February 6. 2026

For Immediate Release

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NCAE Files Amicus Brief Supporting DOL's AEWR Interim Final Rule

Arlington, VA — [February 6, 2026] — The National Council of Agricultural Employers (NCAE) today announced that it has filed an **amicus curiae brief** in support of the U.S. Department of Labor (DOL) in *United Farm Workers, et al. v. U.S. Department of Labor*, a case challenging the Department's **Adverse Effect Wage Rate (AEWR) Interim Final Rule (IFR)** governing the H-2A agricultural worker program. The NCAE brief was joined by the California Farm Bureau.

> "For years, agricultural employers were forced to operate under a wage-setting system that falsely inflated wages due to a broken and outdated methodology," said **John Hollay, President and CEO of the National Council of Agricultural Employers**. "The Department of Labor's interim final rule corrects that failure by restoring a realistic, data-driven wage system that reflects actual labor-market conditions while continuing to protect U.S. workers, as the law requires and our members want the court to know why we can't go back to a system that was bankrupting the American farmer."

The AEWR IFR, issued in October 2025, modernizes how wages are calculated for H-2A non-range agricultural occupations by replacing the discontinued and unreliable USDA Farm

Labor Survey with wage data from the Bureau of Labor Statistics' Occupational Employment and Wage Statistics. The rule also establishes skill-based wage tiers and accounts for employer-provided housing, creating a more accurate and transparent framework.

In its brief, NCAE highlighted the how and why the Farm Labor Survey needed to be replaced and the harm that would be brought to farmers, consumers and the economy in general. According to the Department of Labor's own analysis, correcting the inflated wage calculations produced under the prior system is expected to save agricultural employers **approximately $2.46 billion per year — more than $17 billion over ten years** — while maintaining the statutory requirement that U.S. workers not be adversely affected.

About NCAE

Founded in 1964, NCAE is the only national association focusing exclusively on agricultural labor issues from the agricultural employer's viewpoint.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

United Farm Workers, *et al.*,

Plaintiffs,

v.

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

Defendants.

Case No.: 1:25-cv-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

INTERESTS OF THE *AMICI CURIAE*[1]

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

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

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[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.

INTRODUCTION

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

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

ARGUMENT

I. Origin of the AEWR and Why FLS AEWR Needed to Be Replaced

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

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

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

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

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

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

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

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

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

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

lower wages under the IFR, even though the Department of Labor would allow them to do so. They are paying the higher California FLS AEWR now in both California and Arizona. There are already contracts certified by the Department of Labor at the higher "old" wage rates that are publicly-available via the Department's seaonaljobs.dol.gov website.

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

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

II. Plaintiffs' Proposed Remedies Would Cause Harm and Disruption

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

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

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

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

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

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

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

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CONCLUSION

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

Dated: February 5, 2026

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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.

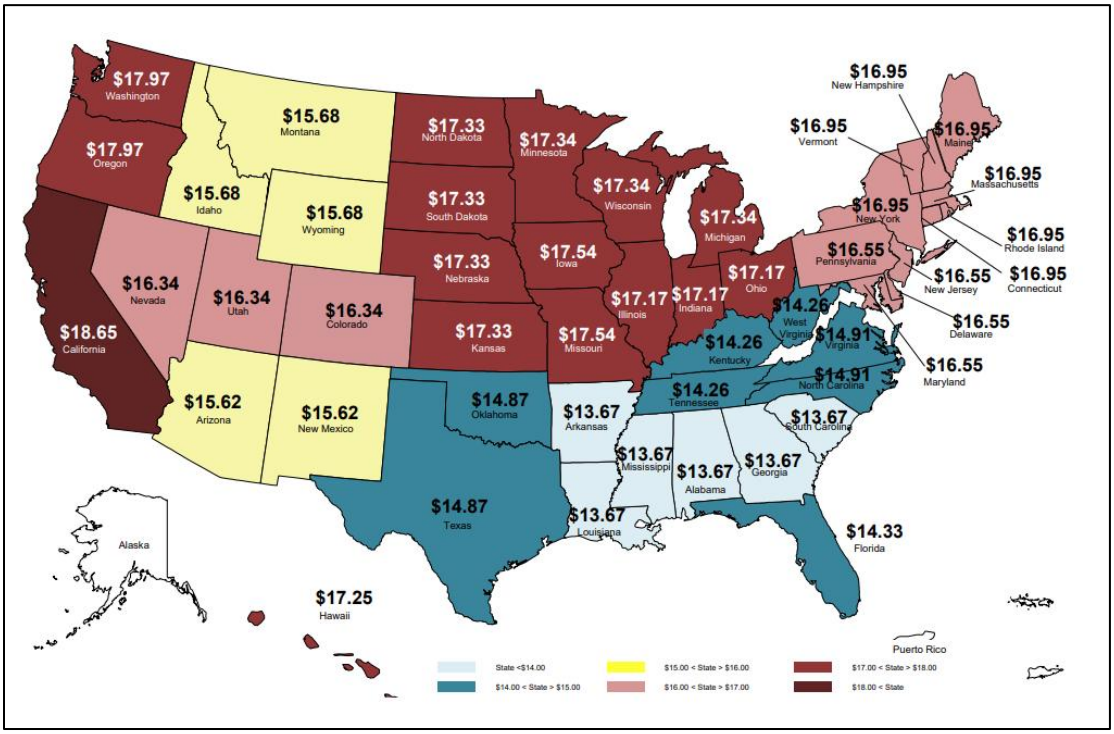
Background

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 x $18.80 + .83 x $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 AEWR) under the assumption that the AEWR 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]

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

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 AEWR) 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.

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[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:
$Wage_{FY2021} \times [.25 \times \frac{CPI_{2022}}{CPI_{2020}} + .75\frac{CPI_{2022}}{CPI_{2021}}]$.

[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 AEWR

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 AEWR would have been set at $16.16 instead of $18.65. I calculated the 2023 California H-2A contract values under the 2023 AEWR ($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 AEWR 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 AEWR 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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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

United Farm Workers, *et al.*,

Plaintiffs,

v.

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

Defendants.

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

UNOPPOSSED 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

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

STATEMENT OF INTEREST

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

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

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JUSTIFICATION

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

RELEVANCE

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

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STATEMENT OF CONSENT

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

Dated: February 5, 2026

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