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11
12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**
14 **FRESNO DIVISION**

15 UNITED FARM WORKERS and UFW
16 FOUNDATION,

17 Plaintiffs,

18 v.

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

22 Defendants.

Case No. 1:20-CV-01452-DAD-JLT

**PLAINTIFFS' OPPOSITION TO
MOTION TO MODIFY AND
DISSOLVE TRO AND PRELIMINARY
INJUNCTION**

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION 1

BACKGROUND 2

LEGAL STANDARD..... 6

ARGUMENT 7

I. Plaintiffs’ Members Will Suffer Irreparable Injury If The Injunction Is Dissolved..... 7

 A. The DOL Rule Does Not Invalidate This Court’s Irreparable Harm Findings
 Or Render Plaintiffs’ Claims Moot..... 8

 B. The DOL Rule Will Be Challenged, And Serious Questions Exist About The
 Rule’s Validity 9

 C. Defendants’ Contrary Arguments Lack Merit 11

II. USDA’s Cancellation Of The Farm Labor Survey Still Constitutes Final Agency
Action..... 14

CONCLUSION..... 17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

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Agostini v. Felton,
521 U.S. 203 (1997).....7, 8

Bennett v. Spear,
520 U.S. 154 (1997).....16

California v. Azar,
911 F.3d 558 (9th Cir. 2018)9

California v. EPA,
385 F. Supp. 3d 903 (N.D. Cal. 2019)12

California v. EPA,
No. 18-cv-3237, 2019 WL 5722571 (N.D. Cal. Nov. 5, 2019)13

California v. EPA,
No. 19-17480, 2020 WL 6193497 (9th Cir. Oct. 22, 2020)12, 13, 14

Coleman v. Brown,
922 F. Supp. 2d 1004 (E.D. Cal. 2013).....7, 8

Department of Commerce v. New York,
139 S. Ct. 2551 (2019).....11

Gifford Pinchot Task Force v. Perez,
No. 03:13-cv-00810-HZ, 2014 WL 3019165 (D. Or. July 3, 2014).....15, 16, 17

Gilmore v. California,
220 F.3d 987 (9th Cir. 2000)7

Lujan v. National Wildlife Federation,
497 U.S. 871 (1990).....15

Martinez v. Wilson,
32 F.3d 1415 (9th Cir. 1994)15

Mateo v. M/S Kiso,
805 F. Supp. 761 (N.D. Cal. 1991)6

Miller v. Benson,
68 F.3d 163 (7th Cir. 1995)14

National Mining Association v. U.S. Department of Interior,
251 F.3d 1007 (D.C. Cir. 2001).....15

1 *National Urban League v. Ross*,
 2 977 F.3d 770 (9th Cir. 2020)16, 17

3 *Rufo v. Inmates of Suffolk County Jail*,
 4 502 U.S. 367 (1992).....7

5 *Stratman v. Leisnoi, Inc.*,
 6 545 F.3d 1161 (9th Cir. 2008)14

7 *System Federation No. 91 Railway Employees’ Department v. Wright*,
 8 364 U.S. 642 (1961).....7

9 *U.S. Army Corps of Engineers v. Hawkes Co.*,
 10 136 S. Ct. 1807 (2016).....16, 17

11 *United States v. Westlands Water District*,
 12 134 F. Supp. 2d 1111 (E.D. Cal. 2001).....6

13 *Whitman v. American Trucking Associations*,
 14 531 U.S. 457 (2001).....15

15 **Regulations**

16 *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A*
 17 *Nonimmigrants in Non-Range Occupations in the United States*, 85 Fed. Reg.
 18 70,445 (Nov. 5, 2020) *passim*

19 *Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions*
 20 *From Existing Electric Utility Generating Units; Revisions to Emission*
 21 *Guidelines Implementing Regulations*, 84 Fed. Reg. 32,520 (July 8, 2019)13

22 *Temporary Agricultural Employment of H-2A Aliens in the United States*, 75 Fed.
 23 Reg. 6884 (Feb. 12, 2010)6

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 25 Fed. Reg. 36,168 (July 26, 2019).....6, 10

26

27

28

INTRODUCTION

Nothing about the rule recently issued by the United States Department of Labor (DOL) obviates the necessity for the preliminary injunction issued by this Court. This Court enjoined the United States Department of Agriculture (USDA) from ending (1) data collection through the Farm Labor Survey (FLS) and (2) publication of the Farm Labor Report (FLR)—including the survey originally planned for October 2020 and the report scheduled for publication in November 2020. In so doing, the Court recognized that unless USDA collects data now, hundreds of thousands of U.S. farmworkers and agricultural guestworkers would likely experience devastating wage cuts if DOL cannot provide a satisfactory replacement for the current AEW methodological by the end of the year.

DOL has now issued a rule that, when it becomes effective on December 21, 2020, will modify the methodology for calculating AEWs. That methodology—which drastically departs from the proposed rule DOL issued in July 2019—arbitrarily freezes 2020 AEWs for two years instead of using the most accurate, recent FLS data to issue 2021 AEWs. The rule also uses a generic labor index to adjust AEWs—based on outdated FLS data—starting in 2023. While acknowledging that “the FLS has been the only comprehensive survey of wages paid by farmers and ranchers,” DOL justifies its decision to stop using updated FLS data largely by relying on USDA’s decision to discontinue the survey. However, the rule ignores that, under this Court’s Order, 2020 FLS data will be available to calculate 2021 AEWs. DOL also chose to freeze farmworker wages and then adjust those wages using an index that does not measure farmworker wages, even though it recognizes that paying below-market wages harms farmworkers and contravenes DOL’s statutory mandate. That contradiction is underscored by DOL’s concession that the rule is actually meant to depress farmworker wages below market rates.

For three reasons, DOL’s new rule does not impact the Court’s conclusion that farmworkers will be irreparably injured absent injunctive relief or render Plaintiffs’ claims moot. *First*, the rule does not undermine any fact, premise, or assumption underlying this Court’s findings that Plaintiffs’ members would be irreparably harmed absent injunctive relief. The Court anticipated and considered DOL’s forthcoming rule when it issued the injunction. Defendants’ motion to dissolve the injunction thus amounts to an improper request for this Court to reconsider issues it already decided. And in any

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