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15 **UNITED STATES DISTRICT COURT**
16 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
17 **FRESNO DIVISION**

18 UNITED FARM WORKERS, *et al.*,

19 Plaintiffs,

20 v.

21 UNITED STATES DEPARTMENT OF LABOR;

22 LORI CHAVEZ-DEREMER, in her official
23 capacity as Secretary of Labor;

24 LORI FRAZIER BEARDEN, in her official
25 capacity as Acting Assistant Secretary for
26 Employment and Training

27 Defendants.

Civil Case No.: 1:25-cv-1614

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION FOR A SECTION 705 STAY
AND PRELIMINARY INJUNCTION**

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INTRODUCTION

The Department of Labor (“DOL”) is obligated, by statute, to ensure that the employment of H-2A farmworkers will not adversely affect the wages of similarly-employed U.S. farmworkers. DOL has historically enforced that requirement by establishing minimum wages for H-2A jobs—the Adverse Effect Wage Rates (“AEWRs”)—that approximate the market wages that U.S. farmworkers would receive for those jobs if the market did not include foreign labor. The AEWRs, when properly calculated, ensure that U.S. employers cannot hire H-2A workers at sub-market wages that would in turn depress (*i.e.*, adversely affect) U.S. farmworker wages.

DOL recently issued an interim final rule (“IFR”) that immediately and dramatically slashed AEWRs. Indeed, whereas the pre-IFR AEWRs generally equaled the average wages in the relevant sectors, under the IFR, the AEWRs for an estimated 90% (*or more*) of H-2A jobs will now equal only the 17th wage percentile in those sectors. That is a significant drop. For example, an AEWR for a standard farm job has dropped by roughly 18% in California and roughly 24% in Florida. And the IFR does not stop there. It drops AEWRs even further to account for housing that U.S. employers are supposed to provide to certain farmworkers for free. The IFR contemplates that the housing deduction could equal up to 30% of an AEWR. In short, the IFR is even more extreme than the 2020 AEWR methodology that this Court previously found unlawful in *United Farm Workers v. U.S. Dep’t of Lab.*, 509 F. Supp. 3d 1225 (E.D. Cal. 2020) (*UFW I*). That methodology froze AEWRs for two years; the IFR significantly *reduces* them.

DOL’s response brief disputes none of this. Nevertheless, DOL asks this Court to deny Plaintiffs’ motion for emergency relief based on a number of arguments that are no stronger than those rejected by this Court in *UFW I*. The Court should stay, and preliminarily enjoin, the IFR.

First, Plaintiffs are likely to succeed on the merits of their claims. To start, contrary to DOL’s assertion, Plaintiffs—individual farmworkers and two organizations with farmworker members—have

1 standing to challenge an IFR that deliberately lowers farmworker wages. To seek standing for prospective
2 relief, a plaintiff must establish a substantial risk of an imminent injury. Importantly, in a case with
3 multiple plaintiffs, only one must establish standing for the case to proceed. Here, there is a substantial
4 risk that the IFR will imminently impact all Plaintiffs. It will impact the individual Plaintiffs—seventeen
5 U.S. farmworkers and one H-2A worker—by cutting their wages. The U.S. farmworker Plaintiffs will be
6 impacted because they will be competing with H-2A labor that is now cheaper, which will place downward
7 pressure on their wages. The H-2A Plaintiff will also be impacted because the AEW—the functional
8 minimum wage—applicable to his next job will now be lower. Additionally, the organizational Plaintiffs
9 have associational standing through their farmworker members whose wages will likely also fall (or have
10 already fallen) because of the significant drop in AEWs. All Plaintiffs therefore have standing. At the
11 very least, it is virtually certain that at least one Plaintiff will have standing, which is sufficient for this
12 case to proceed.
13

14
15 Furthermore, Plaintiffs are likely to prevail on their Administrative Procedure Act (“APA”) claims.
16 The IFR is arbitrary and capricious because DOL failed to properly consider whether, under the IFR’s
17 new AEW methodology, DOL can satisfy its obligation to protect U.S. farmworker wages from the
18 adverse effects of H-2A employment. As noted above, AEWs can meaningfully protect U.S. farmworker
19 wages only if they track the relevant market wage rates. But the IFR adopts multiple measures that slash
20 AEWs to the point where they do not even resemble market rates. Most notably, the IFR classifies all
21 H-2A jobs into one of two skill-level tiers, and it sets the AEWs for the bottom tier—which the IFR
22 projects will contain over 90% of H-2A jobs—at only the 17th wage percentile for the relevant job
23 categories. DOL fails to explain how the 17th wage percentile can possibly match the market rate for
24 nearly all H-2A jobs. Instead, DOL notes that certain other visa programs, such as the H-1B program, also
25 utilize a tier-system. But the H-1B program—which concerns high-skilled, non-agricultural jobs—uses a
26 *four*-tier system, and only the fourth and lowest tier is assigned a minimum wage at the 17th wage
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1 percentile. The IFR, by contrast, has only two tiers, the bottom tier covers the lion's share H-2A jobs, and
2 that whole tier receives AEWRS at the 17th wage percentile. In fact, DOL has repeatedly stated that a
3 skill-level tier system in general makes little sense for the H-2A program because H-2A jobs generally
4 have few skill level requirements and thus the vast majority will invariably get packed into the lowest tier.
5 Additionally, aside from the two-tier system, the IFR adopts other measures, like the housing deduction,
6 that tank the AEWRS even further, ensuring that they fall below market rates and thus fail to protect U.S.
7 farmworkers from the adverse effects of the H-2A program. The IFR is therefore arbitrary and capricious.

8
9 The IFR is unlawful for other reasons as well. It is arbitrary and capricious because it fails to
10 properly consider the reliance interests of U.S. farmworkers whose health and safety depend on the wage
11 protections of AEWRS that are far higher than those produced by the IFR. In response, DOL largely notes
12 that it acknowledged those reliance interests, but paying lip service to those interests does not constitute
13 the type of reasoned judgment required by the APA. The IFR is also unlawful because DOL, without good
14 cause, issued the IFR without the requisite notice-and-comment process. DOL claims it needed to rush
15 out the IFR because the data source it previously relied upon was discontinued. But that, at most, justifies
16 a narrow IFR that changes the data source for AEWRS. It does not justify the IFR's radical overhaul of
17 the AEWRS methodology. DOL also argues that it needed to quickly issue the IFR because there is a
18 purported labor shortage. But it is unclear how the IFR was necessary to address that shortage. If farms
19 needed additional labor, they could have hired more U.S. farmworkers or H-2A workers based on AEWRS
20 generated by a lawful methodology. If those workers are willing to work for sub-market AEWRS rates
21 under the IFR, they would also be willing to work for higher AEWRS rates (*i.e.*, more pay). Accordingly,
22 the IFR is substantively and procedurally unlawful, and so Plaintiffs are likely to prevail on their APA
23 claims.
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26 *Second*, Plaintiffs will suffer irreparable harms absent emergency relief and the balance of the
27 equities favors that relief. DOL does not even engage with the individual Plaintiffs' declarations, all of
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1 which explain how wage reductions occasioned by the IFR will compromise those Plaintiffs’ ability to
2 cover critical expenses. Nor does DOL dispute that the inability to cover those expenses would constitute
3 irreparable harm. DOL merely contends that the individual Plaintiffs are speculating when they claim they
4 will suffer wage reductions. But once more, those wage reductions would be the predictable economic
5 effect of a sharp reduction in AEWs. The individual Plaintiffs and the organizational Plaintiffs’ members
6 will thus suffer irreparable harms without relief. On the other side of the ledger, DOL identifies no likely,
7 concrete harm it will suffer if the Court stays and enjoins the IFR. Accordingly, the balance of the equities
8 favors emergency relief.
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10 Plaintiffs have thus established all of the requirements for a stay of, and preliminary injunction
11 against, the IFR. The Court should therefore grant Plaintiffs’ motion for emergency relief.
12

13 ARGUMENT

14 A. Plaintiffs are likely to succeed on the merits.

15 1. Plaintiffs have standing to challenge the IFR.

16 DOL argues that Plaintiffs—individual farmworkers and organizations with farmworker
17 members—have established no injury from the IFR, a regulation that deliberately reduces AEWs and
18 consequently lowers U.S. farmworker wages. DOL is wrong. To establish standing for prospective relief,
19 a plaintiff “must demonstrate that he has suffered or is threatened with a concrete and particularized legal
20 harm.” *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 680
21 (9th Cir. 2023).¹ “A future injury need not be literally certain;” there “need only be a substantial risk that
22 it will occur.” *Nw. Requirements Utilities v. FERC*, 798 F.3d 796, 805 (9th Cir. 2015). Further, “in cases
23 seeking injunctive . . . relief, only one plaintiff need demonstrate standing to satisfy Article III.” *Olean*
24 *Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 682 n.32 (9th Cir. 2022).
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28 ¹ Internal citations and quotations marks are omitted throughout this brief unless otherwise stated.

1 Here, all Plaintiffs have standing. First, there is a substantial risk that the individual Plaintiffs—
2 seventeen U.S. farmworkers and an H-2A farmworker—will see a decrease in wages due to the IFR. The
3 U.S. farmworker Plaintiffs will likely see a reduction in wages because they must compete with H-2A
4 labor that is now cheaper due to the lower AEWRS. Several of those Plaintiffs submitted sworn
5 declarations indicating that they have held, and will continue to seek, seasonal jobs requiring tasks that
6 have been (and can still be) performed by H-2A workers, such as picking and transporting fruits and
7 vegetables and operating farm machinery. *See, e.g.*, Grimaldo Decl. ¶¶ 2, 8; Lopez Decl. ¶ 2; Serrano
8 Decl. ¶¶ 2, 8; Garcia Decl. ¶¶ 2, 8. The IFR recognizes that it will reduce AEWRS, lowering the wages
9 farms must now pay for the H-2A workers that U.S. farmworkers must compete with for jobs. *See* 90 Fed.
10 Reg. 47914, 47928 (Oct. 2, 2025) (“[DOL] acknowledges that the overall impact of this new methodology
11 will be a reduction in the AEWRS, or minimum hourly wage rate floors for H-2A workers *and workers in*
12 *corresponding employment [i.e., U.S. workers] that are likely to result in wage transfers to employers.”)*
13 (emphasis added). Consequently, when the U.S. farmworker Plaintiffs seek seasonal work in the future,
14 there is a substantial risk that their wages will be lower than they would have been but-for the IFR’s new
15 methodology.² *See* 80 Fed. Reg. 12760, 12796 (Feb. 28, 2023) (“The AEWRS” seeks to prevent “adverse
16 [wage] effect[s]” by providing “a floor below which wages cannot be negotiated, thereby strengthening
17 the ability of this particularly vulnerable labor force to negotiate over wages with growers who are in a
18 stronger economic and financial position.”); 76 Fed. Reg. 3452, 3463 (Jan. 19, 2011) (“An employer
19 paying U.S. workers as well as” foreign laborers “has no incentive to pay the U.S. workers any higher
20 compensation. The local competitors, by extension, have no incentive to pay a higher compensation.”).
21 The anticipated economic consequences of lower AEWRS are sufficient to establish the U.S. farmworker
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27 ² Indeed, in their prior farmworker positions, several Plaintiffs received salaries around the prevailing
28 AEWRS rate, and thus if they perform similar work in the future, they are likely to again be paid around
the AEWRS rate. *See, e.g.*, Garcia Decl. ¶ 5; Cruz Decl. ¶ 5; Lopez Decl. ¶ 5.

1 Plaintiffs’ standing to sue. *See Int’l Bhd. of Teamsters v. U.S. Dep’t of Transp.*, 861 F.3d 944, 951 (9th
2 Cir. 2017) (“introduc[ing] new competition into the market, making it more difficult for [plaintiffs]” to
3 earn more money is “sufficient to establish Article III injury”); *Diamond Alt. Energy, LLC v. Env’t Prot.*
4 *Agency*, 606 U.S. 100, 116 (2025) (a standing analysis should “recognize[] commonsense economic
5 realities,” and thus “[w]hen third party behavior is predictable, commonsense inferences may be drawn”).
6 Thus, the U.S. farmworker Plaintiffs have standing. Additionally, the H-2A farmworker Plaintiff has
7 standing because his wages are directly governed by the AEWRS that apply to his jobs, and those will
8 now be lower.

9
10 DOL contends that no individual Plaintiff has shown that she or he has already suffered an injury
11 due to the IFR. *See Resp.* at 10. But at least one Plaintiff has already secured a farmworker position for
12 which she has seen a sharp wage reduction. *See Panfilo Decl.* ¶¶ 2-3.³ In any event, Plaintiffs need not
13 establish a current injury; “the possibility of *future* injury may be sufficient to confer standing on
14 [Plaintiffs]; threatened injury constitutes injury in fact.” *Cent. Delta Water Agency v. U.S.*, 306 F.3d 938,
15 947 (9th Cir. 2002) (emphasis added). As explained above, the IFR creates a substantial risk that all
16 individual Plaintiffs will see lower wages in the future.

17
18 And to be clear, it is unsurprising that several individual Plaintiffs may not have suffered an injury
19 from the IFR yet (indeed, the whole point of the current motion is to secure an injunction *before* Plaintiffs
20 suffer any injury). The IFR was issued only a few months ago, in October of 2025, and due to the
21 government shutdown, DOL delayed processing H-2A job orders under the IFR’s new methodology. *See*
22 *Foreign Labor Certification*, U.S. Dep’t of Labor, <https://perma.cc/U9D7-6E6X> (last visited Jan. 27,
23 2026)) (“due to the government shutdown, the processing of foreign labor certification applications and
24 all activities associated with implementing regulatory requirements ceased through October 31, 2025”).
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³ Plaintiffs submit certain limited, new materials in response to the standing arguments raised in DOL’s
response brief.

1 Additionally, most seasonal farm jobs do not start now, in the dead of winter. *See* Romero Decl. ¶ 9. Many
2 of those jobs will commence in March or thereafter. *See id.* Thus, there is little reason to doubt that, to the
3 extent the individual Plaintiffs have not yet been injured, they face a substantial risk of imminent injury.

4 DOL also argues that Plaintiffs’ injury theory assumes “that job opportunities they will apply and
5 be selected for will be assigned a Skill Level I wage.” Resp. at 10. But that assumption is valid. A Skill
6 Level I job is one “where workers need no formal education or specialized training credentials” and need
7 “no or very little work-related experience” or may require only “a short demonstration.” 90 Fed. Reg. at
8 47932. Here, the individual Plaintiffs have held, and intend to again seek, farmworker jobs that involve
9 basic farm tasks such picking, sorting, packing, and transporting various crops. *See, e.g.,* Compl. ¶¶ 20,
10 30, 32, 35; Mendoza Decl. ¶ 2; Lopez Decl. ¶ 2. These tasks do not require formal education or specialized
11 training credentials, and they require no extensive work experience. Furthermore, the IFR itself
12 acknowledges that over 90% of the relevant jobs will be classified as Skill Level I, making it more likely
13 that Plaintiffs’ jobs will be classified as Skill Level I jobs. *See* 90 Fed. Reg. at 47955. Accordingly, the
14 individual Plaintiffs have established a substantial risk of injury stemming from the IFR. At the very least,
15 it is likely that at least one of the eighteen individual Plaintiffs will suffer the requisite injury, which is all
16 that is required for this case to proceed.

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19 Second, in addition to the individual Plaintiffs, the organizational Plaintiffs—United Farm
20 Workers (“UFW”) and UFW Foundation—have standing as well. An organization has associational
21 standing if “(a) its members would otherwise have standing to sue in their own right; (b) the interests it
22 seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief
23 requested requires the participation of individual members in the lawsuit.” *Vasquez Perdomo v. Noem*,
24 148 F.4th 656, 676 (9th Cir. 2025). Here, DOL does not dispute that the organizational Plaintiffs satisfy
25 prongs two and three. Obviously, the protection of farmworker employment conditions is germane to the
26 purpose of both UFW and UFW Foundation, a farmworker labor union and a farmworker nonprofit.
27
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1 Further, the claims at issue here (relating to the lawfulness of the IFR) and the relief requested (an
2 injunction against the IFR) do not require any information from, or the participation of, the organizational
3 Plaintiffs' members.

4 DOL only disputes the remaining prong, arguing that the organizational Plaintiffs' farmworker
5 members do not have standing because they "speculate about future wage reductions." Resp. at 10. But as
6 explained above, those alleged, impending injuries are not speculative. They are based on the predictable
7 and inevitable consequences of a sharp reduction in AEWRS. Additionally, UFW members have
8 previously worked, and will likely again seek to work, for certain employers that have already signaled
9 that they will lower farmworker pay in light of the IFR. See Romero Decl. ¶¶ 4-8. And critically, to
10 establish standing, an organization need only show that it is "relatively clear . . . that" at least "one . . .
11 member[] . . . will be adversely affected by a defendant's action." *Vasquez Perdomo*, 148 F.4th at 676
12 (emphasis added). Here, given the IFR's broad economic consequences, it is "relatively clear" that many
13 of the organizational Plaintiffs' members will be impacted by the IFR. The organizational Plaintiffs, like
14 the individual Plaintiffs, have standing to sue.

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17 2. Plaintiffs are likely to prevail on their claim that the IFR is arbitrary and capricious, and
18 contrary to law.

19 A regulation is arbitrary and capricious if the agency has failed to "reasonably consider[] the
20 relevant issues," *Fed. Commc 'ns Comm'n v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021), or has
21 otherwise made a "clear error of judgment," *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm*
22 *Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).⁴ Here, the IFR is arbitrary and capricious for two reasons.

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25 ⁴ DOL argues that it has discretion over the selection of an AEWRS methodology, citing to *AFL-CIO v.*
26 *Brock*. But there, after noting that DOL has some discretion over its AEWRS methodology, the court
27 emphasized that it must still "discern the reasonableness of the agency's action." 835 F.2d 912, 919 (D.C.
28 Cir. 1987); *People of State of Cal. v. F.C.C.*, 905 F.2d 1217, 1230 (9th Cir. 1990) ("Under the APA, an
agency's discretion is not boundless, and" a court must determine whether the agency "articulated a
(continued...)

1 First, DOL did not adequately consider whether the IFR will fulfill DOL’s statutory duty to protect U.S.
2 farmworker wages from the adverse effects of H-2A labor. Again, to the contrary, the IFR slashes AEWRs
3 to well below market levels, thus ensuring that they cannot protect U.S. farmworker wages. Second, the
4 IFR did not adequately consider the reliance interests of farmworkers.

5
6 a) *The IFR fails to reasonably consider whether its new methodology would satisfy*
7 *DOL’s statutory duty to protect U.S. farmworkers from the adverse effects of H-*
8 *2A labor.*

9 DOL is required to protect U.S. farmworker wages from the adverse effects caused by the H-2A
10 program. *See* 8 U.S.C. § 1188(a)(1)(A), (B). DOL has historically satisfied that requirement by setting
11 AEWRs that “approximate[] the equilibrium wage [*i.e.*, market wage] that would result absent an influx
12 of temporary foreign workers” and thus “put incumbent farm workers in the position they would have
13 been in but for the H-2A program.” 75 Fed. Reg. 6884, 6891 (Feb. 12, 2010). DOL disputes none of this.

14 Here, the IFR adopts at least three measures that deliberately slash AEWRs to the point where they
15 do not resemble applicable market rates, thus placing downward pressure on the wages of similarly-
16 employed U.S. farmworkers. In particular, the IFR adopts an arbitrary two-tier system and housing
17 deduction, and it shifts to an unreliable data source. In adopting these measures, DOL failed to reasonably
18 consider whether the IFR would actually protect U.S. farmworker wages from the adverse effects of H-
19 2A labor.

20
21 Two-tier system. The IFR adopts an arbitrary two-tier system that tanks AEWRs for over 90% of
22 H-2A jobs. Under the IFR, each H-2A job must be classified into a job category called a Standard
23 Occupational Classification (“SOC”) code. *See* Mem. at 6-7. Then, each H-2A job is placed into one of
24 two tiers within its job category: Skill Level I (line-level positions requiring no specialized training or
25

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27 _____
28 satisfactory explanation for its action based upon the record.”). Regardless of any discretion DOL may
have, it must still ensure that the employment of H-2A workers will not “adversely affect” the wages of
similarly employed U.S. workers. *See Brock*, 835 F.2d at 917 (a court must “judge the consistency of” an
agency’s “action[s] with the agency’s [statutory] mandate”).

1 credentials) and Skill Level II (managerial positions requiring greater qualifications). The IFR anticipates
2 that over 90% of H-2A positions will be classified as Skill Level I. *See* 90 Fed. Reg. at 47955. That is
3 consistent with DOL’s prior recognition that most farmworker jobs require no specialized training, even
4 if they are ultimately filled by experienced laborers. *See, e.g.,* Mem. at 10-11; 75 Fed. Reg. at 6900 (“Most
5 of the occupations and activities relevant to the H–2A program involve skills that are readily learned in a
6 very short time on the job.”); *see also UFW*, 509 F. Supp. 3d at 1239 (“[L]ower-skill work, which is field
7 and livestock work, make up most H-2A job opportunities.”).

8
9 Under the IFR, the AEWs for Skill Level II jobs equal the mean wages in the relevant job
10 categories—similar to the pre-IFR methodology—but the AEWs for Skill Level I jobs equal only the
11 17th wage percentile for the relevant job categories. *See* 90 Fed. Reg. at 47932. Stated differently, under
12 the IFR, the AEWs for all Skill Level I jobs (representing over 90% of H-2A positions) will be less than
13 the wages earned by 83% of workers in each of the relevant job categories. AEWs set to the 17th wage
14 percentile clearly do not approximate the relevant market rates and thus cannot protect U.S. farmworker
15 wages. Indeed, DOL previously acknowledged that an AEW rate that, like the 17th wage percentile, falls
16 “below the mean in the relatively less skilled agricultural SOC codes that predominate in the H-2A
17 program may have a depressive effect on the wages of workers in the United States similarly employed.”
18 88 Fed. Reg. 12760, 12774 (Feb. 28, 2023); *see also* 76 Fed. Reg. at 3463 (“[I]f the employer must only
19 offer and pay Level I wages, wages below what the average similarly employed worker is paid, those
20 wages will make the U.S. workers less likely to accept those job opportunities or will require them to
21 accept the job at a wage rate less than the market has determined is prevailing for the job. The net result
22 is an adverse effect on the worker’s income.”).

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24
25 In response, DOL argues that the IFR’s two-tier system resembles the four-tier system used in
26 other visa programs such as the H-1B program, which concerns high-skilled labor. *See* Resp. at 15. But
27 as Plaintiffs explained in their opening brief, that comparison is faulty because, for the H-1B program, the
28

1 minimum wage for *only* the fourth and final tier is set at the 17th wage percentile. *See* Mem. at 12. The
2 other three tiers receive a higher minimum wage.⁵ *See id.* Here, by contrast, the IFR establishes only two
3 tiers (not four), the bottom tier covers over 90% of the relevant jobs, and yet that whole tier is subject to
4 AEWRs equaling the 17th wage percentile.

5
6 Notably, DOL previously explained that the H-1B tier system would not work for lower-skilled
7 visa programs such as the H-2A program precisely because, for those programs, most jobs would be
8 clustered in the bottom tier. For example, DOL explained that it would not apply the H-1B tier system to
9 the H-2A companion program—the H-2B program, which concerns lower-skilled non-farm labor—
10 because “almost 75 percent of [H-2B] jobs” would be “classified at a Level I wage,” and a prevailing
11 wage for all of those jobs that is equal to only “the mean of the bottom one third”—*i.e.*, about the 17th
12 percentile—would not “represent[] [the] market-based wage[s]” for those jobs. 76 Fed. Reg. at 3463. DOL
13 thus concluded that a tier-system for the H-2B program would “adverse[ly] impact . . . those U.S. workers
14 performing the same tasks and engaged in the same jobs.” *Id.* And during the first Trump Administration,
15 DOL stated that the same concerns applied to the use of a tier structure for the H-2A program. It explained
16 that “[DOL’s] practical experience has demonstrated that use of a []tiered wage structure in the H-2A
17 program” would lead “to the overwhelming majority of H-2A job opportunities being classified at a level
18 I wage,” resulting in AEWRs that fall “well below the median wage for” those jobs. 85 Fed. Reg. 70445,
19 70462 (Nov. 5, 2020). Accordingly, DOL’s use of a tier-system elsewhere does not justify the IFR’s
20 arbitrary two-tier system for the H-2A program.
21
22

23 DOL then argues more generally that a tier system is preferable because it allows DOL to assign
24 different AEWRs to different jobs based on their qualifications. *See* Resp. at 15. But even if a tier system,
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26
27 ⁵ There is another critical distinction between the H-1B and H-2A program: unlike with the H-1B program,
28 there is no cap on the number of H-2A visas that may be issued, which makes U.S. farmworker wages
even more vulnerable to the depressive effects of foreign labor. *See* Mem. at 12 n.9.

1 in theory, could be effective, the *IFR*'s two-tier system—and its arbitrary AEW rates—is not. *See supra*
2 at 10. Regardless, as noted above, DOL has already explained that a tier system would not be effective for
3 visa programs like the H-2A program because most jobs would be jammed into the lowest tier, subjecting
4 all of the jobs within that tier to the lowest rate. *See supra* at 11. In its response brief, DOL protests that,
5 according to the IFR, the H-2A program covers “more than 60 different occupations, including lower and
6 higher skilled occupations.” Resp. at 15. But the IFR merely states that there are roughly “60 different
7 *SOC codes*” (*i.e.*, job categories). *See* 90 Fed. Reg. at 47933. It never states that H-2A jobs will be evenly
8 distributed across those categories, or that jobs within those categories will be evenly distributed across
9 the two skill level tiers. To the contrary, the IFR notes that the “vast majority” of H-2A jobs “are
10 concentrated in the five field and livestock worker (combined)” SOC codes. *Id.* And DOL has repeatedly
11 recognized that there were generally *no* “*meaningful skill differences*” among H-2A jobs and that “H-2A
12 wage differences” therefore “do not accurately reflect meaningful differences in skills or job complexity.”
13 75 Fed. Reg. at 6900; *see also supra* at 10. Thus, a tier system makes little sense for the H-2A program.
14 To the extent DOL can adopt some tier system, it certainly cannot use the 17th wage percentile as the
15 AEW rate for a tier covering over 90% of H-2A jobs.⁶

16
17
18 Finally, DOL argues that setting the AEW rate at the mean wage for the relevant job categories could
19 overestimate the market rates for certain farmworker jobs (presumably those jobs that would otherwise
20 receive wages below the mean rate). The IFR, however, raises a much greater issue: it will lead to AEW rates
21 that underestimate the market rates for far more farmworker jobs by broadly applying a depressed AEW
22 rate. *See supra* at 10-11. And although DOL cites to no statute that it would violate by using AEW rates that
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26 ⁶ The IFR's decision to set the AEW rates for Skill Level II jobs at the mean wage rates for the relevant
27 sectors is likewise puzzling. If those jobs require greater skills and credentials, and involve managerial
28 responsibilities, their wages should, in theory, exceed the average wage in the relevant sector. Even the
IFR notes that “those with more experience and education could expect wages near the 75th or 90th
percentile.” 90 Fed. Reg. at 47935.

1 potentially overestimate market rates for certain jobs, it *would* violate a statutory provision—the “adverse
2 effect” provision, *see supra* at 9—by setting unduly low AEWRs for a large number of H-2A jobs.

3
4 Moreover, although the mean wage may not be perfect—potentially overestimating the market
5 rates for certain jobs and underestimating them for certain others—it is more sensible than the 17th wage
6 percentile. As DOL previously explained, it has had “a long-standing practice of using the average or
7 mean wage to determine the AEWR in the H-2A program” because “[t]he mean provides equal weight to
8 the wage rate received by each worker in the [relevant job categories] across the wage spectrum.” 88 Fed.
9 Reg. at 12774; *see also* 76 Fed. Reg. at 3463 (“While an arithmetic mean is not an indicator of the single
10 best wage at which U.S. workers are considered to be adversely affected, by its placement at the average
11 wage rate it establishes a more accurate wage for the average U.S. worker.”). Regardless, Plaintiffs are
12 not arguing that DOL must necessarily set AEWRs using mean wage rates. Rather, Plaintiffs are arguing
13 that the IFR’s use of the 17th wage percentile to set AEWRs is arbitrary and capricious, and DOL must
14 therefore use another, permissible methodology, and that could include a methodology that relies on mean
15 wage rates.
16

17 In conclusion, the two-tier system ensures that the AEWRs for the vast majority of H-2A jobs will
18 come nowhere close to approximating the relevant market rates. Those AEWRs thus cannot satisfy their
19 intended purpose: to satisfy DOL’s duty to protect U.S. farmworkers from the adverse effects of the H-
20 2A program. In adopting the two-tier system in the IFR, DOL thus made a clear error of judgment. That
21 judgment is arbitrary and capricious.
22

23 Housing Deduction. The IFR reduces AEWRs even further to account for housing that employers
24 must provide to H-2A workers for free. *See* Mem. at 13. In certain jurisdictions, that housing deduction
25 has reduced AEWRs by an astonishing 22%, and the IFR contemplates that it could drop AEWRs by up
26 to 30%. *See* 90 Fed. Reg. at 47927, 47948-49 (Hawaii’s housing deduction would be \$3.18 for a \$14.36
27 Skill Level I AEWR). Further, DOL does little to ensure that the housing deduction will not overshoot the
28

1 actual value of housing provided to H-2A workers. *See* Mem. at 14. Again, DOL denies none of this.
2 Instead, DOL largely argues that Plaintiffs lack standing to challenge the housing deduction because it
3 only applies to AEWRs for H-2A workers; it does not reduce the minimum wage that employers must still
4 pay U.S. farmworkers.
5

6 As an initial matter, one Plaintiff is an H-2A worker. *See* Compl. ¶ 27. Regardless, the housing
7 deduction will harm U.S. farmworkers even if it applies only to AEWRs for H-2A workers. In particular,
8 by lowering the minimum wage applicable to only H-2A farm workers, the housing deduction makes those
9 workers comparatively cheaper than U.S. farmworkers, making them more attractive to employers. That
10 will naturally harm U.S. farmworkers such as the U.S. farmworker Plaintiffs. In fact, during the first
11 Trump administration, DOL recognized that a housing-cost “wage credit” would “lead to an adverse effect
12 on the wages of workers in the United States similarly employed.” 85 Fed. Reg. at 70463. DOL also
13 previously rejected a proposal that would have allowed employers to pay H-2A workers less than U.S.
14 farmworkers, explaining that “[t]o do so would provide a disincentive to the hiring of U.S. workers by
15 allowing employers to hire foreign workers at lower wages.” 85 Fed. Reg. at 70462. U.S. farmworkers,
16 including the U.S. farmworker Plaintiffs, can therefore challenge the housing deduction.
17

18 DOL argues that the housing deduction does not necessarily make “H-2A workers more attractive”
19 because there are other costs associated with the H-2A program, including certain fees and transportation
20 costs. Resp. at 18. But DOL never argues that those costs come close to matching the size of the housing
21 deduction. Additionally, these H-2A costs are offset, at least in part, by other financial benefits of hiring
22 H-2A workers, including that “H-2A workers are exempt from FICA taxes, which include social security
23 and Medicare taxes.” 84 Fed. Reg. 36168, 36197 (Jul. 26, 2019). DOL also overlooks the benefit accruing
24 to H-2A employers by virtue of their exclusive right to employ H-2A workers whose jobs, and very
25 presence in the U.S., depend on the good will of their employers. DOL also notes that the housing
26 deduction does not necessarily incentivize the employment of H-2A workers over U.S. workers because
27
28

1 there are not “sufficient U.S. workers to fill agricultural jobs.” Resp. at 18. But that misses the point. Even
2 though U.S. farmworkers do not fill all agricultural jobs, there are many (in fact, hundreds of thousands)
3 who fill a number of those jobs,⁷ and they will now be comparatively more expensive than H-2A workers.
4 Those are the workers DOL is obligated to protect.

5
6 DOL also reiterates its argument that the “free housing” requirement unfairly privileges H-2A
7 workers, but that is incorrect. Employers must provide free housing to all workers, including U.S.
8 farmworkers, who are unable to commute home at the end of each workday. *See* 20 C.F.R. § 655.122(d).
9 Further, the point of the “free housing” requirement is to put H-2A workers (and U.S. farmworkers who
10 cannot commute home) on equal footing with farmworkers who do not rely on employer-provided
11 housing. As DOL previously explained: farmworkers who rely on employer-provided housing
12 “presumably also have housing costs in their home community.” 85 Fed. Reg. at 70463. Thus, absent the
13 housing deduction, those H-2A and U.S. farmworkers who cannot return home at the end of each workday
14 would end up paying for housing both in their home communities and at their place of employment. The
15 free housing requirement is meant to address that.
16

17 The housing deduction causes AEWs to plummet, further ensuring that they do not match the
18 relevant market rates. In so doing, the housing deduction places downward pressure on the wages of
19 similarly-employed U.S. farmworkers, further demonstrating that the IFR is arbitrary and capricious.
20

21 Improper Data Source. To establish AEWs for H-2A jobs, the IFR relies on wage data that does
22 not even come from farm establishments. Under the IFR, AEWs will be calculated using OEWS data,
23 which DOL itself previously conceded was generally “not an appropriate data source for ensuring that the
24 importation of guest workers does not adversely affect U.S. workers” because it “does not gather data
25 directly from farmers.” 75 Fed. Reg. at 6901. DOL further explained that OEWS data on farmworker
26

27 ⁷ *See Farm Labor*, U.S. Dep’t of Agric. (Nov. 18, 2025), <https://perma.cc/GRM4-VL88> (showing 56
28 percent of “[f]arm laborers, graders and sorters” were U.S. citizens as of 2022).

1 wages comes “from non-farm establishments whose operations support farmer production”—*i.e.*, farm
2 labor contractors (“FLCs”)—and the “workers employed by” FLCs “are less educated and less likely to
3 be U.S. citizens than employees of farm establishments, and therefore typically have substantially lower
4 wage rates.” *Id.*

5
6 In response, DOL argues that OEWS data is accurate because FLCs are now responsible for “42%
7 of the [farmworker] positions certified” under the H-2A program. *See Resp.* at 19. But even if FLCs are
8 responsible for 42% of *H-2A* jobs, that does not mean they are responsible for 42% (or any meaningful
9 percentage) of all farmworker jobs, and thus they say little about general market rates. And since
10 farmworkers employed by FLCs are generally paid less than other farmworkers, their wages are not
11 representative of farmworker wages as a whole. *See Mem.* at 15-16.

12
13 Furthermore, not only does the IFR rely on an inadequate data source, in certain circumstances it
14 requires the use of inaccurate data from that source. *See Mem.* at 16. In particular, the OEWS wage data
15 is classified into various SOC codes, and thus to determine which OEWS data will be used to calculate
16 the AEW for any particular H-2A job, that job must first be assigned an SOC code. When a particular
17 H-2A job involves multiple duties, some of which would fall under an SOC code meriting a higher AEW,
18 and others falling under an SOC code meriting a lower AEW, the IFR states the entire job will be subject
19 to the SOC code applicable to the task that consumes over 50% of the job. *See 90 Fed. Reg.* at 47937; 20
21 C.F.R. 655.120(b)(7). Thus, if an H-2A job requires the worker to spend 49% of his time on heavy truck
22 driving (which is compensated at a higher rate) and 51% on ranch farmwork (which is compensated at a
23 lower rate), the AEW for the entire job will be based on the OEWS wage data for ranch farmwork. As
24 DOL noted during the first Trump Administration, “this approach runs an intolerable risk of adversely
25 affecting the wages of” U.S. farmworkers because, among other reasons, “permit[ing] employers to pay
26 an AEW based on the SOC in which work is ‘primarily’ performed ... could encourage employers to
27
28

1 intersperse higher-skilled, higher-paying work among many workers so that the higher-paying work is
2 never a duty ‘primarily’ performed by any one employee.” 85 Fed. Reg. at 70461.

3 In response, DOL chastises the approach taken by DOL’s now-vacated 2023 rule, which stated
4 that when an H-2A job involves duties that could fall under different SOC codes, the entire job would be
5 subject to the SOC code involving the highest wages. *See* Resp. at 20–21; 80 Fed. Reg. at 12779. But
6 Plaintiffs are not arguing that DOL must necessarily take that approach. DOL could also calculate AEWRs
7 for multi-duty H-2A positions by taking a weighted average of wage data from all applicable SOC codes.
8

9 That said, if the Court were to find that DOL should be permitted to rely on OEWS data and assign
10 SOC codes using its “greater than 50%” rule, the Court can and should still conclude that DOL cannot use
11 its arbitrary two-tier system or apply its arbitrary housing deduction. In that scenario, DOL would have to
12 craft a methodology that uses OEWS data to generate AEWRs that actually track relevant market rates.
13

14 * * *

15 The IFR deliberately and significantly cuts AEWRs to the point where they fall far below the
16 market rates that U.S. farmworkers would have received but-for the H-2A program. Thus, in issuing the
17 IFR, DOL failed to reasonably consider whether the IFR would satisfy DOL’s obligation to protect U.S.
18 farmworker wages from the adverse effects of H-2A labor.⁸
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26 ⁸ DOL argues that it is not unlawful to merely decrease AEWRs. *See* Resp. at 13. To be clear, Plaintiffs’
27 argument is not that *any* decrease in AEWRs is unlawful. The IFR is unlawful because it significantly
28 decreases AEWRs to the point where they fall far below market rates and thus it fails to protect U.S.
farmworkers.

1 b) *DOL failed to adequately consider the reliance interests of U.S. farmworkers.*

2 An agency must consider reasonable reliance interests. *See Dep't of Homeland Sec. v. Regents of*
3 *the Univ. of Cal.*, 591 U.S. 1, 33 (2020). The agency must do more than simply acknowledge those reliance
4 interests; it must meaningfully grapple with them. *See Mem.* at 18. DOL falls short of this standard.

5 Farmworkers relied on the pre-IFR AEWRS whose wage protections allowed them to cover
6 essential life expenses. *See infra* at 20. Although the IFR pays lip service to those interests, it does not
7 even attempt to quantify them, nor does it meaningfully explain why it ultimately chose to ignore those
8 interests. DOL, in response, principally argues that U.S. workers have no serious reliance interests in
9 DOL's use of FLS data. *See Resp.* at 21–22. But that misunderstands the reliance interests. U.S.
10 farmworkers relied on the wage protections of AEWRS that were far higher than those produced under the
11 IFR. The IFR will substantially tank the AEWRS (and thus the income) that U.S. farmworkers relied upon.
12 Consequently, many U.S. farmworkers will struggle to cover essential life expenses. *See Mem.* at 19. DOL
13 also notes that it acknowledged the harms to U.S. farmworkers. But the IFR failed to discuss the issue in
14 any meaningful depth, nor did it explain why it found the tangible harms inflicted on farmworkers to be
15 acceptable. The Court's precedent is clear: such a dismissive consideration of the interests of many
16 thousands of U.S. workers is insufficient. *See UFW I*, 509 F. Supp. 3d at 1244–45 (2020 Rule's brief
17 statement concerning the impact on U.S. farmworkers failed to adequately analyze their reliance interests).

18 3. Plaintiffs are likely to prevail on their claim that the IFR is procedurally defective.

19 The IFR institutes a number of significant, “structural” reforms to the AEWRS methodology, 90
20 Fed. Reg. at 47920, making it precisely the type of regulation that should have undergone a notice-and-
21 comment process. In fact, after immediately instituting its policy changes, the IFR welcomed comments
22 after-the-fact, resulting in over 800 comments, many of which highlighted the same points discussed
23 above. *See Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A*
24 *Nonimmigrants in Non-Range Occupations in the United States*, <https://perma.cc/T5ET-WUQP> (accessed
25
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27
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1 February 4, 2026). For example, seventeen State Attorneys General—including the California Attorney
2 General—submitted a comment letter “strongly oppos[ing]” the IFR based on many of the arguments
3 made in Plaintiffs’ opening brief. *See* Mem., Ex. 3.

4 DOL was obligated to solicit, and consider, those comments before instituting the IFR, not
5 afterwards. An agency can bypass notice-and-comment only if there is “good cause,” 5 U.S.C. §
6 553(b)(B), and the “good cause exception” applies “only when compliance would interfere with the
7 agency’s ability to carry out its mission.” *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018). An
8 “agency must overcome a high bar” to invoke that exception. *Id.*

9
10 None of DOL’s justifications for avoiding notice-and-comment clears that high bar. First, DOL
11 again refers to the discontinuation of FLS, but that, at most, constitutes good cause for circumventing
12 notice-and-comment to issue a narrow rule that shifts to a new wage data source. It does not justify
13 circumventing notice-and-comment for the remaining IFR provisions, such as those instituting the
14 arbitrary two-tier system and housing deduction. In fact, DOL admits that those other substantive changes
15 are “untethered from the continued use of the annual FLS wage data.” 90 Fed. Reg. at 47920. DOL, in
16 response, notes that a good cause analysis must look to the “totality of circumstances.” Resp. at 22. But
17 that means only that, in determining whether there is good cause to avoid notice-and-comment for any
18 particular provision, a court must look to all relevant factors pertaining to that provision. DOL cites to no
19 authority indicating that if there is good cause for avoiding notice-and-comment for one provision in a
20 regulation, there is good cause for every remaining provision. That type of expansive reading of the
21 “totality of circumstances” standard would give agencies a backdoor to sidestep notice-and-comment for
22 scores of regulatory changes. This case illustrates why that is problematic. The IFR contains several
23 measures—including the two-tier system—that will result in “annualized transfers of \$2.46 billion . . . over
24 10 years” from H-2A farmworkers to employers. 90 Fed. Reg. at 47959. The public should have had a
25 chance to weigh in before DOL decided whether to put those measures into effect.
26
27
28

1 Second, DOL also argues that it has good cause because there is a purported labor shortage. But
2 DOL fails to explain why the IFR is necessary to cure any labor shortage. If employers needed additional
3 workers, they could have hired more U.S. farmworkers or H-2A workers based on AEWRs that were not
4 slashed by the IFR. The supply of H-2A workers is “highly elastic”; foreign laborers generally have a
5 “strong incentive . . . to enter the U.S. labor market” regardless of where the AEWRs are set. 90 Fed. Reg.
6 at 47952.
7

8 Accordingly, DOL fails to establish good cause for bypassing notice-and-comment for the IFR—
9 including, especially, the IFR provisions concerning the two-tier system and housing deduction—
10 rendering the IFR unlawful, at least in part.

11 **B. The IFR will irreparably harm Plaintiffs, and the balance of the equities favors**
12 **issuing emergency relief.**

13 The IFR will inflict irreparable harms on the individual Plaintiffs and the organizational Plaintiffs’
14 members. As the declarations make clear, the wage cuts anticipated by the IFR will impact the individual
15 Plaintiffs’ ability to cover essential costs, including housing, food, and health care costs. *See* Mem. at 27–
16 28. Although DOL calls the anticipated wage cuts “speculative,” Resp. at 11, those cuts are the predictable
17 consequence of a sharp drop in AEWRs, *see supra* at 5-6. Indeed, if it were true that lowering the AEWRs
18 had no effect on domestic farmworkers’ wages, there would be no need for AEWRs to exist in the first
19 place. DOL also does not dispute that if Plaintiffs suffer those wage cuts, they will suffer significant and
20 irreparable harms. That is sufficient for emergency relief.
21

22 DOL also argues that Plaintiffs waited too long to file suit and move for preliminary relief. That
23 is patently false. The IFR was issued on October 2, 2025, and Plaintiffs brought suit the very next month,
24 on November 21, 2025. Plaintiffs then moved for preliminary relief just a few weeks later, on December
25 22, 2025. Plaintiffs therefore acted expeditiously following the IFR’s release, especially given the time
26 necessary to review and digest the IFR, assemble the required materials, and put together the judicial
27 filings. Unsurprisingly, DOL cites to no case indicating that a party has been dilatory in filing suit and
28

1 seeking relief when it did both just weeks after the agency action at issue. Nor could it. *Cf. Lydo Enters.,*
2 *Inc. v. City of Las Vegas*, 745 F.2d 1211, 1214 (9th Cir. 1984) (court was “loath” to penalize plaintiff who
3 delayed five years in seeking preliminary injunction); *Doe v. Horne*, 115 F.4th 1083, 1111 (9th Cir. 2024)
4 (finding that Plaintiffs seeking preliminary injunctive relief “just seven months after the Act took effect”
5 was not a long delay).

6
7 Additionally, the balance of the equities favors emergency relief because DOL highlights no
8 interest that would outweigh the irreparable harms that Plaintiffs will suffer. As noted in the opening
9 motion, DOL has no interest in an unlawful agency action. *See* Mem. at 23. DOL asserts that this argument
10 is duplicative of the “likelihood of success on the merits” prong, Resp. at 24, but DOL cites no precedent
11 in this Circuit or District to support their position that the Government can have an interest in furthering
12 an unlawful agency action. *Compare* Mem. at 22 (citing *Washington v. DeVos*, 481 F. Supp. 3d 1184,
13 1197 (W.D. Wash. 2020)) *with* Resp. at 24 (citing *USA Farm Lab., Inc. v. Micone*, No. 23-2108, 2025
14 WL 586339 at *4 (4th Cir. Feb. 24, 2025)); *see UFWI*, 509 F. Supp. 3d at 1253 (the “government’s failure
15 to comply with the APA . . . weighs in favor of granting injunctive relief”).

16
17 In any event, the policy considerations identified by DOL do not counsel against an injunction
18 here. DOL argues, for example, that the injunction would “inject a high degree of uncertainty into the H-
19 2A program” because “[the AEW] may change based on additional court rulings.”⁹ Resp. at 25. But
20 DOL cites to no case where a court has refused to enjoin or stay an unlawful regulation that inflicts
21 irreparable harm because doing so could shake up the regulatory landscape. And DOL has identified no

22
23
24 ⁹ DOL also argues that it will eventually issue a final rule that supersedes the IFR. *See* Resp. at 25. But
25 DOL never identifies a particular date by which that final rule will be issued, and in the meantime, the
26 IFR will continue to inflict irreparable injuries on Plaintiffs. The Court must therefore issue relief. *See*
27 *Garcia v. Acosta*, 393 F. Supp. 3d 93, 110–11 (D.D.C. 2019) (refusing to stay H-2A litigation because the
28 timing of a forthcoming rulemaking was unknown and “the existing policy and practice of certifying
wages lower than the prevailing wage defined by the OES w[ould] cause Plaintiffs concrete harm in the
near future”). Further, the potential for a final rule counsels in favor of an injunction here, since that
injunction could in turn inform how DOL structures the final rule.

1 concrete harm that would flow from any purported uncertainty created by an injunction. Nor could it. If
2 farms could adapt to the AEWs under the IFR’s regulatory change, they can adapt to new lawful AEWs
3 that actually track market rates. DOL also argues that if the Court enjoins or stays the IFR, there would be
4 no alternative methodology in place because DOL cannot revert to the 2010 methodology given that it
5 relied on FLS data, which is now unavailable. *See Resp.* at 25. But that is why Plaintiffs have requested
6 an affirmative injunction requiring DOL to promptly come forward with a new, lawful permanent or
7 interim methodology. *See Mem.* at 25.

9 Finally, Defendants argue that any economic harm to farmworkers is offset by benefits to
10 employers. *See Resp.* at 27. But while Plaintiffs have alleged specific, concrete harms to U.S.
11 farmworkers, including the inability to afford food and medication, *see, e.g.*, *Mem.* at 19, DOL has offered
12 no evidence of any significant impacts that employers would suffer due to a lawful AEW methodology.
13 That is unsurprising: USDA has noted that U.S. farms have recently seen record profits.¹⁰ *Compl.* ¶ 55.
14 Moreover, although employers may face “rising labor costs,” *Resp.* at 26–27, that is because they can no
15 longer pay unlawful, sub-market rates for an undocumented workforce.¹¹ *See Mem.* at 23. Accordingly,
16 the concrete irreparable harms identified by Plaintiffs outweigh any purported interests identified by DOL.
17 The balance of the equities favors relief against the IFR.
18

19 **C. The Court must stay and universally enjoin the IFR, and it must also require DOL**
20 **to promptly release an alternative, lawful methodology for calculating AEWs.**

21 As noted in the opening brief, the APA empowers the Court to “pause[] the” implementation of
22 the IFR “during the pendency of this litigation in a manner similar to a preliminary injunction.” *Immigr.*
23

24
25 ¹⁰ *See Farm Sector Income & Finances – Farm Sector Income Forecast*, USDA Econ. Rsch. Serv. (Sept.
26 3, 2025), <https://perma.cc/M6RC-CESX> (predicting net farm income to increase by \$52.0 billion
compared to 2024).

27 ¹¹ DOL contends that if farms go out of business, that would harm farmworkers. *See Resp.* at 27. But DOL
28 offers no evidence that a material number of farms would truly go out of business if they were forced to
pay farmworkers fair wages.

1 *Def. L. Ctr. v. Noem*, 145 F. 4th 972, 983 (9th Cir. 2025).¹² That stay would apply to the IFR itself, and
2 would thus necessarily apply nationwide. *See* Mem. at 24. Contrary to Defendants’ assertions, *Trump v.*
3 *CASA, Inc.*, 606 U.S. 831 (2025), does not mandate a different result. Indeed, that case concerns the
4 equitable remedy of an injunction, not the statutory § 705 remedy. *See Trump v. CASA, Inc.*, 606 U.S. 831,
5 869 (2025) (Kavanaugh, J., concurring) (“in cases under the Administrative Procedure Act, plaintiffs may
6 [still] ask a court to preliminarily ‘set aside’ a new agency rule”).

7
8 Further, the Court should also issue a universal injunction against the IFR. DOL argues that
9 universal injunctions are disfavored under *Trump v. Casa*, but there, the Court made clear that a universal
10 injunction may still be appropriate if it is necessary to provide complete relief to the Plaintiffs. *See CASA*,
11 606 U.S. at 851–52. The opening brief offered several reasons why a narrower injunction would be
12 insufficient and impractical, *see* Mem. at 24–25, and DOL addresses none of them. For example, Plaintiffs
13 explained that the IFR harms them through its broader, market effects and a broad injunction against the
14 IFR is needed to address those effects. *See id.* DOL never suggests otherwise. Accordingly, the Court
15 should stay, and universally enjoin, the unlawful IFR provisions.

16
17 Moreover, the Court should also issue an injunction that requires DOL to promptly produce a
18 substitute, lawful methodology for calculating AEWRs—*i.e.*, a methodology that adopts a new wage data
19 source and excludes the IFR’s arbitrary two-tier system or housing deduction. DOL objects that this would
20 be a mandatory injunction, but that type of injunction is appropriate if “very serious damage will”
21 otherwise “result that is not capable of compensation in damages, and the merits of the case are not
22 doubtful.” *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017). Here, as explained above, if DOL
23

24
25
26 _____
27 ¹² DOL argues that a request for a stay of the IFR’s “implementation” is moot because the IFR has already
28 been implemented. Resp. at 11. The Court, however, can still stay the *continued* implementation of the
IFR. That request is not moot given that the IFR remains in effect today. *See Coal. for Humane Immigr.*
Rts. v. Noem, No. 25-CV-872 (JMC), 2025 WL 2192986, at *15 (D.D.C. Aug. 1, 2025) (“[T]he fact that
all three Challenged Actions are already in effect does not bar this Court from staying them.”).

1 fails to adopt a methodology that actually protects U.S. farmworkers from the adverse effects of the H-2A
2 program, Plaintiffs will suffer irreparable harms. *See supra* at 20-21. Additionally, Plaintiffs’ right to some
3 affirmative injunction is not “doubtful” given that even DOL acknowledges that some “AEWR
4 methodology needs to be in place.” Resp. at 24; *see also* Mem. at 1 (noting that DOL adopts AEWRs to
5 comply with the statutory “no adverse effect” requirement); 90 Fed. Reg. at 47925 n. 89 (“failure to
6 publish an AEWR is problematic, in its own right”).
7

8 Additionally, to be clear, Plaintiffs are not requesting that the Court mandate any particular
9 methodology. As DOL concedes, Plaintiffs merely suggest “starting point[s].” *See* Resp. at 28. The Court
10 can issue an injunction requiring DOL to promptly issue a new, lawful methodology consistent with the
11 Court’s opinion. *See Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 886 F.3d 803, 823–24 (9th Cir.
12 2018) (“In fashioning equitable relief, a court must act within the bounds of the statute and without
13 intruding upon the administrative province, but it may adjust its relief to the exigencies of the case in
14 accordance with the equitable principles governing judicial action.”). To verify DOL’s compliance with
15 any injunction, the Court should also order the parties to meet and confer, and submit a joint status report
16 every two weeks following the issuance of the Court’s injunction in order to update the Court on DOL’s
17 progress in crafting a substitute AEWR methodology.
18

19 **D. The Court should reject DOL’s request for a stay of any relief issued by the Court
20 and for an order requiring Plaintiffs to post a bond.**

21 Perhaps recognizing its vulnerabilities on the merits, DOL argues that the Court should stay any
22 emergency relief that it awards Plaintiffs. The factors the Court must consider in assessing that type of
23 stay request, however, are analogous to the factors relevant to a preliminary injunction motion. *See Doe*
24 *#1 v. Trump*, 957 F.3d 1050, 1058 (9th Cir. 2020). Thus, if the Court concludes that Plaintiffs are entitled
25 to a preliminary injunction based on the relevant factors, it should also conclude that DOL is not entitled
26 to a stay of that injunction.
27
28

1 DOL also argues that “Plaintiffs should post a bond” under Fed. R. Civ. P. 65(c) “to the extent
2 employers are required to pay a higher wage during the term of any injunction” and that “[t]he bond could
3 compensate employers should DOL ultimately prevail.” Resp. at 29. The Court should reject that request
4 as well. First, DOL seeks a bond for the benefit of employers, but Rule 65(c) only allows for bonds for
5 “any *party* found to have been wrongfully enjoined or restrained,” and employers are not parties to this
6 action. Second, this Court recently noted that the “party affected by the injunction [has the] obligation of
7 presenting evidence that a bond is needed,” and courts “regularly waive security in cases” where a
8 defendant does “not explain how they risk harm without such a security bond.” *Alvarenga Matute v.*
9 *Wofford*, No. 1:25-CV-01206-KES-SKO (HC), 2025 WL 2817795, at *8 (E.D. Cal. Oct. 3, 2025)
10 (Sherriff, J.). Here, DOL has presented no evidence of any harm it will suffer due to an injunction, and
11 thus it has waived any right to a bond.
12

13 CONCLUSION

14 The Court should grant the Motion for a Section 705 Stay and a Preliminary Injunction. The Court
15 should stay, and enjoin, the IFR, and should also issue an injunction requiring DOL to promptly implement
16 a substitute, lawful permanent or interim methodology for calculating AEWRS. To ensure compliance
17 with this injunction, the Court should require the parties to file a joint status report every two weeks
18 following the entry of the injunction, updating the Court on DOL’s progress. This joint status report
19 requirement should remain in place until a new AEWRS methodology is released.
20
21

22 DATED: February 5, 2026

Respectfully submitted,

23 /s/ Kuntal Cholera

24 Kuntal Cholera*

25 Tom Plotkin*

26 Mark Andrews-Lee*

27 Christina Coleburn*

Lindsay Williams*

28 Sela Carrington**

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1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF CALIFORNIA

3 UNITED FARM WORKERS, *et al.*,

4 Plaintiffs,

5 v.

6 THE UNITED STATES DEPARTMENT OF
7 LABOR;

8 LORI CHAVEZ-DEREMER, in her official
9 capacity as Secretary of Labor;

10 LORI FRAZIER BEARDEN, in her official
11 capacity as Acting Assistant Secretary for
12 Employment and Training

13 Defendants

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

DECLARATION OF TERESA ROMERO

14
15 **DECLARATION OF TERESA ROMERO**

16 I, Teresa Romero, declare as follows:

- 17 1. I am the President of the United Farm Workers (“UFW”).
- 18 2. The UFW represents thousands of farmworkers across the country and is dedicated to improving
19 wages, working conditions, and economic stability for agricultural workers.
- 20 3. UFW has thousands of farmworker members in California, Oregon, Washington, and New York
21 who are employed under collective bargaining agreements, and many of whom spend part of
22 each year working for employers that do not have a collective bargaining agreement.
- 23 4. In worksites where the UFW represents farmworkers, the Interim Final Rule (“IFR”) has already
24 had the effect of lowering the wages of farmworkers there and will continue to do so in the
25 coming weeks and months. This will impact UFW members who are U.S. farmworkers as well
26 as H-2A workers.
27
28

- 1 5. The UFW represents workers at Cahoon Farms in New York. In 2025, Cahoon Farms offered
2 UFW members \$19.40 per hour, slightly above the 2025 AEW in New York of \$18.83, for the
3 work of picking apples for fresh market. Cahoon Farms recently informed UFW that effective
4 January 12, 2026, they will begin offering UFW members \$17.91 per hour for that same work.
5 \$17.91 represents the prevailing wage rate, which is highest of all wages now that the IFR
6 reduced the AEW to \$15.68 for U.S. farmworkers and \$13.38 for H-2A workers.
7
- 8 6. UFW has multiple members who have worked, and again intend to work for Cahoon Farms. For
9 example, John Doe I,¹ a U.S. farmworker with 18 years of experience, has worked for Cahoon
10 Farms for 8 years, and was previously compensated at an hourly rate of \$19.40. John Doe II, an
11 H-2A farmworker with 38 years of experience, has worked at Cahoon Farms for 7 years, and was
12 previously compensated at an hourly rate of \$19.40 per hour. John Doe III, an H-2A farmworker
13 with 7 years of experience, has worked at Cahoon Farms for 4 years, and was previously
14 compensated at an hourly rate of \$19.40. These workers seek anonymity because they fear
15 retaliation from their employers.
16
- 17 7. The UFW also has a collective bargaining agreement with D'Arrigo Brothers in California that
18 set the 2025 wages at the 2025 AEW in California, \$19.97. D'Arrigo Brothers uses the farm
19 labor contractor, Elkhorn Packing Co. LLC ("Elkhorn"), to hire workers, including H-2A
20 workers. While Elkhorn has not submitted job orders for D'Arrigo Brothers positions, it has
21 submitted job orders for other employers that it contracts for. These job orders offer hourly
22 wages of \$16.90, the California state minimum wage, which is the lowest that employers and
23 contractors can legally offer H-2A workers and U.S. farmworkers in corresponding employment
24 due to the IFR lowering the AEW in California to \$13.45 and \$16.45, respectively. The AEW
25

26
27 ¹ For clarity, anonymously identified individuals in this declaration are not the anonymous named
28 individual plaintiffs in the above-captioned matter.

1 in California prior to the IFR was \$19.97, which is what Elkhorn offered, via H-2A job orders, in
2 2025. We anticipate that Elkhorn will offer similar rates of \$16.90 in their jobs orders for
3 D'Arrigo Brothers, as they have begun to offer for jobs that begin on February 16. But even if
4 they do not, offering wages for D'Arrigo Brothers' competitors that are lower than what was
5 offered in 2025, because of the IFR, will put downward pressure on a company that employs
6 higher wage workers under a collective bargaining agreement.

8 8. UFW has multiple members that have worked, currently work, and again intend to work, for
9 D'Arrigo Brothers. For example, Jane Doe I, a U.S. farmworker with 25 years of experience, has
10 worked for D'Arrigo Brothers for 25 years, and was previously compensated at an hourly rate of
11 \$19.97. She is currently being compensated at \$18.63 for her work at D'Arrigo Brothers. She
12 seeks anonymity because she is worried about problems or retaliation at work. Jane Doe II, a
13 U.S. farmworker with 20 years of experience, has worked for D'Arrigo Brothers for 20 years,
14 and was previously compensated at an hourly rate of \$19.97. She seeks anonymity because she
15 fears retaliation from her employer. Jane Doe III, a U.S. farmworker with 13 years of experience,
16 has worked for D'Arrigo Brothers for 20 years, and was previously compensated at an hourly
17 rate of \$19.97. She also seeks anonymity because she fears retaliation at work from the foreman
18 and supervisors at her work.

20 9. Due to the seasonality of the agricultural work, many UFW members, including H-2A workers
21 and U.S. workers in corresponding employment, do not commence seasonal farm work until the
22 spring. This includes individual plaintiffs who face imminent wage cuts that will not directly
23 impact them until they begin work later in the year. A significant number of UFW members
24 begin their agricultural jobs between March and May. In total, approximately: 40% of UFW
25 members begin their agricultural jobs between March and May in California; 40% of UFW
26 members begin their agricultural jobs between March and May in California; 40% of UFW
27

1 members begin during that time in New York; 50% of UFW members begin during that time in
2 Washington; and 40% of UFW members begin during that time in Oregon.

3 10. As part of our work to bargain for higher wages for farmworkers, we have recently encountered
4 in negotiations employers who have shared that they will hire H-2A workers at the new, lowered
5 AEWR rates. They have used the new, lowered AEWRs created by the IFR to push back against
6 our request for higher wages. This will impact UFW members who are both H-2A workers and
7 U.S. workers in corresponding employment when those jobs actually begin.
8

9 I declare under penalty of perjury under the laws of the United States that the foregoing is true and
10 correct.
11

12 Executed on February 5, 2026, in Keene, California.

13 /s/  _____
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14 UNITED STATES DISTRICT COURT
15 FOR THE EASTERN DISTRICT OF CALIFORNIA

16 UNITED FARM WORKERS, *et al.*,

17 Plaintiffs,

18 v.

19 THE UNITED STATES DEPARTMENT OF
20 LABOR;

21 LORI CHAVEZ-DEREMER, in her official
22 capacity as Secretary of Labor;

23 LORI FRAZIER BEARDEN, in her official
24 capacity as Acting Assistant Secretary for
25 Employment and Training

26 Defendant

Civil Case No.: 1:25-cv-1614

DECLARATION OF ISABEL PANFILO

DECLARATION OF ISABEL PANFILO

27 I, Isabel Panfilo, declare as follows:

- 28 1. I am a U.S. citizen and have worked as a farmworker in California for two years. I am also a plaintiff in this case, *United Farm Workers, et al. v. United States Department of Labor*.

