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12 National Council of Agricultural Employers

13 **UNITED STATES DISTRICT COURT**
14 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
FRESNO DIVISION

15 United Farm Workers, *et al.*,

16 Plaintiffs,

17 v.

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

19 Defendants.
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Case No.: 1:25-cv-01614-KES-SKO

**UNOPPOSED MOTION OF AMICUS
CALIFORNIA FARM BUREAU
FEDERATION AND NATIONAL
COUNCIL OF AGRICULTURAL
EMPLOYERS FOR LEAVE TO FILE
BRIEF AS *AMICUS CURIAE* IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION AND SECTION 705 STAY**

1 The National Council of Agricultural Employers (“NCAE”) and *Amicus* California Farm
2 Bureau Federation respectfully moves for leave to file a brief as amicus curiae in support of
3 Defendants’ Opposition to Plaintiffs’ Motion for a Preliminary Injunction and § 705 Stay.

4 **STATEMENT OF INTEREST**

5 The NCAE is a national association organized under the laws of the District of Columbia.
6 Founded in 1964, NCAE is the only national association focusing exclusively on agricultural
7 labor issues from the agricultural employer’s viewpoint. NCAE represents labor-intensive
8 agriculture before Congress, with federal agencies, and where necessary, in court. NCAE’s
9 membership, including farmers represented by its association members, represents an estimated
10 85% of all U.S. agricultural employers directly engaged in the production of food and nursery
11 crops in the United States, and its members employ roughly 90% of all H-2A workers in the
12 United States. On behalf of its members, NCAE commented on the Department of Labor’s use
13 of “adverse effect wage rates” (“AEWRs”) in 2019, 2020, 2021, and 2025, the rulemaking
14 processes that led to the previous AEWR rule and the current AEWR rule under challenge in
15 this lawsuit. Farm labor costs are the primary expense for NCAE’s members, and a stable and
16 affordable H-2A visa program is essential to sustaining American agriculture.

17 *Amicus* California Farm Bureau Federation is a voluntary nonprofit mutual benefit
18 corporation. As a trade association, its purposes include working for the solution of the problems
19 of the farm and representing and protecting the economic interests of California’s farmers and
20 ranchers. Its members are 54 separately incorporated county Farm Bureau organizations
21 representing farmers in 57 of California’s 58 counties. Those 54 organizations have in total
22 among them more than 23,300 members, including more than 15,500 agricultural members.
23 Many of those agricultural members are employers who either now use the H-2A program or in
24 the future will either use or consider using it. The level of compensation that must be paid to H-
25 2A employees is a huge factor in the affordability to employers of the program and thus in their
26 determinations as to whether to use it. The issue in this case of AEWR methodology, by which
27 that compensation is determined, therefore greatly concerns them.

28 ///

1 **JUSTIFICATION**

2 The *amici* submit this brief to offer the Court context for how this 2025 interim final rule
3 (the “IFR”) came into existence and the risk of negative consequences from the inappropriate
4 relief sought by Plaintiffs. In the past five months, H-2A employers have gone through three
5 different AEWB rules, with Plaintiffs proposing a fourth, soon to be followed by the final rule
6 on the IFR for a potential fifth. Farm labor is the single largest cost for most of *amici*’s members,
7 and this kind of chaos plays havoc with the crucial work that they are doing to put food on
8 America’s dinner tables. None of the various AEWB proposals is perfect, but one thing is certain:
9 injecting additional uncertainty and disruption into agricultural labor right now would be
10 disastrous for American agriculture.

11 **RELEVANCE**

12 *Amicus* NCAE is the only nationwide organization representing H-2A employers; its
13 direct members and members of its association members employ approximately 90% of all the
14 H-2A workers in the United States. *Amicus* California Farm Bureau Federation represents more
15 than 15,500 agricultural employers in California, many of whom use and rely on the H-2A visa
16 program. *Amici* and their members have significant knowledge and experience with the H-2A
17 program and, can share that knowledge with the Court on the factual allegations made by
18 Plaintiffs in this case and the potential effects of Plaintiffs’ proposed relief.

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1 **STATEMENT OF CONSENT**

2 Counsel for all Parties have been contacted by undersigned counsel, seeking their consent
3 to this motion. Counsel for Plaintiffs represents that Plaintiffs take no position on proposed amici's
4 motion. In the interest of avoiding any delay in the Court's consideration of Plaintiffs' pending
5 Motion for Preliminary Injunction and Section 705 Stay, which is scheduled to be fully briefed by
6 the parties later today, amici are filing this motion before receiving Defendants' position. The
7 proposed amicus brief is attached to this motion.

8 Dated: February 5, 2026

FISHER & PHILLIPS LLP

9
10 By: /s/ Rebecca Hause-Schultz
11 Christopher J. Schulte
Alden J. Parker
Rebecca Hause-Schultz

12 Attorneys for Amicus California Farm Bureau
13 Federation, and National Council of Agricultural
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13 **UNITED STATES DISTRICT COURT**
14 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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18 U. S. Department of Labor, *et al.*,

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Case No.: 1:25-cv-01614-KES-SKO

**BRIEF OF THE NATIONAL COUNCIL
OF AGRICULTURAL EMPLOYERS
AND CALIFORNIA FARM BUREAU AS
AMICI CURIAE IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION AND
SECTION 705 STAY**

1 **INTERESTS OF THE *AMICI CURIAE*¹**

2 The National Council of Agricultural Employers (“NCAE”) is a national association
3 organized under the laws of the District of Columbia. Founded in 1964, NCAE is the only
4 national association focusing exclusively on agricultural labor issues from the agricultural
5 employer’s viewpoint. NCAE represents labor-intensive agriculture before Congress, with
6 federal agencies, and where necessary, in court. NCAE’s membership, including farmers
7 represented by its association members, represents an estimated 85% of all U.S. agricultural
8 employers directly engaged in the production of food and nursery crops in the United States, and
9 its members employ roughly 90% of all H-2A workers in the United States. On behalf of its
10 members, NCAE commented on the Department of Labor’s use of “adverse effect wage rates”
11 (“AEWRs”) in 2019, 2020, 2021, and 2025, the rulemaking processes that led to the previous
12 AEWR rule and the current AEWR rule under challenge in this lawsuit. Farm labor costs are
13 the primary expense for NCAE’s members, and a stable and affordable H-2A visa program is
14 essential to sustaining American agriculture.

15 *Amicus* California Farm Bureau Federation is a voluntary nonprofit mutual benefit
16 corporation. As a trade association, its purposes include working for the solution of the problems
17 of the farm and representing and protecting the economic interests of California’s farmers and
18 ranchers. Its members are 54 separately incorporated county Farm Bureau organizations
19 representing farmers in 57 of California’s 58 counties. Those 54 organizations have in total
20 among them more than 23,300 members, including more than 15,500 agricultural members.
21 Many of those agricultural members are employers who either now use the H-2A program or in
22 the future will either use or consider using it. The level of compensation that must be paid to H-
23 2A employees is a huge factor in the affordability to employers of the program and thus in their
24 determinations as to whether to use it. The issue in this case of AEWR methodology, by which
25 that compensation is determined, therefore greatly concerns them.

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28 ¹ Neither *amici* has any parent corporation or stockholders. No party’s counsel authored this brief in whole
or in part; no party or party’s counsel contributed money to fund preparing or submitting this brief. No
parties other than members of *amici* contributed money to fund this brief.

1 **INTRODUCTION**

2 The *amici* submit this brief to offer the Court context for how this 2025 interim final rule
3 (the “IFR”) came into existence and the risk of negative consequences from the inappropriate
4 relief sought by Plaintiffs. In the past five months, H-2A employers have gone through three
5 different AEWB rules, with Plaintiffs proposing a fourth, soon to be followed by the final rule
6 on the IFR for a potential fifth. Farm labor is the single largest cost for most of *amici*’s members,
7 and this kind of chaos plays havoc with the crucial work that they are doing to put food on
8 America’s dinner tables. None of the various AEWB proposals is perfect, but one thing is
9 certain: injecting additional uncertainty and disruption into agricultural labor right now would
10 be disastrous for American agriculture.

11 Defendants’ brief in opposition (ECF 28) to Plaintiffs’ Motion for Preliminary Injunction
12 and Stay (ECF 21), and the *amicus* brief of the North Carolina Chamber (ECF 29), set forth the
13 substantive and procedural defects of Plaintiffs’ motion succinctly and compellingly. NCAE
14 and CAFB will not reiterate the litany of flaws but, hopefully, attempt to add texture and context
15 to the IFR that might assist the Court in making its decision on the Motion.

16 **ARGUMENT**

17 **I. Origin of the AEWB and Why FLS AEWB Needed to Be Replaced**

18 In creating the H-2A visa program 40 years ago, Congress directed the Secretary of Labor
19 to issue regulations in support of the Secretary’s requirement to certify two things before an
20 employer could hire temporary foreign agricultural workers:

- 21 1. “there are not sufficient workers who are able, willing, and qualified, and who will
22 be available at the time and place needed, to perform the labor or services involved
23 in the petition, and”
24 2. “the employment of the alien in such labor or services will not adversely affect the
25 wages and working conditions of workers in the United States similarly employed.”

26 8 U.S.C. § 1188(a)(1)(A) and (B). “Congress did not, however, further define adverse effect and
27 left it in the Department’s discretion how to ensure that the importation met the statutory
28 requirements.” *American Fed. of Labor and Congress of Indus. Orgs. (AFL-CIO) v. Dole*, 923

1 F.2d 182, 184 (1991). “Striking that balance is a judgment call which Congress entrusted to the
2 Department of Labor,” since “the statute requires that the Department serve the interests of both
3 farmworkers and growers – which are often in tension.” *Id.* at 187; *see also U.S. Equal*
4 *Employment Opportunity Comm’n v. Global Horizons, Inc.*, 915 F.3d 631, 639 (9th Cir. 2019)
5 (“Congress designed the program to ‘balance two competing interests: to assure employers an
6 adequate labor force on the one hand and to protect the jobs of citizens on the other.’”). “Even
7 if desirable, the Secretary has no authority to set a wage rate on the basis of attractiveness to
8 workers. His authority is limited to making an economic determination of what rate must be
9 paid all workers to neutralize any ‘adverse effect’ resultant from the influx of temporary foreign
10 workers.” *Williams v. Usery*, 531 F.2d 305, 306 (5th Cir. 1976).

11 For most of the 40 years since the H-2A program was created, the Department of Labor
12 chose to set AEWRs based on the average combined crop and livestock rate from the Department
13 of Agriculture’s Farm Labor Survey (“FLS”) from the previous calendar year. As discussed in
14 the attached “Analysis of the USDA Farm Labor Survey Hourly Wage Estimates: A Case Study
15 of California,” by Zachariah Rutledge, Ph.D., the original goal of helping prevent downward
16 pressure on domestic farmworkers’ wages was more recently replaced by the realization that the
17 FLS AEWRs were now higher than the average wage in the domestic farm labor market. Exhibit
18 A. Dr. Rutledge compares the FLS AEWRs with the findings of the National Agricultural
19 Workers Survey (“NAWS”), which surveys farmworkers themselves, rather than capturing
20 “total compensation” for farm employers as the FLS does (or did; it no longer exists as of August
21 2025). That total compensation, particularly in California, improperly included state overtime
22 premiums, performance bonuses, and piece-rate earnings, rather than the hourly wage rate as it
23 was meant to capture.

24 Plaintiffs’ case is built on three core assumptions, none of which is accurate: (1) the FLS
25 AEWRs accurately captured the average wage in the domestic labor market; (2) any wage lower
26 than the FLS AEWR must cause “adverse effect”; and (3) Plaintiffs actually will be paid such
27 lower wages and suffer “adverse effect,” either individually or collectively as UFW members.
28 The extremely speculative assumption specified in #4 is well addressed in Defendants’ and the

1 NC Chamber’s brief. It therefore is not addressed in this brief. Dr. Rutledge shows that the first
2 two assumptions are also false. For California, in particular, the FLS AEWL for calendar year
3 2023 was \$2.49 higher than the average domestic farmworker wages reported in the NAWS for
4 “a statistically representative source of data” that specifically excluded H-2A workers to avoid
5 tainting the data. By using the FLS AEWL in California in 2023, the previous rule caused
6 California H-2A employers to pay approximately \$90 million more than they should have if the
7 goal were to have them pay the average domestic farmworker wage.

8 Moreover, of the certified H-2A jobs in California, 97% were in crop production, so a
9 blended “crop and livestock” average in the FLS results would be less relevant here than the
10 NAWS report for crop workers’ wages.

11 The FLS also and somewhat notoriously includes the wages of H-2A workers, creating
12 an artificial “echo effect” that inflated the FLS over time. Year after year, the gap between the
13 FLS wage used as the AEWL and the actual average wage rate found by NAWS was expanding.
14 So, the \$2 to \$3 change from the FLS AEWL to the wages under the IFR is not, as Plaintiffs
15 claim, a “deflation” below the real average domestic wage but a simple “correction” from an
16 already artificially inflated wage to a *more* accurate wage. Thus, Plaintiffs’ theory of the case
17 that the old wages were correct and the new ones are too low and will “adversely affect”
18 Plaintiffs are shown to be patently false.

19 Turning from the statewide and top-level problems with Plaintiffs’ theory of the case, the
20 day-to-day lived experience of *amici*’s members further belies Plaintiffs’ arguments. While
21 Plaintiffs cynically assume that agricultural employers will “race to the bottom” and move to
22 immediately slash wages, many of *amici*’s members report paying the same or more than they
23 were under the previous wage rules to retain their long-tenured employees and be able to recruit
24 and retain talented workers going forward. An employer with a mix of domestic and H-2A
25 workers, including positions within the company that are exclusively filled by U.S. workers, the
26 FLS AEWL operated to pull those U.S. wages up, even where the work was not covered by an
27 H-2A contract as “corresponding employment.” This echoes Dr. Rutledge’s broader findings,
28 and on a year-over-year basis, that employer reports that they have specifically chosen not to

1 lower wages under the IFR, even though the Department of Labor would allow them to do so.
2 They are paying the higher California FLS AEW R now in both California and Arizona. There
3 are already contracts certified by the Department of Labor at the higher “old” wage rates that are
4 publicly-available via the Department’s seasonaljobs.dol.gov website.

5 That employer and many others in California offer health insurance (including spousal
6 coverage which is not required under the Affordable Care Act), dental plans, and 401(k) plans
7 with 5% employer matches for U.S. and H-2A workers, alike. At least one member of *amici* has
8 recently invested tens of millions of dollars in new housing for their H-2A employees, part of
9 the \$5,000 per H-2A worker in non-wage costs each year that they pay. These costs were not
10 considered in assessing “adverse effect” under earlier versions of the AEW R rule, but it is finally
11 being included in the IFR’s calculations. The Court should not adopt Plaintiffs’ proposal to
12 ignore these costs and intentionally skew farmworkers wages.

13 For the reasons discussed above, the FLS AEW R was already artificially inflated, so
14 adding Plaintiffs’ proposed further inflation increase to it may benefit some visa workers who
15 are not party to the case, but doing so is neither legally nor economically defensible. The FLS
16 AEW R was disconnected from any actual “adverse effect,” so moving in the wrong direction
17 and arbitrarily increasing the mandated wages further away from an actual domestic average
18 would make a bad situation worse. The INA does not require such an outcome; it does not permit
19 such an outcome. The Court should not take part in Plaintiffs’ request for such illegal
20 government action and should deny the Motion for Preliminary Injunction and Stay.

21 **II. Plaintiffs’ Proposed Remedies Would Cause Harm and Disruption**

22 The Department of Labor implemented a new AEW R rule in spring 2023, keeping the
23 FLS AEW R for most occupations and adding a “disaggregated” wage for certain “other” job
24 categories like truck drivers, mechanics, and first-line supervisors. That 2023 Rule was the
25 subject of considerable litigation challenges by the employer community, including one
26 spearheaded by *amicus* NCAE. In August 2025, the Department entered into a consent judgment
27 in the Western District of Louisiana that declared the 2023 Rule “arbitrary and capricious” and
28 vacated it immediately. Employers certified to hire H-2A workers during a six-week window

1 between the entry of that judgment and the implementation of the 2025 IFR were subject to the
2 2010 AEW rule. Those certified after the 2025 IFR took effect on October 2, 2025 were subject
3 to a third AEW rule. Now, on the verge of a fourth rule being issued by the Department (the
4 final rule based on the comments to the IFR in Fall 2025), Plaintiffs want to insert a fifth wage
5 rule into the mix, asking this Court to create a new rule out of thin air, cobbling together the
6 2010 wage rule with a new inflation adjustment to the FLS AEW rule for 2026. No business thrives
7 on this kind of uncertainty, but few suffer more from this kind of disruption than agricultural
8 employers.

9 Beyond the seasonal weather and crop unpredictability that already challenge California
10 farms, cost pressures for fuel, fertilizer, and other inputs continue to strain agricultural operations
11 in the state. As noted in the Department’s preamble to the IFR, significant and ongoing increases
12 to immigration enforcement and border security activity are already tightening the labor market
13 in agriculture and creating upward pressure on wages and food prices. But structural issues in
14 agriculture make mid-season changes more problematic than in other industries. Farms enter
15 into sales contracts for their produce before the crop is ever planted; farm labor contractors agree
16 to contracts with growers before the season. The Department of Labor’s AEW rules never
17 allow an employer to lower wages once a contract has started but require employers to raise
18 wages if they increase mid-contract. This means that the risk is borne entirely by the agricultural
19 employer when there is regulatory chaos like what Plaintiffs propose. There is no ability to
20 control that risk; farms and farm labor contractors can only hope for stability until the next
21 growing season comes.

22 Plaintiffs attack the Department’s decision to implement the new wage rule as an IFR
23 rather than issuing a rule *after* comments were submitted and considered. Complaint ¶¶ 138-
24 146. As the Department noted, however, the lack of FLS data after USDA suspended the survey
25 would have created a “regulatory gap” that would have forced the Department to choose between
26 two impossible options: violate its own rules or suspend processing H-2A applications. ECF
27 28 at 3. *Amici*’s members that participate in the H-2A program do so because, as they prove to
28 the Secretary of Labor each time they are certified to employ visa workers, “able, willing, and

1 qualified” U.S. workers are not available. It is unconscionable for Plaintiffs to hold these farms
2 (and America’s families that rely on the food that they grow) hostage by shutting down the
3 program that they rely on, based on the spurious theory that Plaintiffs might earn slightly higher
4 wages through this brinksmanship. To be clear, that is precisely what Plaintiffs wanted the
5 Department to do after USDA ended the FLS and, disappointed that the Department did not play
6 along in their extortion plan, precisely the scheme that Plaintiffs now attempt to enlist this Court
7 to join.

8 Plaintiffs acknowledge that the IFR considers their reliance interests; claiming only that
9 it “minimizes” those interests. ECF 21 at 17. Yet Plaintiffs proposed remedies would all play
10 havoc with the reliance interests of agricultural employers, particularly *amici*’s members. When
11 Plaintiffs talk about “reliance interests,” they mean that employees would generally prefer to
12 have higher wages than lower or stable wages. “Reliance interests” for the agricultural
13 employers that pay those employees are far more concrete. As described above, sales contracts
14 and farm labor contractor agreements include locked in cost numbers. Mid-season wage changes
15 like the ones Plaintiffs propose could cause ruinous losses for agricultural employers.

16 When the question of H-2A AEWs was last before this Court in 2020, *amicus* NCAE
17 intervened for the specific purpose of addressing the question of equitable remedy in that case.
18 *UFW v. DOL*, No. 1:20-cv-01690-DAD-JLT. Similar concerns motivate NCAE to again weigh
19 in with the Court. Plaintiffs seek a nationwide order from this Court, changing the AEW rule
20 across all 50 states and covering thousands of H-2A contracts. Under *Trump v. CASA, Inc.*, the
21 Supreme Court recently held that nationwide injunctions, particularly nationwide preliminary
22 injunctions, are not permitted, regardless of the substance of the government action or the trial
23 court’s interpretation of the importance of the issue or the importance of uniformity. 606 U.S.
24 831 (2025). While the experience of *amici*’s California agricultural employer members shows
25 why the substance of Plaintiffs’ theory is flatly wrong, the fear outside the Eastern District of
26 California that this case will have disastrous repercussions for H-2A employers nationwide is
27 every bit as real.

28 ///

1 **CONCLUSION**

2 For all the reasons set forth above, and echoing the arguments already made by Defendants
3 and *amicus* N.C. Chamber, the National Council of Agricultural Employers and California Farm
4 Bureau Federation and their members respectfully urge the Court to deny Plaintiffs’ Motion for
5 Preliminary Injunction and Stay of the 2025 AEW R IFR.

6 Dated: February 5, 2026

FISHER & PHILLIPS LLP

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8 By: /s/ Rebecca Hause-Schultz
9 Christopher J. Schulte
Alden J. Parker
Rebecca Hause-Schultz

10 Attorneys for Amicus California Farm Bureau
11 Federation, and National Council of Agricultural
Employers

EXHIBIT A

EXHIBIT A

Analysis of the USDA Farm Labor Survey Hourly Wage Estimates: A Case Study of California

Zachariah Rutledge, Ph.D.¹

Introduction

The Adverse Effect Wage Rates (AEWR) are state-level minimum wages that must be paid to foreign agricultural guest workers working in the United States (US) under the H-2A visa program. The United States Department of Agriculture's (USDA) Agricultural Labor Survey (also commonly referred to as the Farm Labor Survey or "FLS") was previously used to set most AEWRs prior to October 2, 2025. The AEWRs were originally implemented to help prevent domestic farmworkers from facing downward wage pressure as a result of competition from foreign workers (Congressional Research Service, 2008). The FLS AEWRs were supposed to reflect the average wage in the domestic farm labor market; however, industry groups were concerned that they were higher than the average wage in the domestic farm labor market (Crittenden, 2020; Lewison, 2021). In this study, I analyze wage data from California to provide insights into whether the FLS wage estimates were higher than the average wage in the domestic farm labor market. I also estimate the amount of excess wages that California's H-2A employers may have paid to H-2A workers during calendar year 2023 as a result of the use of the FLS to set AEWRs instead of a statistically representative source of data that only collected information on domestic crop farmworkers (the National Agricultural Workers Survey or NAWS). I find that the 2022 FLS hourly wage estimate (i.e., the 2023 AEWR) for California was \$2.49 higher than the wage estimate produced by the NAWS. Additionally, I find that use of the 2022 FLS wage estimate to set the 2023 AEWR for California caused H-2A employers to pay approximately \$90 million more in wages during 2023 than they would have had to if the NAWS was used instead of the FLS.

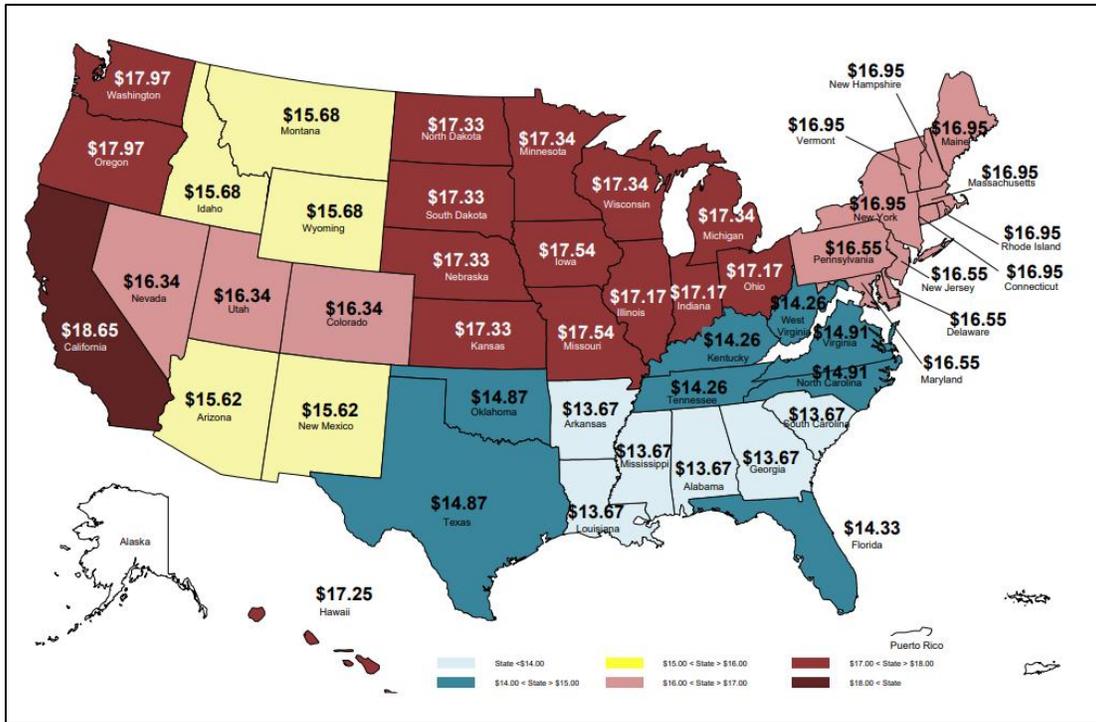
Background

The FLS "provides the basis for employment and wage estimates for all workers directly hired by U.S. farms and ranches (excluding Alaska)" (NASS, 2021). In 2023, the AEWRs ranged from a low of \$13.67 in the southeastern part of the country to a high of \$18.65 in California (see Figure 1). According to Castillo et al. (2022), 97% of the certified H-2A jobs in California were in crop production, indicating that the relevant set of domestic employees that might compete with H-2A workers are involved, almost exclusively, in crop production activities (see Table 1). As such, an estimate of the average wage of domestic crop employees is likely more relevant than the set of employees sampled by the FLS, which included crop and animal production employees, as well as H-2A workers.²

¹ Zachariah Rutledge is acting in his own individual capacity and not on behalf of Michigan State University. Michigan State University does not endorse, sponsor, or support this work.

² According to the FLS data reported in NASS Quickstats (NASS, 2025), the average 2022 California animal wage was higher (\$18.80) than the average crop wage (\$18.62), and a simple calculation indicates that the FLS animal wage estimate was given 17% of the weight in the \$18.65 FLS estimate for the state ($.17 \times \$18.80 + .83 \times \$18.62 = \$18.65$).

Figure 1: Adverse Effect Wages Rates for 2023



Source: <https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/AEWR-Map-2023.pdf>.

Table 1: California H-2A Jobs by Industry

Industry group	H-2A jobs certified	Percent of State H-2A jobs	Contract value (avg. \$)	Hours per week (avg.)	Weeks (avg.)
Crop support (inc. FLCs)	17,077	67	14,644	37	27
Fruits	3,956	16	13,102	39	23
Vegetables	2,172	9	11,621	39	22
Field and other crops	1,307	5	16,632	39	29
Animals	756	3	19,479	41	37
Nursery	185	1	20,177	46	30
Total or average	25,453	100	14,432	38	26

Source: <https://ers.usda.gov/sites/default/files/laserfiche/publications/104606/EIB-238.pdf> (see page 36).

Wage Analysis Methodology

To provide an estimate of the potential impacts of using the FLS to set the AEWR in California, I analyze wage data from the FLS (NASS, 2025) and the NAWS (DOL, 2025a), as well as H-2A disclosure data from the US Department of Labor (DOL, 2025b). I use these data sets to estimate the total wage bill for California’s H-2A employers under two scenarios: (i) if the FLS was used to determine the AEWR or (ii) if domestic crop farm wages were used to determine the AEWR calculated with the FY2021-FY2022 NAWS data.³ For every H-2A application that had H-2A jobs certified to work in California during the calendar year 2023, I calculated the number of jobs

³ The National Agricultural Workers Survey contains a statistically representative sample of domestic crop production workers for California.

certified, the length of each certified contract using the employment start and end dates, and the specified number of hours of work per week. For contracts that did not start and end in calendar year 2023, I determined the number of days that each contract overlapped with the calendar year 2023. For example, if a contract started on December 1, 2022 and ended on January 15, 2023, the number of days that contract employed H-2A workers for during 2023 would have been 15 (i.e., January 1 – January 15). Similarly, if a contract started on December 1, 2023 and ended on January 15, 2024, the number of days that contract would have employed H-2A workers for during 2023 would have been 31 (i.e., December 1 – December 31). As such, I isolated the number of days of work that were contracted for work during 2023 that would have been subject to the 2022 FLS estimate (i.e., the 2023 AEW) under the assumption that the AEW would have gone into effect on January 1, 2023. I converted the length of the contracts from days into weeks by dividing the number of days by 7. Then, I calculated the total value of each certified H-2A application during 2023 by using the following formula:⁴

$$\text{Contract Value} = \text{Certified Jobs} \times \text{Weeks Worked} \times \text{Weekly Hours} \times \text{Wage}.$$

According to the most recent sample (FY2021 – FY2022) of data from the public access NAWS, California’s crop employees earned an average of \$16.16 (in \$2022), per hour.^{5,6} Thus the 2022 FLS average wage estimate of \$18.65 (and thus the 2023 AEW) for California was \$2.49 (\$18.65 – \$16.16 = \$2.49) higher than the average wage of domestic crop production workers in the state. This evidence suggests that the FLS estimate of the hourly wage in California likely overstated the true average hourly wage of domestic crop production workers in the state.

There were a total of 418 employers with H-2A jobs certified to work in the state of California during calendar year 2023, with some 44,521 H-2A jobs certified to work in California at some point during the year.⁷ During 2023, the average duration of employment for a certified H-2A contract was 156 days (22 weeks), and the average number of hours worked per week was 39. The value of an average H-2A job for work conducted in 2023 was about \$15,100. The total estimated wage bill for California H-2A employers during 2023 was about \$673 million.

⁴ When the hours of work per week was missing for a contract in the database, I assigned those contracts the mean number of hours from the contracts in all other applications that were in effect during the calendar year 2023.

⁵ NAWS wage values were converted to real 2022 dollar values using the Consumer Price Index found at <https://www.bls.gov/cpi/data.htm>. I used the annual CPI values for the current, not seasonally adjusted, U.S. city average for all items. Because the NAWS samples are collected on a fiscal year basis (i.e., October 1 to September 30) such that 25% of the time in a given fiscal year is contained in the previous calendar year and 75% of the time in the current calendar year, I created a weighted average using CPI data from both years. For example, the wage values for fiscal year 2021 are converted to 2022 dollar values by using the following formula:

$$\text{Wage}_{FY2021} \times \left[.25 \times \frac{CPI_{2022}}{CPI_{2020}} + .75 \frac{CPI_{2022}}{CPI_{2021}} \right].$$

⁶ All NAWS wage averages were calculated according to the guidelines set forth by the US Department of Labor. These guidelines suggest using more than one year of data to construct averages and applying the sampling weight variable “PWTYCRD” (see https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/Analyzing%20the%20NAWSPAD_An%20Introduction.pdf).

⁷ This figure includes jobs that were scheduled to start during 2022 and extended into 2023 and jobs that were scheduled to start during 2023 and extended into 2024.

Using Domestic Crop Production Wages to Set the AEW

If the 2022 FLS estimate of the average hourly wage for California was replaced by the average domestic crop employee wage reported by the NAWS, the 2023 California AEW would have been set at \$16.16 instead of \$18.65. I calculated the 2023 California H-2A contract values under the 2023 AEW (\$18.65) and under the value that would have been determined if the wage estimate was based on the NAWS (\$16.16). My calculations reveal that California’s H-2A employers paid an estimated \$90 million in excess wages above what they would have been required to pay if the AEW reflected the average domestic crop worker hourly wage calculated from the NAWS. In this case, the average California H-2A employer in the sample would have paid an estimated \$215,000 in excess wages to H-2A workers in 2023 if they had fulfilled all of the certified contracts. Furthermore, 107 employers would have paid more than \$100,000 in excess wages, 60 would have paid more than \$250,000 in excess wages, 39 would have paid more than \$500,000 in excess wages, and 24 would have paid more than \$1 million in excess wages. Table 2 displays a list of the estimated excess wages that the top 10 California H-2A employers paid during 2023 as a result of the use of the FLS instead of the NAWS.

Table 2: Excess Labor Costs for the Top 10 California H-2A Employers During 2023

Employer Name	Excess H-2A Wage Bill During 2023
Fresh Harvest, Inc.	\$7,779,930
Royal Oak Ag Services, Inc.	\$5,413,056
Elkhorn Packing Co. LLC	\$5,062,743
Empire Farm Labor Contractor LLC	\$2,669,716
Rancho Nuevo Harvesting, Inc.	\$2,332,871
Foothill Packing, Inc.	\$2,273,930
Tanimura & Antle Fresh Foods, Inc.	\$2,269,468
SARC, Inc	\$2,216,570
Foothill Packing, Inc.	\$2,162,503
Peri & Sons Farms of California, LLC	\$1,985,343

Conclusion

Based on my analysis of H-2A application and wage data for the state of California, I make the following conclusions. First, the average domestic crop employee wage in California calculated from the most recent round of public-access NAWS data (FY2021 – FY2022) was \$2.49 (in \$2022) less than the 2022 FLS California estimate of \$18.65. This finding indicates that the FLS may have significantly overstated the average wage of domestic crop production employees in California. The higher wage estimates produced by the FLS may have caused H-2A employers in the state of California to pay \$90 million more than they would have had to if the AEW was calculated with domestic crop farm employee wage data taken from the NAWS. The results of this analysis indicate that the California FLS sample may not have accurately represented the set of domestic workers who compete with H-2A employees in the state and may have caused H-2A employers to pay millions in excess wages than they otherwise would have had to.

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