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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

UNITED FARM WORKERS and UFW
FOUNDATION,

Plaintiffs,

v.

SONNY PERDUE, WILLIAM NORTHEY, and
THE UNITED STATES DEPARTMENT OF
AGRICULTURE,

Defendants.

Case No. _____

COMPLAINT

1 Plaintiffs United Farm Workers (“UFW”) and UFW Foundation for their Complaint against
2 Defendants Sonny Perdue, in his official capacity as United States Secretary of Agriculture; William
3 Northey, in his official capacity as Under Secretary, Farm Production and Conservation; and United
4 States Department of Agriculture (USDA) hereby allege as follows:

5 INTRODUCTION

6 1. The United States critically depends on approximately 2.5 million farmworkers located
7 in rural communities from coast to coast to produce the nation’s food supply and its agricultural
8 exports. Although they are essential to ensure continuity of the food that Americans consume every
9 day, these farmworkers are highly vulnerable to wage decline, job loss, or other economic dislocation.
10 Their jobs typically offer only subsistence wages, are often seasonal, and are vulnerable to economic
11 shocks to agricultural markets. Congress has charged defendant USDA, the U.S. Department of Labor
12 (DOL), and other federal agencies with ensuring the economic security of farmworkers and the
13 stability of agricultural production. While Congress has authorized the entry of foreign agricultural
14 guestworkers in unlimited numbers when the domestic labor supply is inadequate, Congress also
15 charged DOL with protecting U.S. farmworkers’ jobs and wages from the adverse economic
16 consequences posed by the potentially limitless supply of foreign labor. To discharge their
17 Congressionally mandated duties, the defendant agencies depend on accurate data about the nation’s
18 farmworkers and agricultural labor markets. Numerous state and local government programs and
19 private entities similarly need such data to fulfill their obligations to assist farmworkers in achieving
20 economic security and just living and working conditions.

21 2. On September 30, 2020, USDA published a cursory, one-page notice (the Notice) in
22 the Federal Register announcing that it was suspending the survey that serves as the premier source
23 for data on the agricultural labor markets and the only source of information about hiring and wages
24 paid by U.S. farms, the Farm Labor Survey (FLS), and ceasing publication of the biannual Farm Labor
25 Report (FLR). For over 100 years, USDA has consistently used the FLS to collect data about farm
26 labor and wages. The Notice abruptly ended that practice.

27 3. Notwithstanding its decision to cast aside a century-old practice, USDA provided no
28 rationale for the FLS’s suspension and invited no public comment. USDA announced—without any

1 elaboration—that it had “determined the public can access other data sources for the data collected
2 in the [FLS].” After reciting a few proposed alternatives (again, without any analysis or discussion),
3 the Notice flatly stated that USDA will no longer conduct the FLS or publish the FLR. USDA did
4 not consider the detrimental impact its decision would have on farmworker wages or explain why
5 it chose to eliminate a survey that so many federal and state entities have relied on for so long.

6 4. USDA’s decision to discontinue both the FLS (including the survey originally
7 contemplated in October 2020) and the FLR (including the next publication in November 2020) will
8 cause many hundreds of thousands of farmworkers already living on subsistence incomes to suffer
9 significant wage cuts. Without FLS data, U.S. farmworkers and foreign guestworkers will be paid
10 on average materially less per hour than what is currently permitted under H-2A regulations. For
11 the typical, affected farmworker, the losses in annual income will amount to thousands or tens of
12 thousands of dollars. Those wage decreases will send ripple effects throughout the farm labor
13 market, ultimately resulting in many U.S. farmworkers being paid less as farms hire an increasing
14 number of foreign laborers who can be paid lower wages than U.S. farmworkers currently receive.

15 5. For a century, the FLS has regularly surveyed a nationally representative sample of
16 farm employers. While the cadence of the survey has varied somewhat over the decades, the
17 purpose and scope have remained fundamentally the same. The survey asks employers to report
18 their employment statistics from a weekly pay period for each quarter, including information about
19 wage rates and the number of field workers and livestock workers employed. The FLS provides the
20 only national data on farm labor employment and wages rates paid by farms, as well as regional and
21 seasonal (quarterly) data. Farm labor data collected by other means do not accurately reflect the
22 agricultural labor market, and no alternative data set is an adequate substitute for the FLS.

23 6. The uses of the FLS data are many-fold. FLS data are used to set minimum wages for
24 hundreds of thousands of U.S. and foreign workers employed on farms participating in the H-2A
25 visa program. These DOL-set wages are calibrated—using FLS data—so that the admission of H-
26 2A guestworkers fulfills its statutorily mandated purpose of *supplementing* the domestic labor
27 supply while protecting U.S. workers’ wages from being undercut. FLS data are also necessary to
28 administer various farmworker assistance programs and calculate accurate “parity prices” for crops,

1 prices that undergird numerous government economic programs and private production contracts.
2 And many other public and private programs rely on FLS data to understand the farmworker
3 population so they can efficiently deliver services.

4 7. The information collected by the FLS is critical to DOL's administration of the H-2A
5 agricultural guestworker program. FLS data are used to calculate the annual Adverse Effect Wage
6 Rates (AEWRs), a minimum wage that must be paid by H-2A program employers. The AEWR is
7 the primary wage rate under the H-2A program because it is used to calculate the wages paid to the
8 vast majority of U.S. and H-2A visa workers employed at H-2A program employers. Eliminating
9 the FLS would eradicate, or at least fundamentally alter, the AEWR. As a result, many employers
10 would be allowed to pay farmworkers the federal or state minimum wage, which is often
11 substantially less than the AEWR.

12 8. The FLS plays a similarly important role in the administration of several federal aid
13 programs for U.S. farmworkers and foreign guestworkers. The FLS, in tandem with other data
14 sources, is used to allocate funding and other resources for the National Farmworker Jobs Program,
15 administered by DOL; the Migrant and Seasonal Head Start Program, administered by the U.S.
16 Department of Health and Human Services; and the programs assisting migrant farmworkers
17 administered by the Legal Services Corporation—programs that provide economic, housing,
18 professional, educational, and legal assistance to farmworkers. The FLS's unrivaled data on
19 farmworker demographics helps ensure that public funds are efficiently targeted to farmworkers'
20 needs.

21 9. Moreover, USDA relies on FLS data to calculate parity prices for agricultural products
22 and the parity index, a data set upon which economic planning and numerous farm support programs
23 rely. The wages paid to workers hired by farms is an important component of the parity index and
24 has been used in its calculation since 1933. Without these data, the parity index would be less
25 representative of the expenses borne by U.S. farms and thus would be a less useful tool for protecting
26 food production—and food producers—from market shifts and changes to agricultural prices.
27 Protecting the agricultural sector from economic turmoil has been foundational to American
28 economic policy for nearly a century, and numerous parties—including workers employed on

1 farms—would be affected if this protection was destabilized. Since data concerning the wages paid
2 by farms are not collected outside of the FLS, it would not be possible to accurately calculate the
3 statutory parity index if the FLS was suspended.

4 10. Finally, the FLS, in combination with other data sets, provides the detailed
5 information about the U.S. farm labor market required or otherwise relied upon by many other
6 federal programs and in turn relied upon by states and private entities. For example, the FLS
7 provides reliable regional and statewide information that can be combined with other data sources,
8 such as the Agricultural Census, to estimate the number of farmworkers that reside in specific areas,
9 which DOL relies on to determine whether domestic workers can satisfy farm labor demands.
10 DOL's National Agricultural Workers Survey (NAWS) also uses FLS data to estimate the
11 demographics of farmworkers by region and state on a yearly or seasonal basis. And other federal
12 entities—including the congressionally mandated 1992 Commission on Agricultural Workers and
13 the Congressional Budget Office—have long used the FLS in conjunction with other data sources
14 to assess the farmworker population in the United States.

15 11. In sum, the FLS has for over 100 years been a critical and unique component of the
16 government's efforts to collect data on agricultural labor markets. Those data directly support
17 substantial programs administered by both DOL and USDA, and they are used by the federal
18 government in combination with other survey data to plan and implement policies and programs for
19 farmworkers. In deciding to discontinue the FLS, USDA failed to explain its rationale for abruptly
20 ending a century-old survey, and it failed to consider the numerous weighty interests that would be
21 impacted by that decision. The decision is therefore arbitrary and capricious and an abuse of
22 discretion. Moreover, USDA's action is procedurally defective under the Administrative Procedure
23 Act. For those reasons, USDA's abrupt decision to discontinue the FLS and cease publication of
24 the FLR should be enjoined.

25 **JURISDICTION AND VENUE**

26 12. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 over this action for review
27 of final agency action under the Administrative Procedure Act, 5 U.S.C. §§ 701-706, and 28 U.S.C.
28 §§ 2201-2202 (declaratory and further relief).

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