Court craft an injunction requiring DOL to implement a new AEWB  
13 methodology. Br. 23, 25. They suggest that DOL could use the 2010 Rule as a starting point, along with  
14 stale FLS data, and then create an increase in wage rates from there. Br. 25. That is a request for a  
15 mandatory injunction because it would order DOL to take action and would provide H-2A workers with  
16 a higher rate of pay than they would have received before the IFR issued. *See Stanley v. Univ. of S. Cal.*,  
17 13 F.3d 1313, 1320 (9th Cir. 1994) (request to order university to rehire employee at higher rate of pay  
18 than she received before her employment contract expired was mandatory injunction). In *Stanley*, the  
19 district court did not err in rejecting the requested injunction because such a request is “subject to a higher  
20 degree of scrutiny because such relief is particularly disfavored under the law of this circuit.” *Id.* That is  
21 because “[a] mandatory injunction ‘goes well beyond simply maintaining the status quo *pendente lite*  
22 [and] is particularly disfavored.’” *Id.* quoting *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir.  
23 1979)). A district court must deny requests for mandatory injunctions unless the law and facts clearly  
24 favor a moving party. *See Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). Here, for all the  
25 reasons explained above, the law and facts do not clearly favor Plaintiffs. Their request for a mandatory  
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1 injunction should be denied.

2 Finally, Plaintiffs should post a bond to the extent employers are required to pay a higher wage  
3 during the term of any injunction (which, as explained, should not be granted). The bond could compensate  
4 employers should DOL ultimately prevail. *See* Fed. R. Civ. P. 65(c).

5 Further, should the Court enter an order against the government, that relief should be tailored to  
6 any actual injury a Plaintiff with standing has demonstrated, and the Government respectfully requests  
7 that the relief be stayed pending the disposition of any appeal that is authorized, or at a minimum that such  
8 relief be administratively stayed for fourteen days to allow an opportunity to seek expedited relief.  
9

10 **CONCLUSION**

11 Wherefore, Defendants request that this Court deny Plaintiffs' motion for a preliminary  
12 injunction.

13  
14  
15 Dated: January 22, 2026

Respectfully submitted,

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19  
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