

Exhibit A

1 XAVIER BECERRA
 Attorney General of California
 2 MICHAEL L. NEWMAN
 DANIEL A. OLIVAS
 3 Senior Assistant Attorneys General
 JAMEE JORDAN PATTERSON
 4 SATOSHI YANAI
 Supervising Deputy Attorneys General
 5 MARISSA MALOUFF
 DAVID PAI
 6 JULIA HARUMI MASS, State Bar No. 189649
 Deputy Attorneys General
 7 1515 Clay Street, Suite 2000
 Oakland, CA 94612
 8 Telephone: (510) 879-3300
 Fax: (510) 622-2270
 9 E-mail: Julia.Mass@doj.ca.gov
Attorneys for Amicus Curiae State of California

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

16 **UNITED FARM WORKERS, ET AL.,**
 17 Plaintiffs,
 18 v.
 19 **U.S. DEPARTMENT OF LABOR, ET AL.,**
 20 Defendants.

Case No. 1:20-CV-1690-DAD-JLT

**[PROPOSED] BRIEF OF AMICUS
 CURIAE STATE OF CALIFORNIA IN
 SUPPORT OF PLAINTIFFS' MOTION
 FOR PRELIMINARY INJUNCTION**

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INTRODUCTION AND INTEREST OF AMICUS

The State of California submits this brief in support of Plaintiffs’ motion for a preliminary injunction to enjoin the rule published by the U.S. Department of Labor (DOL) entitled Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States, 85 Fed. Reg. 70,445 (Nov. 5, 2020) (Rule). California is home to hundreds of thousands of farmworkers who provide essential labor under extremely difficult circumstances to put food on the tables of Californians and all Americans.¹ In contravention of Congress’s requirements for the H-2A program, the Rule will, in effect, depress the wages of these U.S.-based farmworkers. In so doing, it will harm the well-being of farmworkers and their families, put greater strain on California’s safety net, and make it more difficult for California to enforce its labor protections. For these reasons, the public interest favors granting Plaintiffs’ motion.

ARGUMENT

I. CALIFORNIA FARMWORKERS PERFORM ESSENTIAL AND SKILLED WORK, CRITICAL TO THE NATION’S FOOD SUPPLY

California farmworkers’ essential and skilled labor feeds the nation and boosts the economy. California grows two-thirds of the United States’ fruits and nuts, one-third of its vegetables,² and produces 99 percent of its almonds, figs, table grapes, olives and olive oil, dates, artichokes, kiwifruit, raisins, pistachios, and garlic.³ The State is also the leading provider of dairy, producing 18 percent of the country’s supply.⁴ In total, there are 400 different commodities produced in California.⁵ In no small part due to farmworkers’ labor, California is

¹ Cal. Emp’t Dev. Dep’t, *Agricultural Employment in California*, Detailed Agricultural Employment and Earnings Data Tables, <https://www.labormarketinfo.edd.ca.gov/data/ca-agriculture.html> (last visited Dec. 8, 2020).

² Cal. Dep’t of Food and Agric., *California Agricultural Production Statistics, 2019 Crop Year — Top 10 Commodities for California Agriculture*, <https://www.cdfa.ca.gov/Statistics/> (last visited Dec. 8, 2020).

³ Cal. Dep’t of Food and Agric., *California Agricultural Statistics Review 2018-2019* at 2 (hereafter, Cal. Dep’t of Food and Agric. Statistics Review), <https://www.cdfa.ca.gov/statistics/PDFs/2018-2019AgReportnass.pdf>.

⁴ *Id.*

⁵ *Id.* at 7.

1 the leading State for cash farm receipts, with California farms bringing in \$50 billion in gross
2 revenue in 2019.⁶ California is also the nation’s largest agricultural global exporter, reaching
3 \$21.02 billion in exports in 2018, the last year for which data is available.⁷

4 The events of the past year have exemplified farmworkers’ imperative role in our society.
5 Since March 2020—when COVID-19 first shut down businesses and led panicked shoppers to
6 flood grocery stores in search of food staples—farmworkers have continued their essential work
7 to keep the nation’s supply chain intact.⁸ Indeed, the Federal Government advised that
8 farmworkers should continue to work normally, despite the risk of COVID-19, because their
9 work is so crucial. President Trump’s *Coronavirus Guidelines for America* called upon food
10 supply workers to fulfill their “special responsibility to maintain [their] normal work
11 schedule[s].”⁹ Likewise, the U.S. Department of Homeland Security’s Cybersecurity and
12 Infrastructure Security Agency (CISA) identified farmworkers as essential to America’s “critical
13 infrastructure,” and advised that they should continue normal operations.¹⁰ Referencing CISA’s
14 guidance, Governor Newsom exempted agricultural work from the State’s March 2020 Stay at
15 Home Order.¹¹ Agricultural workers have remained exempted since then, including from the
16 State’s December 3, 2020 Regional Stay at Home Order, which addresses recent, unprecedented
17 surges in COVID-19 cases.¹²

18 ⁶ Cal. Dep’t of Food and Agric. *supra* note 2.

19 ⁷ Cal. Dep’t of Food and Agric. Statistics Review, *supra* note 3 at 7.

20 ⁸ Brittany Martin, *Farm Workers Are Still in the Fields as the Pandemic Spreads*, LOS ANGELES MAGAZINE (Mar. 24, 2020), <https://www.lamag.com/digestblog/farm-workers-coronavirus/>.

21 ⁹ The White House, *The President’s Coronavirus Guidelines for America* (Mar. 16, 2020), https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf.

22 ¹⁰ Director Christopher C. Krebs, *Memorandum on Identification of Essential Critical Infrastructure Workers During Covid-19 Response*, CISA (Mar. 20, 2020) <https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf>.

23 ¹¹ Governor Gavin Newsom, Executive Order N-33-20 (Mar. 19, 2020), <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

24 ¹² Erica S. Pan, MD, MPH, Acting State Public Health Officer, Regional Stay at Home Order, Cal. Dep’t of Pub. Health (Dec. 3, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/12/12.3.20-Stay-at-Home-Order-ICU-Scenario.pdf>; Essential Workforce, State of California, <https://covid19.ca.gov/essential-workforce/> (last updated Dec. 3, 2020); Cal. Dep’t of Pub. Health, COVID-19 Industry Guidance: Agric. and Livestock (July 29, 2020), <https://files.covid19.ca.gov/pdf/guidance-agriculture--en.pdf>.

1 Farmworkers’ continued labor during the pandemic has given the United States the benefit
2 of an uninterrupted supply chain, which in turn has kept our grocery stores stocked and put food
3 on our tables. But that positive outcome for the rest of the Nation has come at an immeasurable
4 cost to the workers. Farmworkers in Monterey County, California, are three times more likely to
5 contract COVID-19 as other residents in the State.¹³ A recent study of Monterey County
6 farmworkers found that nearly one quarter have had a loved one become infected with COVID-
7 19, and seven percent have lost a loved one to the virus.¹⁴

8 On top of the hardships of the pandemic, California farmworkers had to work through
9 wildfires that raged through the State in September 2020. As wildfires bordered large swaths of
10 the State’s agricultural regions, filling the air with smoke and coloring the sky orange,
11 farmworkers continued their demanding outdoor labor—breathing unhealthy air for long hours
12 each day.¹⁵ Executive Director of the California Farmworker Foundation, Hernan Hernandez,
13 described that “[t]o be out in the fields, it’s like you can’t breathe.”¹⁶

14 As this year has proven, farmworkers perform indispensable, and at times dangerous, work
15 and deserve a fair wage. Yet, as discussed below, this Rule would undercut those wages and
16 cause ripple effects for farmworkers’ health and livelihoods with profound impacts upon the State
17 and State-administered programs.

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20 ¹³ Rosa Tuiran & Nick Roberts, *Farmworkers Are Among Those at Highest Risk for*
21 *COVID-19, Studies Show*, FRONTLINE (July 21, 2020),
<https://www.pbs.org/wgbh/frontline/article/covid-19-farmworkers-among-highest-risk-studies-show/>.

22 ¹⁴ UC Berkeley School of Public Health, *Clinica De Salud Del Valle De Salinas,*
23 *Prevalence and Predictors of Sars-Cov-2 Infection Among Farmworkers in Monterey County, Ca*
July – Nov. 2020 19 (Dec. 2, 2020),
https://cerch.berkeley.edu/sites/default/files/ucb_csvs_white_paper_12_01_20_final_compressed.pdf.

24 ¹⁵ James Doubek, *Wildfires Make Dangerous Air For Farmworkers: ‘It’s Like You Can’t*
25 *Breathe*, NPR – ALL THINGS CONSIDERED (Sept. 14, 2020),
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26 *farmworkers — masks requirements vary*, MARKETPLACE (Sept. 15, 2020),
27 <https://www.marketplace.org/2020/09/15/wildfires-continue-air-quality-impacts-farmworkers-masks-requirements-vary/>.

28 ¹⁶ Doubek, *supra* note 15.

1 **II. THE RULE WILL UNNECESSARILY AND CRUELLY DEPRESS WAGES FOR**
 2 **CALIFORNIA FARMWORKERS, CONTRARY TO CONGRESSIONAL INTENT**

3 **A. Legislative and Regulatory History**

4 Temporary agricultural worker programs have long included requirements designed to
 5 protect U.S. workers, with varying degrees of success.¹⁷ In 1964, Congress terminated the
 6 controversial *bracero* program, which had supplied low wage temporary workers to agricultural
 7 employers during and after World War II.¹⁸ In 1965, Congress amended the Immigration and
 8 Nationality Act of 1952 to exclude noncitizens seeking to enter the United States “for the purpose
 9 of performing skilled or unskilled labor” unless the Secretary of Labor certified the absence of
 10 sufficient domestic workers who were able, willing, qualified, and available to perform the work,
 11 and that “employment of such aliens will not adversely affect the wages and working conditions
 12 of the workers in the United States similarly employed.” Pub. Law 89-235, 79 Stat. 911, 917
 13 (Oct. 3, 1965).¹⁹ In the Immigration Reform and Control Act of 1986, Congress applied these
 14 and additional requirements to the H-2A temporary agricultural worker program specifically.
 15 Pub. Law. 99-603, 100 Stat. 3359 (Nov. 6, 1986).

16 As the U.S. Supreme Court has observed, the “obvious point” of the H-2A regulatory
 17 scheme is to ensure that “to the extent that foreign workers are brought in, the working conditions
 18 of domestic employees are not to be adversely affected.” *Alfred L. Snapp & Son v. Puerto Rico*,
 19 458 U.S. 592, 596 (1982)). The Adverse Effect Wage Rate (AEWR) is, “the minimum wage that
 20 employers who wish to hire aliens as temporary agricultural workers must offer American and
 21 foreign workers,” and a critical component of this effort. *Am. Fed’n of Labor & Cong. of Indus.*

22 ¹⁷ See *Shamg-Tzu (Peter) Hwu, Alien Labor Certification: A “Shell Game” for United*
 23 *States Workers?* 14 SUFFOLK TRANSNAT’L L.J. 367, 371 (describing the Contract Labor Law of
 24 1885 which forbade importation of foreign workers under labor contracts made prior to admission
 25 to protect domestic workers, but was not enforced); *Bustos v. Mitchell*, 481 F.2d 479, 482 (D.C.
 26 Cir. 1973) (describing protections for domestic workers instituted with Congress’s 1951 renewal
 27 of the *bracero* program).

28 ¹⁸ See William Whittaker, “Farm Labor: The Adverse Effect Wage Rate (AEWR),”
 Congressional Research Service at 3 (Mar. 26, 2008),
https://www.everycrsreport.com/files/20080326_RL32861_9a486634f79a5f9c680cc5ba021e579c67210a5.pdf.

¹⁹ Substantially identical language was included in the Agricultural Workers Importation
 Act, as amended, which governed the *bracero* program. See *Limoneira Co. v. Wirtz*, 225 F. Supp.
 961, 962 (S.D. Cal. 1963).

1 *Orgs. v. Dole*, 923 F.2d 182, 183 (D.C. Cir. 1991). “The AEW R not only addresses the potential
 2 adverse effect that the use of low-skilled foreign labor may have on the wages paid to native-born
 3 agricultural workers, but also protects U.S. workers whose low skills make them particularly
 4 vulnerable to wage deflation resulting from the hiring of immigrant labor.” Temporary
 5 Agricultural Employment of H-2A Aliens in the United States, 74 Fed. Reg 45,906, 45,911 (Sept.
 6 4, 2009). For a period after the termination of the *bracero* program, DOL used an AEW R
 7 significantly above then-current agricultural wages in order to “offset both future and past adverse
 8 effect. . . of . . . foreign labor [on] the U.S. labor [market].” *Dole*, 923 F.2d at 184. Thereafter
 9 DOL set the AEW R based on actual farmworker wages, ceasing to offset past wage stagnation
 10 but guarding against an adverse effect moving forward. *Id.*

11 With the exception of a brief period at the end of 2008, DOL has set AEW Rs for the H-2A
 12 program using the USDA’s Farm Labor Survey (FLS) “because it is the only comprehensive
 13 wage survey that collects data from farm and ranch employers,” and therefore reflects the actual
 14 value of agricultural labor most accurately. Temporary Agricultural Employment of H-2A
 15 Nonimmigrants in the United States, 84 Fed. Reg. 36,168 (July. 26, 2019) (NPRM). Using wage
 16 data from farm and ranch employers to set the AEW R has been critical because over at least the
 17 last decade, wages for field and livestock workers have risen at higher rates than those in nonfarm
 18 occupations. Based on the FLS, the AEW R for California rose 43 percent from 2011 to 2020, an
 19 average of over four percent per year.²⁰ The national average AEW R has also risen steadily, from
 20 \$10.12 in 2011 to \$14 an hour in 2020.²¹

21 The Rule reflects a significant change in course. Following a two year wage freeze for field
 22 and livestock workers, increases to the AEW R for field and livestock workers will be based on
 23 the broader and more general Employment Cost Index (ECI). The ECI has risen at markedly

24 _____
 25 ²⁰ *AEW Rs for 2020 average \$14 an hour*, Fig. 9, RURAL MIGRATION NEWS (Jan. 16,
 2020), <https://migration.ucdavis.edu/rmn/blog/post/?id=2392>.

26 ²¹ *Cf. id.*, Fig. 6; Am. Farm Bureau Fed’n, *H-2A and the AEW R We Were*, Fig. 2 (Mar. 15,
 2019) (illustrating 9-20% annual increases in AEW R since 2013), <https://www.fb.org/market-intel/h-2a-and-the-aewr-we-were#:~:text=The%20national%20average%20AEWR%20wage,year%202018%20was%203.1%20percent>).
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1 lower rates than farm labor wages gathered through the Farm Labor Survey. Since 2011, the
 2 average annual earnings of field and livestock workers in the FLS rose 37 percent, whereas the
 3 ECI average for private sector workers rose 22 percent between the first quarter of 2011 and
 4 2019.²²

5 **B. The Rule’s Impact on Domestic Farmworker Wages**

6 As discussed above, the very *purpose* of the AEWL is to prevent wage depression and
 7 stagnation for domestic workers affected by the hiring of similarly employed H-2A workers,
 8 which is served by paying both groups the same market-based minimum wage. *See e.g. Alfred L.*
 9 *Snapp & Son*, 458 U.S. at 596. However, because the Rule *freezes* the AEWL at 2019 rates for
 10 two years for the vast majority of agricultural occupations, California’s farmworkers working for
 11 employers that participate in the H-2A program will be deprived of any wage increases regardless
 12 of market conditions. 85 Fed. Reg. 70,477. Thereafter their wage increases will be constrained
 13 by the ECI, which tends to have a lower rate of increase than wages in the farm labor market. By
 14 2022, California’s minimum wage will be \$15 per hour for employers with more than 25
 15 employees, outpacing the AEWL under the new Rule, which will stagnate at \$14.77.²³ H-2A
 16 employers will be free to pay state minimum wages to both domestic and temporary foreign
 17 workers, which is a drastic departure from recent years in which—even as state minimum wages
 18 have been rising—the AEWL for each state has “far outstrip[ped] every state minimum” wage.²⁴

19 DOL acknowledges that the Rule will result in an immense transfer of wealth from H-2A
 20 workers to their employers—\$1.69 billion over ten years. 85 Fed. Reg. at 70,472. But this figure
 21 understates the transfer, which would be even higher if domestic farmworkers were included.
 22 DOL does not attempt to quantify the transfer of wages from non-H-2A “workers in
 23 corresponding employment,” *i.e.* domestic farmworkers, asserting that it “does not have sufficient

24 ²² *DOL Changes AEWL Methodology*, RURAL MIGRATION NEWS (Nov. 20, 2020),
 25 <https://tinyurl.com/RuralMigrationNewsUCDavis>.

26 ²³ Cal. Dep’t of Indus. Relations, *Minimum Wage* (Dec. 2019),
 27 https://www.dir.ca.gov/dlse/faq_minimumwage.htm; U.S. Dep’t of Labor, Emp’t and Training
 28 Admin., “Adverse Effect Wage Rates (Through 12/20/2020),”
<https://www.dol.gov/agencies/eta/foreign-labor/wages/aewr-20201220>.

²⁴ *H-2A Guest Worker Minimum Wages Up in 2020, 57% above New State Minimums*,
 Cato at Liberty (Jan. 3, 2020), <https://www.cato.org/blog/h-2a-guest-worker-minimum-wages-2020-57-above-new-state-minimums>.

1 information about the number of workers in corresponding employment affected and their wage
2 structure to reasonably measure the wage transfer to or from these workers.” *Id.* In fact, DOL
3 should be able to estimate the impact, as it collects information about farmworker immigration
4 status and migration patterns through the National Agriculture Workers Survey, has access to
5 demographic data through the American Community Survey, and has access to wage data from
6 farm and ranch employers and labor contractors through FLS and Occupation Employment
7 Statistics, respectively.²⁵ As H-2A workers are only a small fraction of the workforce, the DOL’s
8 \$1.69 billion figure represents only a small fraction of the actual wealth transfer.²⁶

9 The impact of the Rule is not limited to H-2A visa holders or even all employees who work
10 for employers that use the H-2A program. Because employers that do not use H-2A workers
11 compete with those that do, the AEWL is a critical floor for agricultural wages in general.²⁷
12 Thus, it is reasonable to expect that freezing the AEWL for two years and limiting its rate of
13 growth based on the ECI thereafter will have the effect of transferring many billions of dollars in
14 wages from non-H-2A workers—*i.e.* domestic agricultural workers—to non-H-2A employers as
15 well. These U.S. farmworkers and their families are already struggling to survive on subsistence
16 wages.²⁸

17 Wage stagnation under the new Rule will also negatively impact domestic farmworkers’
18 ability and willingness to continue working in agriculture. As the AEWL is met or surpassed by
19 California’s minimum wage, at least some domestic farmworkers will abandon grueling
20 agricultural labor to take minimum wage jobs in urban centers where housing and other resources

21 ²⁵ See *Farm Labor*, USDA Economic Research Service (Apr. 22, 2020) (compiling, *inter*
22 *alia*, data regarding size and composition of the U.S. agricultural workforce, recent trends,
23 demographic characteristics, geographic distribution, wages, and legal status and migration
24 practices), <https://www.ers.usda.gov/topics/farm-economy/farm-labor/#demographic>.

25 ²⁶ In 2017, H-2A workers made up seven percent of the crop workforce. Philip Martin,
26 *The H-2A farm guestworker program is expanding rapidly*, ECONOMIC POLICY INSTITUTE (Apr.
27 13, 2017), <https://www.epi.org/blog/h-2a-farm-guestworker-program-expanding-rapidly/>.

28 ²⁷ See Sarah deLone, *Farmers, Grower, and the Department of Labor: the Inequality of*
Balance in the Temporary Agricultural Worker Program, 3 YALE J. L. & LIBERATION (1992) at
142 (demonstrating downward pressure on non-H-2A wages from lower wages paid by users of
H-2A program), <https://digitalcommons.law.yale.edu/yjll/vol3/iss1/7/>.

²⁸ Daniel Costa, *Trump administration looking to cut the already low wages of H-2A*
migrant farmworkers while giving their bosses a multibillion-dollar bailout, WORKING ECONS.
BLOG, Econs. Policy Inst., Fig A (Apr. 14, 2020),

1 are more plentiful. This, in turn, will create greater labor shortages, resulting in a greater need for
 2 foreign labor. Given significantly lower wages in Mexico—from which the vast majority of H-
 3 2A workers originate—the Rule’s two-year freeze and subsequent limit on the AEWR’s rate of
 4 increase will not discourage H-2A workers from taking U.S. agriculture jobs, but will instead
 5 increase their numbers and further depress domestic farmworker wages.²⁹ These circumstances
 6 undermine the entire point of the H-2A regulatory scheme—to not adversely affect domestic
 7 employees.

8 **III. LOWER WAGES LEAD TO POVERTY AMONGST FARMWORKER FAMILIES AND WILL** 9 **BURDEN STATE HOUSING, NUTRITION ASSISTANCE, AND HEALTHCARE RESOURCES**

10 Depressed wages under the Rule will devastate farmworkers and their families, many of
 11 whom already live in poverty or are on the brink of it. According to the 2015-2016 National
 12 Agriculture Workers Survey (NAWS), which is the most recent available, one-third of
 13 farmworkers have family incomes under the poverty level.³⁰ Farmworkers must rely on safety net
 14 programs to supplement their modest wages: 54 percent of farmworkers reported that a household
 15 member used a needs-based program in the two years prior to the NAWS.³¹

16 The effects of lower wages under the Rule, and the attendant increase in poverty, will
 17 extend beyond the farmworkers themselves to their families, to their communities, and to the
 18 State itself, which will need to increase support to various State programs during a budgetary
 19 crisis to soften the Rule’s impacts.³² While increased poverty harms the State and its residents in
 20 many ways, California particularly focuses on the Rule’s effect on: (1) housing; (2) children’s

21 ²⁹ David Bier, *H-2A Visas for Agriculture: The Complex Process for Farmers to Hire*
 22 *Agricultural Workers*, CATO INSTITUTE IMMIGRATION RESEARCH AND POLICY BRIEF 12 (Mar. 10,
 23 2020), <https://www.cato.org/sites/cato.org/files/2020-03/IRPB-17-update-4.pdf> (“Even if H-2A
 24 minimum wages fell, Mexicans would still greatly benefit from H-2A jobs. Indeed, a larger
 25 number would benefit because a lower wage would allow farmers to hire more workers.”)
 26 (citation omitted).

27 ³⁰ U.S. Dep’t of Labor, National Agriculture Workers Survey, *Findings from the National*
 28 *Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of*
 29 *United States Farmworkers* 36 (Jan. 2018),
 30 https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS_Research_Report_13.pdf.

31 NAWS, *supra* note 30 at 39. Public benefits accessed included Medicaid (44 percent),
 SNAP (18 percent), WIC (17 percent), or a public health clinic (10 percent).

32 Legislative Analyst’s Office, *The 2020-21 Budget, Overview of the California Spending*
 Plan, <https://lao.ca.gov/Publications/Report/4263>.

1 well-being; and (3) healthcare.

2 **A. Lower Wages Will Exacerbate the Farmworker Housing Crisis**

3 The Rule will intensify the challenges that domestic farmworkers already face in
 4 obtaining affordable housing and increase demand on State housing programs. In Salinas,
 5 California, where an estimated 91,433 farmworkers reside, there is a serious affordable housing
 6 shortage.³³ Median rent for a two-bedroom home is \$2,095 per month, or \$25,140 per year, while
 7 median income for farmworkers in the area is \$25,000.³⁴ According to a report by the California
 8 Institute of Rural Studies, an additional 33,159 units are needed in the area to meet the housing
 9 needs of farmworkers.³⁵ That report found that due to the lack of affordable housing there are
 10 “stunningly high rates of residences that are above the severely crowded condition of 2.0 people
 11 per room,” and often more than five people per bathroom.³⁶ These crowded living quarters have
 12 raised serious health concerns, including contributing to the spread of COVID-19 among the
 13 farmworker population.³⁷ Moreover, many farmworker families can’t afford housing at all, and
 14 resort to living in tents, abandoned buildings, and converted chicken coops.³⁸ In fact, one in three
 15 children in the Salinas City Elementary School District are technically homeless.³⁹ Rents in
 16 Salinas increased at a rapid rate of more than 50 percent, five times the national average, in recent
 17 years, and there is no indication that prices will meaningfully drop anytime soon.⁴⁰

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 19 ³³ Cal. Inst. for Rural Studies, *Farmworker Housing Study and Action Plan for Salinas Valley and Pajaro Valley* 8 (April 2018),
 20 <https://www.co.monterey.ca.us/home/showdocument?id=63729>.

21 ³⁴ Kate Cimini, *Want to rent a two-bedroom home in Salinas? Be prepared to pay double the national average*, THE CALIFORNIAN (Mar. 23, 2020),
 22 <https://www.thecalifornian.com/story/news/2019/03/23/rent-salinas-practically-double-national-average/3157004002/>; Cal. Inst. for Rural Studies, *supra* note 33 at 145.

23 ³⁵ Cal. Inst. for Rural Studies, *supra* note 32 at 342.

24 ³⁶ *Id.* at Executive Summary.

25 ³⁷ UC Berkeley School of Public Health, *supra* note 14 at 8.

26 ³⁸ Amy Wu, *Low wages, high prices drive desperate housing choices for farm workers and tough questions for community*, THE CALIFORNIAN (Sept. 29, 2017),
 27 <https://tinyurl.com/CalifornianLowIncome>.

28 ³⁹ *Id.*

⁴⁰ Cimini, *supra* note 34; Kate Cimini, *Real estate prices soar during pandemic, climbing 25% in parts of California*, CAL MATTERS (Dec. 5, 2020), <https://calmatters.org/california-divide/2020/12/real-estate-climb-pandemic/> (discussing how, despite the pandemic, housing prices have continued to go up in Monterey County, “pricing local renters — potential homebuyers — out of the market”).

1 Yet, as housing prices rise, the Rule freezes most farmworkers' wages until 2023, and
 2 provides them with only modest raises after that. In addition, the Rule's indirect effect of
 3 increasing reliance on H-2A workers, *see supra*, creates an even more competitive housing
 4 market in agricultural areas. Because employers pay for H-2A workers' housing, domestic
 5 farmworkers are at a competitive disadvantage for rental units or short-term housing like hotels
 6 because employers can afford to pay higher rent.⁴¹ An influx of H-2A workers, combined with
 7 depressed wages, will only make housing harder to obtain. More farmworkers may end up in
 8 extremely cramped housing or without proper housing at all.

9 With affordable housing further out of reach due to the Rule, State-funded housing
 10 assistance programs will likely be increasingly burdened. For example, the California
 11 Department of Housing and Community Development's Office of Migrant Services (OMS) runs
 12 24 migrant housing centers, with a total of 1,800 low cost units, reserved for domestic
 13 farmworkers during peak harvest season.⁴² These centers tend to meet capacity and often have
 14 waitlists.⁴³ OMS could not sustain increased demand without additional State funding, as it
 15 struggles to meet the current demand. As more farmworkers risk homelessness, some may be
 16 forced to rely on state and local homeless programs, such as CalWORKs Housing Support
 17 Program, which are already overburdened by California's affordable housing crisis and COVID-
 18 19.⁴⁴

19 **B. The Rule Will Harm Farmworker Families**

20 Fifty-five percent of farmworkers have children, most of whom are under the age of

21 ⁴¹ Cal. Inst. for Rural Studies, *supra* note 33 at 58.

22 ⁴² Cal. Dep't of Hous. and Cmty. and Dev., Office of Migrant Servs.,
<https://www.hcd.ca.gov/grants-funding/active-no-funding/oms.shtml> (last visited Dec. 8, 2020).

23 ⁴³ Adia White, *North State's Migrant Farmworkers Face Housing Shortage*, NORTH
 STATE PUBLIC RADIO (June 8, 2017), <https://www.mynspr.org/post/north-state-s-migrant-farmworkers-face-housing-shortage#stream/0>.

24 ⁴⁴ Cal. Dep't of Soc. Servs., CalWORKs Housing Support Program,
<https://www.cdss.ca.gov/inforesources/cdss-programs/housing-programs/calworks-housing-support-program>
 25 (last visited Dec. 8, 2020); Alicia Victoria Lozano, *California's Rising Rents, Severe Housing Shortage Fuel Homelessness*, NBC NEWS (Feb. 2, 2020),
 26 <https://www.nbcnews.com/news/us-news/california-s-rising-rents-severe-housing-shortage-fuel-homelessness-n1127216>;
 27 Daniel Tan, *How COVID-19 Could Deepen California's Housing Crisis*, Public Policy Institute of California (Aug. 7, 2020), <https://www.pplic.org/blog/how-covid-19-could-deepen-californias-housing-crisis/>.
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1 thirteen.⁴⁵ These children’s well-being will be significantly harmed by their parents receiving
2 lower wages due to the Rule. California has a responsibility to ensure that its residents, and
3 especially children, are educated and healthy—thus, where the Rule leaves farmworkers’ children
4 behind, State programs will need to step in to help them advance.

5 First, driving farmworkers’ children into poverty will make them more educationally
6 disadvantaged. Children of farmworkers face serious barriers to education because, among other
7 factors, the transient and seasonal nature of agricultural work often results in poor attendance and
8 inconsistent schooling.⁴⁶ Lowering their household incomes will further impede their academic
9 success. The National Center for Education Statistics attributes living in poverty during early
10 childhood, in part, to lower levels of academic achievement “beginning in kindergarten and
11 extending through elementary and high school.”⁴⁷ In fact, low-income students are “five times
12 more likely to drop out of high school than those who are high-income and 13 times less likely to
13 graduate from high school on time.”⁴⁸

14 Additionally, lower wages will make it more likely that farmworkers’ children experience
15 food insecurity. Studies have shown that farmworker families experience staggering levels of
16 food insecurity under current conditions. For example, in a survey involving farmworker families
17 in the Migrant and Seasonal Head Start Program, 53 percent of respondents reported that they
18 experience some limitations in food choices in the home or sometimes not enough food, “strongly
19 suggest[ing] that children of migrant farmworkers may be at a greater than average risk for health
20 concerns related to malnutrition.”⁴⁹ Making it even harder for farmworkers to afford nutritious

21 ⁴⁵ NAWS, *supra* note 30 at 8.

22 ⁴⁶ Alex Granados, *Education, Unsettled: Inside the Struggle to Keep Migrant Students in*
School and Out of the Fields, EDWEEK.ORG (Nov. 28, 2018),
23 <https://www.edweek.org/ew/projects/education-unsettled-migrant-students.html>.

24 ⁴⁷ Nat’l Ctr. for Educ. Statistics, U.S. Dep’t of Educ., *The Condition of Education 2016*
56, <https://nces.ed.gov/pubs2016/2016144.pdf>.

25 ⁴⁸ Kelley Taylor, *Poverty’s Long-Lasting Effects on Students’ Education and Success*,
INSIGHT INTO DIVERSITY (May 30, 2017), [https://www.insightintodiversity.com/povertys-long-](https://www.insightintodiversity.com/povertys-long-lasting-effects-on-students-education-and-success/)
[lasting-effects-on-students-education-and-success/](https://www.insightintodiversity.com/povertys-long-lasting-effects-on-students-education-and-success/).

26 ⁴⁹ Julia Smith & Guadalupe Cuesta, *Hunger in the fields: Food insecurity and food access*
among farmworker families in Migrant and Seasonal Head Start, 19 JOURNAL OF LATINOS AND
27 EDUCATION 3, 246-257 (Aug 10, 2018),
<https://www.tandfonline.com/eprint/89WJ826NzpP5r9Ifm96V/full>; see also Elizabeth Kiehne &
28 Natasha Mendoza, *Migrant and Seasonal Farmworker Food Insecurity: Prevalence, Impact, Risk*

1 food could have serious health impacts on the children. Household food insecurity is “related to
2 significantly worse general health” in children.⁵⁰ For example, food insecure children have a 19
3 percent higher rate of asthma and a 27.9 percent higher rate of depressive symptoms as compared
4 to children in food secure households.⁵¹ It is a cruel irony indeed that while farmworkers are
5 relied upon to keep the nation’s food supply moving, the food security of their own households is
6 threatened by this Rule.

7 Beyond nutrition, lower wages can be generally harmful to children’s health. The
8 American Academy of Pediatrics has stated that “the link between poverty and children’s health
9 is well recognized.”⁵² There are immediate health risks related to poverty, as poor children have
10 a higher mortality rate than children from higher-income families.⁵³ Poverty’s health impacts last
11 through adulthood as well.⁵⁴ Adults who experienced childhood poverty are more likely to report
12 arthritis, hypertension, and chronic inflammation, which can ultimately result in chronic disease.⁵⁵
13 In all, by lowering farmworkers’ wages, the Rule harms their children, hindering their education
14 and damaging their health, with long-term consequences.

15 It will fall on the State to mitigate the impact of increased poverty due to the Rule. For
16 example, the California Department of Education (CDE) may need to increase support of its
17 programs that serve farmworker families and redirect or strategize funding to target schools with
18 high enrollment of farmworkers’ children.⁵⁶ The children of farmworkers who experience
19 poverty will need greater support from CDE’s child care and development programs, which

20 *Factors, and Coping Strategies*, 30 SOCIAL WORK IN PUBLIC HEALTH 5, 402 (Apr. 29, 2015),
21 abstract available at: <https://pubmed.ncbi.nlm.nih.gov/25923396/> (45% of farmworkers in Fresno,
County, California are food insecure, and 11% are “very low” food secure.)

22 ⁵⁰ Margaret M.C. Thomas, et al., *Food Insecurity and Child Health*, 144 (4) PEDIATRICS –
23 OFFICIAL JOURNAL OF THE AMERICAN ACADEMY OF PEDIATRICS (Oct. 2019),
<https://pediatrics.aappublications.org/content/144/4/e20190397>.

24 ⁵¹ *Id.*

25 ⁵² John M. Pascoe, MD, MPH, FAAP, et al., *Mediators and Adverse Effects of Child*
26 *Poverty in the United States* 1, American Academy of Pediatrics (Apr. 4, 2016),
<https://pediatrics.aappublications.org/content/pediatrics/137/4/e20160340.full.pdf>.

27 ⁵³ *Id.*

28 ⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Cal. Dep’t of Educ., *Migrant Education Resources*,
<https://www.cde.ca.gov/sp/me/mt/resources.asp> (last visited Dec. 8, 2020); Cal. Dep’t of Educ.,
Available Funding, <https://www.cde.ca.gov/fg/fo/af/> (last visited Dec. 8, 2020).

1 provide services to children from birth to age 12, and are both state and federally funded.⁵⁷
 2 Additionally, state-funded school nutritional programs administered by CDE are likely to see
 3 greater need. The State Meal Program, funded by California, provides nutritionally adequate
 4 meals to needy students.⁵⁸ As farmworkers' children will be more likely to be considered needy
 5 due to the Rule, there may be greater reliance on the program. The Summer Food Service
 6 Program and School Breakfast Program receive both state and federal funding.⁵⁹ If federal
 7 funding fails to meet the increased need among farmworkers' families, the State will need to
 8 provide additional support.

9 Similarly, the state-funded California Food Assistance Program (CFAP), which serves
 10 legal permanent residents who are ineligible for federal food stamp benefits due to their
 11 immigration status, may need to meet an increased demand among farmworker families after the
 12 Rule.⁶⁰ Indeed, while 18 percent of farmworkers receive federal Supplemental Nutrition
 13 Assistance Program (SNAP) benefits—a higher rate than the national average, many are
 14 ineligible for SNAP due to their immigration status.⁶¹ CFAP helps fill that gap, and may be
 15 required to take on a greater role after the Rule when farmworkers earn less income.

16 **C. The Rule Will Place Additional Strain on California's Healthcare** 17 **Resources and Harm Public Health**

18 As farmworkers and their families experience increased poverty and the attendant food

19 ⁵⁷ During Fiscal Year 2019, California budgeted a total of \$5.1 billion for child
 20 development programs, of which approximately 77 percent was from state funds.

21 ⁵⁸ Cal. Dep't of Educ., *State Meal Program*, <https://www.cde.ca.gov/ls/nu/sn/stm.asp> (last
 22 visited Dec. 8, 2020). This program is separate from the federally funded National School Lunch
 23 Program.

24 ⁵⁹ Cal. Dep't of Educ., *School Breakfast and Summer Meal Grants*,
 25 <https://tinyurl.com/CDEnutrition> (last visited Dec. 8, 2020).

26 ⁶⁰ Cal. Dep't of Soc. Servs., *California Food Assistance Program (CFAP)*,
 27 <https://tinyurl.com/CDSSfoodstamps> (last visited Dec. 8, 2020).

28 ⁶¹ NAWS, *supra* note 30 at 39 (Eighteen percent of farmworkers surveyed reported a
 household member received SNAP within two years of the 2015-2016 survey), 5 (finding 29
 percent of hired crop labor force were U.S. citizens, 21 percent were lawful permanent residents);
SNAP participation and spending respond to economic conditions, USDA Economic Research
 Service, [https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-
 detail/?chartId=99512](https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=99512) (between 2013 and 2015, the national average of SNAP usage was
 between 15 and 13 percent). Under 8 U.S.C. § 1611, undocumented immigrants and some legal
 permanent residents who have not resided in the United State for five-years are ineligible for most
 federal public benefits.

1 insecurity and poor housing access discussed above, they will experience poorer health. But
2 farmworkers already suffer from inadequate health care. According to the 2015-2016 NAWS, the
3 majority of farmworkers do not have health insurance.⁶² Among all farmworkers, 23 percent
4 reported that they did not go to the doctor because it was too expensive—making it the most
5 common difficulty that farmworkers face in accessing health care.⁶³ According to California
6 Health Interview Survey results from 2017 and 2018, 40 percent of the respondents from the
7 survey category that includes agricultural workers had privately purchased or employer-based
8 health coverage.⁶⁴ With lower wages, private health insurance will be even less affordable as will
9 visiting a doctor and paying out of pocket. And with job displacement expected as a result of
10 wage stagnation, employer-based coverage may also be disrupted. As a result, the Rule will
11 compound the existing barriers to healthcare with potentially dangerous consequences, including
12 greater costs borne by community health care providers and the State.

13 The loss of wages anticipated under the Rule may make additional domestic farmworkers
14 eligible for Medi-Cal (California’s Medicaid program), which is tethered to Federal Poverty
15 Guidelines. California’s healthcare programs aim to optimize the health and wellbeing of all
16 people in California. This coverage may be “full-scope”—including medical, dental, mental
17 health, substance abuse treatment services, and long term care—or “restricted scope” Medi-Cal,
18 for certain non-citizen groups, which is limited to emergency and/or pregnancy-related and long
19 term care. In 2015, California expanded full-scope Medi-Cal to all low-income children through
20 age eighteen, regardless of immigration status, and California’s 2019-2020 budget extended full
21 scope coverage to all individuals through age 25, regardless of immigration status. These
22 expansions are funded by state, rather than federal, appropriations. Cal. Welf. & Inst. Code
23 § 14007.8. Whether provided through full-scope Medi-Cal due to decreased wages, or through

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25 ⁶² NAWS, *supra* note 30, Executive Summary at iv (only 47 percent reporting having
health coverage).

26 ⁶³ NAWS, *supra* note 30 at 40.

27 ⁶⁴ 2017, 2018 California Health Interview Survey, University of California, Los Angeles,
data available through <https://healthpolicy.ucla.edu/chis/data/Pages/GetCHISData.aspx>. This
28 survey category includes employees in forestry, fishing, hunting, and mining as well as
agriculture. *Id.*

1 emergency services, increased need for safety-net healthcare services resulting from the Rule will
2 come at a cost to the State.

3 For farmworker families that are unable to obtain health insurance, even more restricted
4 access to preventative services and deferral of treatment will lead to poorer health outcomes, with
5 greater healthcare costs in the long term.⁶⁵ These costs will put additional pressure on strained
6 public and private institutions, because public hospitals often pay for the care of uninsured
7 patients.⁶⁶

8 Worse healthcare for farmworkers and family members experiencing increased poverty
9 will also worsen general public health in California. For example, the uninsured are less likely to
10 receive vaccinations, which prevent the spread of infectious diseases throughout the community.⁶⁷
11 According to one study, while 44 percent of insured adults received the flu shot, only 14 percent
12 of uninsured adults did.⁶⁸ Inoculation helps prevent the spread of the flu, which resulted in some
13 79,400 deaths nation-wide in 2017-2018.⁶⁹ As California, the nation, and the world face the
14 threat of COVID-19, gaps in access to healthcare should be minimized, rather than expanded.
15 The Rule's indisputable consequence—limiting wage increases for low-income domestic
16 workers—will make it more difficult for them to care for themselves and their families, at a
17 significant cost to all Californians.

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22 ⁶⁵ Stacey McMorrow, et al., *Determinants of Receipt of Recommended Preventive*
23 *Services: Implications for the Affordable Care Act*, AM J PUBLIC HEALTH (Dec. 2014),
24 <https://tinyurl.com/McMorrowPublicHealth>; Jennifer E. DeVoe, et al., *Receipt of Preventive Care*
25 *Among Adults: Insurance Status and Usual Source of Care*, 93 AM. J. OF PUBLIC HEALTH 5 786-
26 791. (May 1, 2003), available at: <https://tinyurl.com/DeVoePublicHealth>.

27 ⁶⁶ Cal. Ass'n of Pub. Hosps. and Health Sys., *About California's Public Health Care*
28 *Systems*, <https://tinyurl.com/y68c6m87> (Public hospitals in California account for 40 percent of
hospital care to the remaining uninsured in the communities they serve).

⁶⁷ Peng-jun Lu, et al., *Impact of health insurance status on vaccination coverage among*
adult populations, 48 AM J PREV MED. 647–661 (Apr. 15, 2015), <https://tinyurl.com/y5es4yt4>.

⁶⁸ *Id.*

⁶⁹ Ctrs. for Disease Control and Prevention, *Estimated Influenza Illnesses, Medical visits,*
Hospitalizations, and Deaths in the United States – 2017-2018 Influenza Season,
<https://tinyurl.com/y3tf8ebl>.

1 **IV. AN INCREASE IN THE VULNERABLE H-2A WORKFORCE WILL UNDERMINE**
 2 **CALIFORNIA'S ENFORCEMENT OF LABOR PROTECTIONS**

3 As the Rule depresses wages, leading to greater use of H-2A workers, it will be more
 4 difficult for California agencies to enforce labor protections for all agricultural workers because
 5 of H-2A workers' increased levels of vulnerability and dependence on their employers.
 6 California's labor protections apply to all workers, regardless of immigration status, and
 7 California law specifically prohibits employers from threatening to contact immigration
 8 authorities in retaliation against an employee's invocation of state labor protections. Cal. Civ.
 9 Code § 3339 (extending labor protections regardless of immigration status); *see, e.g.*, Cal. Lab.
 10 Code § 1019 (unlawful to threaten immigration enforcement in response to employee complaint
 11 or assertion of labor rights). California's Department of Industrial Relations (including the Labor
 12 Commissioner and Division of Occupational Safety and Health (Cal/OSHA)) enforces wage and
 13 hour standards, meal and rest breaks, and safety and health protections, among others, for
 14 domestic and H-2A agricultural workers alike. Enforcement efforts in the agriculture industry are
 15 particularly difficult, and can require extra effort to reach particularly vulnerable farmworkers.
 16 Recently, for example, the California Labor Commissioner has worked with local advocates to
 17 educate farmworkers—via amplified announcements from a truck driving past the fields—of their
 18 rights to paid sick leave under federal and state law, in response to reports that employees had
 19 been urged to continue working despite having COVID-19 symptoms.⁷⁰

20 Complicating these agencies' enforcement efforts is the fact that H-2A workers are
 21 particularly vulnerable to abuse and exploitation, and fearful to speak out against poor working
 22 conditions, because of the extent to which they must rely on their employers. H-2A workers are
 23 dependent on their employers for their legal status in the United States. If H-2A workers leave a

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 25 ⁷⁰ *See* Rebecca Plevin, *New California campaign aims to inform farmworkers about labor*
 26 *rights amid COVID-19 pandemic*, PALM SPRINGS DESERT SUN (Nov. 24, 2020),
 27 [https://www.desertsun.com/story/news/politics/immigration/2020/11/24/covid-19-campaign-](https://www.desertsun.com/story/news/politics/immigration/2020/11/24/covid-19-campaign-informs-farmworkers-labor-rights/6387781002/)
 28 [informs-farmworkers-labor-rights/6387781002/](https://www.desertsun.com/story/news/politics/immigration/2020/11/24/covid-19-campaign-informs-farmworkers-labor-rights/6387781002/); *see also* Cal. Dep't of Indus. Relations,
California Labor Commissioner's Office Posts Guidance on Agricultural Pay Schedule This Year
 (Jan. 24, 2019) (describing overtime rate schedule and past public education efforts),
<https://www.dir.ca.gov/DIRNews/2019/2019-12.html>.

1 job or are fired, they cannot obtain similar employment with another employer, but must leave the
2 United States and give up the work that brought them here in the first place.⁷¹ They are also
3 reliant on their employers to receive work visas in subsequent seasons, and therefore have a
4 strong incentive to remain silent in the face of violations.⁷² Further, H-2A workers often depend
5 on their employers for housing and transportation, and can even be secluded from others in
6 employer-provided housing.⁷³ These employees are likely to be unfamiliar with reporting
7 mechanisms, and language barriers pose additional challenges as many speak indigenous
8 languages rather than Spanish.⁷⁴

9 In addition, many farmworkers arrive in debt, victims of unscrupulous recruiters that
10 charge significant fees to facilitate their access to visas and employment.⁷⁵ The anti-trafficking
11 organization, Polaris, recently released a report regarding trafficking of persons on temporary
12 work visas.⁷⁶ Using data from the National Human Trafficking Hotline from 2015 to 2017,
13 Polaris examined eight categories of temporary work visas; H-2A workers comprised over 40
14 percent of trafficking victims in those categories.⁷⁷ Traffickers often recruit victims with real job
15 offers, but impose recruitment fees that put applicants thousands of dollars in debt. This
16 indebtedness, combined with the lack of freedom to change employers, makes it very difficult for
17 victims to report or leave unfair working conditions.⁷⁸

18 ⁷¹ 8 C.F.R. § 214.1(e); see Cong. Research Serv., *The Framework for Foreign Workers*
19 *Labor Protections Under Federal Law 1* (Sept. 11, 2013) (“nonimmigrant foreign workers may
20 find themselves subject to deportation in the event of a job loss”) (emphasis in original),
<https://www.everycrsreport.com/reports/R43223.html>.

21 ⁷² See Comment Letter submitted in response to NPRM by farmworker advocates at 6,
[http://www.farmworkerjustice.org/wp-content/uploads/2019/09/2019-H-2A-Advocate-
22 Comments-DOL-Final.pdf](http://www.farmworkerjustice.org/wp-content/uploads/2019/09/2019-H-2A-Advocate-Comments-DOL-Final.pdf).

23 ⁷³ Cal Matters, *Investigation: COVID rips through motel room of guest workers who pick*
24 *the nation’s produce* (Sept. 4, 2020), [https://calmatters.org/california-divide/2020/08/guest-
25 worker-covid-outbreak-california/](https://calmatters.org/california-divide/2020/08/guest-worker-covid-outbreak-california/).

26 ⁷⁴ See *id.*

27 ⁷⁵ See Comment Letter submitted in response to NPRM by farmworker advocates, *supra*
28 note 72 at 6.

29 ⁷⁶ Polaris, *Human Trafficking on Temporary Work Visas: a data analysis 2015-2017*,
[https://polarisproject.org/wp-content/uploads/2019/01/Human-Trafficking-on-Temporary-Work-
30 Visas.pdf](https://polarisproject.org/wp-content/uploads/2019/01/Human-Trafficking-on-Temporary-Work-Visas.pdf).

31 ⁷⁷ *Id.* at 7.

32 ⁷⁸ *Id.* at 11-13; see also Milli Legrain, “Be very careful”: the dangers for Mexicans working
33 legally on US farms,” THE GUARDIAN (May 16, 2019) (describing human trafficking of H-2A
34 workers and debts workers incur to labor contractors prior to arrival in United States),

1 Fear of retaliation prevents workers from reporting violations, undermining the
 2 effectiveness of resource-strained enforcement agencies. In one example, advocates have
 3 reported that farmworkers had not received N-95 masks distributed by the State to protect them
 4 from smoke inhalation in the current fire season.⁷⁹ One farmworker interviewed reported that she
 5 wanted to file a complaint, but feared retaliation.⁸⁰ A local expert also tied immigration status to
 6 fear of retaliation and said the number of complaints would “absolutely be higher if a worker
 7 didn’t have to fear losing their job or not getting rehired for reporting workplace
 8 noncompliance.”⁸¹ Such complaints from workers are critical to alerting enforcement agencies to
 9 violations. Cal/OSHA received 21 complaints related to wildfire smoke and opened 20
 10 investigations in response, allowing “Cal/OSHA to get in touch with the employer to ensure the
 11 proper procedures are in place for protecting workers.”⁸² The Rule’s anticipated consequences—
 12 increasing the number of H-2A workers—thus impacts the State’s ability to enforce labor
 13 protections critical to both domestic and foreign farmworkers in California.

14 CONCLUSION

15 For the foregoing reasons, the State of California respectfully submits that enjoining the
 16 Rule would further the public interest and urges the Court to grant Plaintiffs’ motion for a
 17 preliminary injunction.

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 23 <https://www.theguardian.com/us-news/2019/may/16/us-mexico-immigration-seasonal-work-visas-h-2a>; see also *Palma Ulloa v. Fancy Farms, Inc.*, 762 F. App’x 859, 862–63 (11th Cir. 2019) (H-2A workers paid \$3000 to \$4000 each in recruitment fees).

24 ⁷⁹ Cal. Dep’t of Indus. Relations, *Cal/OSHA Issues Citations to Multiple Employers for COVID-19 Violations* (Sept. 4, 2020), <https://www.dir.ca.gov/DIRNews/2020/2020-76.html>;
 25 Manuela Tobias, *California farmworkers say they didn’t get masks during wildfires*, CAL MATTERS (Sept. 28, 2020); <https://calmatters.org/california-divide/2020/09/california-farmworkers-say-they-didnt-receive-masks-during-wildfires/>.

26 ⁸⁰ *Id.*

27 ⁸¹ *Id.* (quoting Ana Padilla, executive director of the University of California, Merced Community and Labor Center).

28 ⁸² *Id.* (quoting Cal/OSHA spokesperson Frank Polizzi).

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Respectfully Submitted,

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XAVIER BECERRA
Attorney General of California

3

MICHAEL L. NEWMAN

4

DANIEL A. OLIVAS
Senior Assistant Attorneys General

5

JAMEE JORDAN PATTERSON

6

SATOSHI YANAI
Supervising Deputy Attorneys General

7

MARISSA MALOUFF

8

JULIA HARUMI MASS

9

DAVID PAI

10

Deputy Attorneys General

11

s/Julia Harumi Mass

JULIA HARUMI MASS

Deputy Attorney General

*Attorneys for Amicus Curiae State of
California*

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