FORGOTTEN CAMPESINOS, FORGOTTEN COUNTIES
THE RAMPANT, FATAL CIVIL RIGHTS ABUSES AGAINST H-2A LABORERS IN NORTH CAROLINA AND THEIR FIGHT FOR BARGAINING POWER IN *N.C. FARM BUREAU FEDERATION V. U.S. DEPARTMENT OF LABOR*[*]

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INTRODUCTION

When a priest visits an H-2A farm in Eastern North Carolina, the laborers gather and form lines of thirty to forty in waiting to receive a blessing.[1] Parish volunteers offer dinner and a Eucharistic

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1. Maria-Pia Negro Chin, *'We are human beings': North Carolina Pastoral Visit Reveals Farmworkers' Harsh Experiences*, OSV NEWS (Sep. 14, 2024), https://www.osvnews.com/we-are-human-beings-north-carolina-pastoral-visit-reveals-farmworkers-harsh-experiences/ (quoting Jesús García, "They make lines of 30–40 people waiting for a blessing").

celebration,[2] placing water bottles underneath folding chairs that face a makeshift altar.[3] When the workers are asked why they traveled so far from home for the temporary work, most of their reasons have a first and last name.[4] They recount the birthdays and graduations they have missed by returning to work at these farms year after year.[5] They fit as much as they can in one evening, for the workers have no command of their own time.[6]

It was at one of these observances where Father Peter Grace discussed blessing the body of Juan José Ceballos, a migrant worker who died working on a farm in Wayne County, NC.[7] On the day of his death, July 6, 2024, the temperatures reached 101 degrees Fahrenheit.[8] Like many temporary migrant farmworkers, Ceballos continued to work in the excessive heat amid the pressures of his employers.[9] Some supervisors push laborers "beyond what [is] reasonable" during a long workday, then proceed to "cram [them] in houses without adequate plumbing, with broken windows or appliances, or in trailers that would get too hot in the summer without air conditioning."[10]

Despite how these conditions violate requirements for the H-2A program, farmworkers are hesitant to report to authorities.[11] They fear being "blacklisted" from the recruiting organizations that send workers to these farms.[12] The organizations that could support them are hours away from the state's "forgotten counties."[13] Their living conditions, language barriers, and fragile immigration status—

2. Maria-Pia Negro Chin, *Raleigh Catholics Strive to Accompany Migrant Farmworkers in Often 'Forgotten' Counties*, OSV NEWS (Sep. 10, 2024), https://www.osvnews.com/raleigh-catholics-strive-to-accompany-migrant-farmworkers-in-oft-forgotten-counties/.

3. *USCCB Visits Eastern NC to Learn Realities of Migrant Farm Workers*, CATH. DIOCESE OF RALEIGH (Sep. 17, 2024), https://dioceseofraleigh.org/news/usccb-visits-eastern-nc-learn-realities-migrant-farm-workers.

4. Chin, *supra* note 2.

5. *Id.*

6. Chin, *supra* note 1.

7. Aaron Sánchez-Guerra, *Department of Labor Investigates Death of Migrant Mexican Farmworker in Eastern NC*, WUNC (July 29, 2024), https://www.wunc.org/race-class-communities/2024-07-29/migrant-mexican-farmworker-death-north-carolina-department-labor.

8. *Id.*

9. *Id.*; Chin, *supra* note 2.

10. Chin, *supra* note 2.

11. Chin, *supra* note 1.

12. *Id.*

13. Chin, *supra* note 2.

threatened by a lack of job security—all keep their constant struggles and pleas far from the public eye.[14]

Labor protections are not born out of thin air: they come from bargaining between employers and laborers. In the H-2A labor market, that bargaining power is virtually nonexistent due to the control farm labor contractors (FLCs) have over their employees.[15] Gracia & Sons LLC., the same FLC that recruited and employed Juan José Ceballos, was sued for human trafficking, wage theft, and mistreatment before reaching an eventual settlement with three plaintiffs in 2023.[16] Other contractors have been found to confiscate workers' passports immediately upon arrival into the United States to limit their mobility, fail to pay for their travel expenses, and unlawfully charge applicants fees reaching up to $8,000 to participate in the federal program.[17]

H-2A farm owners and FLCs are two wings operating in tandem to discourage pushback from laborers. On the FLC side, migrant workers rely on the contractor's access to farm owners and federal immigration services.[18] FLCs compile and provide H-2A workers to a farm in large groups at a time and for a set period,[19] giving them a dominant influence over the supply of labor. The farm owner side frequently provides the day-to-day supervision and management

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14. *Know the Facts*, AGRIC. WORKERS ADVOC. COAL., https://www.awacoalition.org/know-the-facts (last visited Dec. 12, 2025).

15. *Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program*, CENTRO DE LOS DERECHOES DEL MIGRANTE, INC. (2020), https://cdmigrante.org/wp-content/uploads/2020/04/Ripe-for-Reform.pdf.

16. Guerra, *supra* note 6; *see also* Ivy Nicole-Jonét, *Three Labor Camp Cooks Represented by Legal Aid of North Carolina Farmworker Unit and the North Carolina Justice Center Settle their Human Trafficking and Wage Theft Claims with Gracia Harvesting, Inc.*, N.C. JUST. CTR., https://www.ncjustice.org/three-labor-camp-cooks-represented-by-legal-aid-of-north-carolina-farmworker-unit-and-the-north-carolina-justice-center-settle-their-human-trafficking-and-wage-theft-claims-with-gracia-harvesting-inc/ (last visited Dec. 12, 2025).

17. U.S. DEP'T OF LAB., 23-2116-ATL, DEPARTMENT OF LABOR DEBARS LABOR CONTRACTOR WHO THREATENED, INTIMIDATED FARMWORKERS; ASSESS $62K IN PENALTIES FOR ABUSES OF AGRICULTURAL WORKERS (2023) ("Lopez violated federal regulations by . . . [c]harging 21 H-2A workers fees ranging from $150 to $8,000 to participate in the program, despite provisions prohibiting employers from passing along operating costs to employees."), https://www.dol.gov/newsroom/releases/whd/whd20231023.

18. Cesar Escalante, *Hiring H-2A Workers through Farm Labor Contracts*, S. AG TODAY (July 24, 2024), https://southernagtoday.org/2024/07/24/hiring-h-2a-workers-through-farm-labor-contracts/.

19. *Id.*

of migrant workers.[20] In many instances, the FLC *is* considered the "employer," meaning the organization recruiting and certifying the group of workers also pay, house, and transport them.[21] However, farms may take on some of these responsibilities owed to laborers based on their agreement with an FLC.[22] Regardless of how these duties are distributed between farm owner and contractor, the migrant labor force has minimal influence and authority to bargain. Rather, the organizations they work for control every aspect of their living conditions, compensation, and even their ability to stay and work in the country.[23]

In such a cyclical system of abuse, the only effective interference is regulation enforcement.[24] The U.S. Department of Labor issued the *Farmworker Protection (Final Rule)* in attempt to shift *some* bargaining power and group protections to vulnerable employees.[25] The Final Rule revises otherwise insufficient provisions within the H-2A program in order to "empower[] workers to advocate on behalf of themselves and their coworkers regarding working conditions; improv[e] accountability for employers; [and] improv[e] transparency and accountability in the foreign labor recruitment process."[26] In a program so deeply flawed and discretely abusive,[27] the Final Rule's provisions offer a modest foundation for restoring civil liberties and autonomy to laborers making essential contributions to our domestic economy.[28]

As of June 2025, the Trump Administration's Department of Labor has suspended enforcement of the Final Rule.[29] The Wage and

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20. *Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA)*, U.S. DEP'T OF LAB. WAGE & HOUR DIV. (Feb. 2010), https://www.dol.gov/agencies/whd/fact-sheets/26-H2A.

21. *Id.* ("An H-2ALC is a person who meets the definition of an 'employer' under the H-2A Program and does not otherwise qualify as a fixed-site employer or an agricultural association . . . ").

22. *Id.*

23. Chin, *supra* note 1.

24. CENTRO DE LOS DERECHOS DEL MIGRANTE, *supra* note 15.

25. *See Final Rule: Improving Protections for Workers in Temporary Agricultural Employment in the United States*, U.S. DEP'T OF LAB. (June 28, 2024), https://www.dol.gov/agencies/eta/foreign-labor/farmworker-protection-final-rule.

26. *Id.*

27. CENTRO DE LOS DERECHOS DEL MIGRANTE, *supra* note 15.

28. U.S. DEP'T OF LAB., *supra* note 25.

29. Memorandum from Donald M. Harrison, III, Acting Adm'r, U.S. Dep't of Lab., Wage & Hour Div., to Reg'l Adm'rs and Dist. Dirs., Field Assistance Bull.

Hour Division contends this period of abeyance provides predictability for agricultural employers in continuing litigation and aligns with President Trump's commitment to strictly enforcing immigration laws.[30] At the time, seventeen states had already obtained an injunction against the rule, including Georgia, South Carolina, Tennessee and Virginia.[31] Despite the efforts of nearby states, North Carolina upheld the Final Rule in federal district court.[32] Prior to the nationwide suspension, *N.C. Farm Bureau Federation v. U.S. Department of Labor* made North Carolina the sole exception in affirming the Final Rule.[33]

This recent development examines the coordinated efforts by farm owners and employers to dissuade the Final Rule's enforcement in key agricultural centers. *Kansas, et al. v. U.S. Department of Labor* succeeded in blocking the Final Rule for seventeen of those states under the contention that the Final Rule violated the National Labor Relations Act in giving "NLRA-style rights" to a class of people excluded by Congress.[34] Using the same approach to prohibit the regulatory framework, the plaintiffs came short in *N.C. Farm Bureau Federation v. U.S. Department of Labor*.[35]

No. 2025-2, H-2A Farmworker Protection Rule Enforcement Guidance (June 20, 2025), https://www.dol.gov/sites/dolgov/files/WHD/fab/fab2025-2.pdf.

30. Hunter Lovell, *US Department of Labor Issues New Guidance to Provide Clarity for Farmers on H-2A Worker Regulations*, U.S. DEP'T OF LAB. (June 20, 2025), https://www.dol.gov/newsroom/releases/whd/whd20250620.

31. Bill Shultz, *When Right Is Wrong and Always Has Been:* Kansas v. U.S. Dep't of Labor *and 400 Years of Farm Worker Exploitation*, GEO. ENV'T L. REV. (Nov. 7, 2024), https://www.law.georgetown.edu/environmental-law-review/blog/when-right-is-wrong-and-always-has-been-kansas-v-u-s-dept-of-labor-and-400-years-of-farm-worker-exploitation/; *see also* Barron Dickinson, *Federal Courts Expected to Decide Fate of DOL's Farmworker Protection Rule Soon*, SESO (Oct. 17, 2024), https://www.sesolabor.com/blog/federal-courts-expected-to-decide-fate-of-dol-s-farmworker-protection-rule-soon.

32. *See generally* N.C. Farm Bureau Fed'n, Inc. v. U.S. Dep't of Lab., 781 F. Supp. 3d 455 (E.D.N.C. 2025).

33. *See* Katherine Zehnder, *NC Farm Bureau Sues US Department of Labor*, THE CAROLINA J. (Oct. 28, 2024), https://www.carolinajournal.com/nc-farm-bureau-sues-us-dept-of-labor/.

34. Daniel Wiessner, *US Judge Blocks Biden Rule on H-2A Farmworker Union Organizing*, REUTERS (Aug. 27, 2024), https://www.reuters.com/legal/government/us-judge-blocks-biden-rule-h-2a-farmworker-union-organizing-2024-08-27/.

35. Compl., N.C. Farm Bureau Federation v. U.S. Dep't of Lab., 781 F. Supp. 3d 455 (E.D.N.C. 2025) (No. 5:24-CV-00527-FL).

The first section of this recent development provides a brief overview of the history, legislative intention, and evolution of the H-2A program. The following section explores the Final Rule and how the two above cases challenged its enforcement. The third section addresses the plaintiffs' argument by examining the National Labor Relations Act and its exclusion of farmworkers. Lastly, we will evaluate how the Final Rule and similar regulations are threatened by the modern wave of deregulation and upheaval in administrative authority.

In spite of the Final Rule's suspension, the decision in *N.C. Farm Bureau* remains notable. Considering the malfunction and under-regulation of the modern H-2A program; the antiquated motivations behind excluding farmers from the NLRA; and the overwhelming demand for migrant bargaining power; the Eastern District of North Carolina was right to preserve the Final Rule. It was a starting point to protect thousands of laborers from civil injustice and coercion, and to save their lives from fatal working conditions. The neglect of these lawful residents and rural communities must be answered through an expansion of regulation on the H-2A program and stricter enforcement on violating employers.

I. H-2A PROGRAM & REGULATION

A. *H-2A: Modest Beginnings to Rapid Growth*

The H-2A program was born in 1986 under the Reagan administration, enabled by the Immigration Reform and Control Act.[36] It was a new designation for legal immigration into the United States for the purpose of providing temporary labor.[37] Under the H-2A program, agricultural employers who predict they won't be able to access enough domestic workers for a critical harvesting period can apply with the Department of Labor to be a certified H-2A employer.[38] If certified, the employer may then recruit and submit applications for

36. Audrey Holtkamp, *Overview of the H-2A Visa Program*, IOWA STATE CTR. AGRIC. L. & TAX'N (Aug. 17, 2021), https://www.calt.iastate.edu/article/overview-h-2a-visa-program.

37. *Id.*

38. Berdikul Qushim, Zhengfei Guan, and Fritz M. Roka, *The H-2A Program and Immigration Reform in the United States*, U. OF FLA. INST. FOOD AND AGRIC. SCI. (Jan. 21, 2025), https://edis.ifas.ufl.edu/publication/FE1029.

prospective laborers to come to the United States for a specified period of no longer than a year.[39]

Employer-applicants must meet two conditions under the program: (1) they must demonstrate that there are insufficient numbers of domestic workers who are "willing and able" to perform the agricultural job, and (2) they must show that bringing in these migrant workers "will not adversely affect the earnings and working conditions of similarly employed US workers."[40] This is why the program is often described as a "win-win" by its advocates, as the program satisfies the demand for seasonal labor while providing foreign workers with the opportunity to lawfully enter the United States and receive higher wages than they would at home.[41]

For roughly the first two decades of its existence, the H-2A program was not widely used.[42] However, as FLCs and farms have grown accustomed to the program, it has expanded exponentially.[43] From 2005 to 2022, the number of certified temporary jobs increased from around 50,000 to over 370,000.[44] Nearly half of this growth occurred over a six-year period, indicating this trend is only accelerating.[45] In the 2023 fiscal year, North Carolina accounted for 26,146 certified positions – the fifth highest H-2A state in the country.[46]

Although FLCs are required to show an inability to hire domestic labor, there remains a growing reliance on migrant labor in the agricultural sector. At seventeen percent of the total share of the agricultural workforce,[47] H-2A employment now extends beyond a "last resort" for employers. Rather, H-2A workers make up an

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39. *Id.*

40. *Id.*

41. CENTRO DE LOS DERECHOS DEL MIGRANTE, *supra* note 15.

42. Holtkamp, *supra* note 36.

43. Marcelo Castillo, *H-2A Temporary Agricultural Job Certifications Continued To Soar in 2022*, USDA ECON. RSCH. SERV. (Mar. 13, 2023), https://www.ers.usda.gov/amber-waves/2023/march/h-2a-temporary-agricultural-job-certifications-continued-to-soar-in-2022.

44. *Id.*

45. *Id.*

46. *H2-As: 5 States had 50% H-2A Jobs in FY23*, RURAL MIGRATION NEWS (Jan. 2024), https://migrationfiles.ucdavis.edu/uploads/rmn/blog/2024/01/Rural%20Migration%20News%20Blog%20340.pdf.

47. Samantha Ayoub, *Debunking H-2A Myths*, AM. FARM BUREAU FED. (Nov. 15, 2024), https://www.fb.org/market-intel/debunking-h-2a-myths#:~:text=5.,of%20the%20total%20agricultural%20workforce.

enormous share of the industry, and their widespread certification reflects the desperate demand for farm labor in rural America.

B. *H-2A Abuses and Shortcomings*

Untamed growth in the program has introduced a more urgent need for regulation enforcement, which the program has not met. A 2020 report from the Centro de los Derechos del Migrante (Center for Migrant Rights) found that ninety-four percent of migrant workers experienced three or more serious legal violations by their employer, forty-three percent were not paid wages they were promised, and nearly a third were subjected to serious verbal abuse, experienced restrictions on their mobility, and did not feel free to quit the program.[48] Workers are also denied basic health and safety measures, as forty-five percent of surveyed workers described overcrowded and unsanitary housing, some of which did not have functioning bathrooms and were infested with rats and pests.[49] Employers have taken advantage of the lack of enforcement over their pervasive violations, reducing the costs of migrant labor and keeping them in intimidating conditions that suppress their autonomy.

C. *The Farmworker Protection Rule*

Accounting for these shortcomings, President Biden's Department of Labor sought to enhance their "capabilities to monitor program compliance and take necessary enforcement actions against program violators" in the Farmworker Protection Final Rule.[50] The new rule clarifies it does *not* require H-2A employers to recognize unions, nor must employers engage in collective bargaining protected

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48. *See* CENTRO DE LOS DERECHOS DEL MIGRANTE, *supra* note 15 (The "Major Findings At a Glance" table provides all of the mentioned statistics. "Serious Legal Violations" included the payment of recruitment fees, lack of reimbursement for travel, wage theft, sexual harassment, etc.).

49. *Id.* at 6.

50. Improving Protections for Workers in Temporary Agricultural Employment in the United States, 89 Fed. Reg. 33898 (Apr. 29, 2024) (to be codified at 20 C.F.R. pts 651, 653, 655, 658 and 29 C.F.R. pt. 501) ("The revisions in this final rule focus on strengthening protections for temporary agricultural workers and enhancing the Department's capabilities to monitor program compliance and take necessary enforcement actions against program violators.").

in statutes like the NLRA.[51] Rather, the Final Rule requires that employers provide assurance "they will not intimidate, threaten, or otherwise discriminate against certain workers or others for engaging in 'activities related to self-organization.'"[52] The rule does not protect collective action; it deters mistreatment and abuse inflicted upon migrant workers who raise concerns about their health and safety.

The Final Rule additionally requires more transparency in the recruitment process due to the wave of cases exposing FLC human trafficking, unlawful application fees, and wage theft.[53] It requests that employers provide more identifiable information as to who is managing and operating the business, as well as which farms are contracted with the FLC.[54] It reasserts an existing provision that informs workers of protections in their living standards and contractual rights before accepting a job.[55] In response to the many labor trafficking violations, the Department of Labor prohibits employers from "holding or confiscating a worker's passport, visa, or other immigration or government identification documents,"[56] a strategy frequently used by employers to hold their employees captive in the H-2A system and coerce them into returning each season.

Among these changes and minor enhancements to housing and transportation enforcement, the Department provided an adequate transition period and announced the new rule would take effect on June 28, 2024.[57] Despite the moderate revision, it did not take long before the rule was met with pushback from employers and anti-union organizations across the country.[58]

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51. *Id.* at 33901.
52. *Id.*
53. *See id.* at 33902.
54. *Id.*
55. *See id.*
56. *Id.* at 33903.
57. *Id.* at 33898.
58. *See* Dickinson, *supra* note 31.

II. ATTACK ON THE FINAL RULE

A. Kansas et. al

The seventeen-state roadblock to the Final Rule in *Kansas et. al* provided a framework for the attempt in North Carolina.[59] In the Southern District of Georgia, Judge Lisa Wood granted a preliminary injunction to halt the Final Rule in several states, holding it "violates the NLRA because the DOL attempts to unconstitutionally create law" by extending collective bargaining rights to H-2A farm workers.[60] The states argued the Final Rule would provide immigrant workers with rights which domestic agricultural employees do not enjoy.[61]

Although the agency did not exceed their authority under the H-2A program to make the rule on its face,[62] the language of the rule was ruled too similar to the NLRA and correspondingly "creates a right not previously bestowed by Congress."[63] The court reasoned, since agencies may only promulgate rights which Congress *intends* to create, the exclusion of agricultural workers from the NLRA implies there is no intention for some similar rights under the IRCA.[64]

This ruling contends with statutes such as the Federal Service Labor Management Relations Statute (FLSMRS), which provides collective bargaining protections for public employees, who are also excluded from the NLRA.[65] Nevertheless, the "NLRA-style" rights argument prevailed and kept thousands of farmworkers from the Final Rule's protections.[66] A few months later, the state of Kentucky reached the same outcome for their borders in *Barton, et al. v. U.S. Dep't of Labor*.[67]

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59. Mike Davis, *NC Farm Bureau Files Suit over H-2A Rule*, S. FARM NETWORK TODAY (Sept. 22, 2024, 11:57 PM), https://www.sfntoday.com/2024/09/23/nc-farm-bureau-files-suit-over-h-2a-rule/.

60. Kansas v. U.S. Dep't. of Lab., 749 F. Supp. 3d 1363, 1376 (S.D. Ga. 2024).

61. *Id.* at 1369.

62. *Id.* at 1373.

63. *Id.* at 1377.

64. *Id.*

65. *See* 5 U.S.C. §§ 7101–7135.

66. *Kansas*, 749 F. Supp. 3d at 1333.

67. *See* Barton v. U.S. Dep't of Lab., 757 F. Supp. 3d 766 (S.D. Ga. 2024).

B. N.C. Farm Bureau

The N.C. Farm Bureau Federation initiated the effort against the Final Rule in the state—a collective of NC farm owners who, in their own words, "consistently oppose the unionization of agricultural employees."[68] Their argument was nearly identical to the Attorney General in *Kansas et al.*, asserting the Department of Labor lacked authority to make rules which create rights for agricultural employees that are 'exclusive' to employees under the NLRA.[69]

Yet the Eastern District court diverged with *Kansas* and *Barton* on what the Final Rule sets out to do.[70] It views the NLRA as separate from the federal H-2A program and additionally finds the rule consistent with Congress's intention under the IRCA.[71] Since the Department of Labor is responsible to prevent exploitation and abuse of agricultural employees, it is within their authority to make rules which both preserve the integrity of the federally funded H-2A program and its residual effects on the domestic labor market:[72]

> [The Department of] Labor determined through program experience, recent litigation, challenges in enforcement, comments on this rulemaking as well as on prior rulemakings, and reports from various stakeholders that it is necessary to adopt stronger protections for agricultural workers to better ensure that employers, agents, attorneys, and labor recruiters comply with the law, and to enhance program integrity by improving the Department's ability to monitor compliance and investigate and pursue remedies from program violators.[73]

The court also made a key distinction on the scope of the Final Rule as compared to the NLRA.[74] The Final Rule does not *convey* a

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68. Compl., *supra* note 35, at 3 ("Farm Bureau's farmer members have consistently opposed the unionization of agricultural employees.").

69. *Id.*

70. N.C. Farm Bureau Fed'n, Inc. v. U.S. Dep't of Lab., 781 F. Supp. 3d 455 (E.D.N.C. 2025).

71. *Id.* at 473.

72. *See id.*

73. *Id.*

74. *See id.* at 477.

right to collectively bargain whereas the NLRA does.[75] "Collective bargaining" is a mutual obligation between employers and employees to bargain in good faith.[76] Nothing in the Final Rule imposes an obligation on employers and employees to collectively bargain or negotiate.[77] The rule merely encourages employers to refrain from threats and retaliation against migrant farm workers who engage in labor organization.[78]

Rather than attempting to influence collective bargaining on the H-2A program, the agency was acting "in order to fulfill its statutory mandate to protect the wages and conditions of U.S. agricultural workers."[79] The court in *N.C. Farm Bureau* took a more holistic view of the federal program, demonstrating that any opportunities for H-2A employers to retaliate against their employees injures the industry as a whole.[80] Where any farmworker faces a threat to their wages and autonomy, both domestic and migrant labor suffer.

Following this decision, the Farm Bureau appealed to the Fourth Circuit.[81] The Trump Administration took over the agency, suspended the Final Rule, and did not oppose the Farm Bureau's motion for abeyance .[82] Thus, the Fourth Circuit granted the motion and delayed a decision on the matter until new rulemaking is completed or the Final Rule is revived.[83]

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75. *Id.*

76. 29 U.S.C. § 158(d).

77. N.C. Farm Bureau Fed'n, Inc. v. U.S. Dep't of Lab., 781 F. Supp. 3d 455, 477 (E.D.N.C. 2025).

78. Improving Protections for Workers in Temporary Agricultural Employment in the United States, 89 Fed. Reg. 33898 (Apr. 29, 2024) (to be codified at 20 C.F.R. pts 651, 653, 655, 658 and 29 C.F.R. pt. 501).

79. N.C. Farm Bureau Fed'n, 781 F. Supp. at 477.

80. *See generally id.*

81. N.C. Farm Bureau Fed'n v. U.S. Dep't of Lab., 2025 U.S. App. LEXIS 19073 (4th Cir. 2025).

82. *Id.*

83. *Id.*

III. THE MUTUALLY EXCLUSIVE H-2A & NLRA

A. The NLRA: Its Origins and Exclusion of Farm Workers

The NLRA is wholly separate from the H-2A program.[84] However, the NLRA has been selected by adversaries as the key analogous statute for blocking the final rule, notably because it provides union protections to private sector employees and excludes farm workers from the statute entirely.[85] However, the NLRA's origins and evolution reveal that the exclusion of agricultural workers was less justified by the interests of small farm owners, but rather a motivation to belittle minority bargaining power in the South.[86]

As one of the many New Deal policies, the NLRA was intended to bolster the working class during a period of economic struggle.[87] Passed in 1935, the Act gave employees the right to form, join, and bargain under a union.[88] It also required employers to recognize a duly certified union and negotiate with them in good faith.[89] Beyond unionization, the NLRA provided a foundation of protection for employees engaging in "concerted activities" such as discussing and petitioning over wages, working conditions, or any matter serving the purpose of "mutual aid or protection."[90] This was a critical shift in labor relations that continues to protect collective

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84. *Id.* at 33901 n. 9 ("Nothing in this final rule alters or circumscribes the rights of workers who are already protected by the NLRA to engage in conduct and exercise rights afforded under that law.").

85. Wiessner, *supra* note 34; Dickinson, *supra* note 31.

86. Nat'l Park Serv., *Thirty Years of Farmworker Struggle*, *in* THE ROAD TO SACRAMENTO: MARCHING FOR JUSTICE IN THE FIELDS (2025), https://www.nps.gov/articles/000/a-new-era-of-farm-workerorganizing.htm#:~:text=But%20farmworkers%2C%20along%20with%20domestic,in%20economic%20and%20political%20power.

87. *See 1935 passage of the Wagner Act*, NLRB, https://www.nlrb.gov/about-nlrb/who-we-are/our-history/1935-passage-of-the-wagneract#:~:text=In%20February%201935%2C%20Wagner%20introduced,rather%20than%20to%20mediate%20disputes (last visited May 13, 2026) (explaining that the Wagner Act "gave employees the right, under Section 7, to form and join unions, and it obligated employers to bargain collectively with unions selected by a majority of the employees in an appropriate bargaining unit.").

88. *Id.*

89. *Id.*

90. 29 U.S.C. § 157.

action, but its exclusion of the agricultural industry remains a point of contention—and confusion—to this day.

A coalition of Southern Democrats known as the "Farm Bloc" had significant influence in Congress with the intention of "using constitutional federalism to counteract the perceived power of transportation and banking corporations."[91] The Farm Bloc fought against several New Deal efforts, especially relating to programs that would reform the socio-economic hierarchy of the South.[92] During NLRA negotiations, the group argued that "farmworker unions could potentially threaten the nation's food supply and that higher wages would result in rising consumer prices for food and other basic commodities."[93] They also advocated for the exclusion of farm workers in another key piece of legislation, the Fair Labor Standards Act (FLSA).[94]

The Farm Bloc's support was contingent upon the exclusion of agricultural employees in the NLRA and FLSA, both of which succeeded.[95] As a result, Black, Mexican, and Filipino workers were disproportionately left without labor protections.[96] By that time, the number of Black sharecroppers in the South had reached a high of over 392,000.[97] Black economic mobility was diminished by the Farm Bloc's revisions.[98] A prior New Deal program, the Agricultural Adjustment Act, directly harmed sharecroppers by offering subsidies to farmers who would limit the production of certain crops.[99] The Agricultural Adjustment Act was intended to increase crop prices and limit their overproduction.[100] Accordingly, sharecroppers, whose

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91. Roderick M. Hills, Jr., *Farm-Bloc Federalism: The Rise, Fall (and Rise Again?) of a Constitutional Coalition*, 3 U. OF WIS. L. SCH. J. AM. CON. HIST. 445 (2025), https://doi.org/10.59015/jach.SHHJ4083.

92. *Id.* at 490.

93. Nat'l Park Serv., *supra* note 86.

94. *Id.*

95. *See id.* The FLSA was amended twice in 1966 and 1977 to extend coverage to agricultural workers for the majority of its standards.

96. *Id.*

97. RURAL BUS.-COOP. SERV., U.S. DEP'T OF AGRIC., RBS RESEARCH REPORT 194, BLACK FARMERS IN AMERICA, 1865-2000: THE PURSUIT OF INDEPENDENT FARMING AND THE ROLE OF COOPERATIVES 4 (2002).

98. *See generally* Hills, *supra* note 91, at 1.

99. Chris Dobbs, *Agricultural Adjustment Act*, NEW GA. ENCYC. (Jan. 29, 2016), https://www.georgiaencyclopedia.org/articles/business-economy/agricultural-adjustment-act/.

100. *Id.*

profits were determined by the share of each crop sold, lost substantial revenue from the decrease in production.[101]

Inconsistency in policy direction shines a light on the Farm Bloc's motivations during the New Deal era. On one end, they pushed the Agricultural Adjustment Act to help raise crop prices and bolster that sector of the economy.[102] However, their reasoning for excluding agricultural employees from the NLRA was to *prevent* "rising consumer prices for food."[103] These justifications do not align, and they generate confusion over the Farm Bloc's vision for developing the agricultural sector. The FLSA was eventually amended to include farmers during the Civil Rights Era in 1966,[104] and even expanded its coverage further in 1977, but the NLRA has remained steadfast in its exclusion.[105] Aside from price control, both the NLRA's exclusion and the Agricultural Adjustment Act have one quality in common: both acts deprived Black farmers of their benefits and protections, creating an even greater divide between Black and white laborers in the South.[106]

Even if the Final Rule is interpreted to give a few "NLRA-rights" to agricultural laborers (such as the majority found in *Kansas et al.*),[107] the historical basis for their exclusion is deeply rooted in racism and an intention to undercut minority bargaining power in the South. The motivation behind excluding farm workers from the NLRA in the first place is flawed and contrary to the general welfare. Congress' declaration of purpose in the NLRA states that protections for labor organization "collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by

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101. *See generally* RURAL BUS.-COOP., *supra* note 97.

102. Dobbs, *supra* note 99.

103. Nat'l Park Serv., *supra* note 86.

104. Lyndon B. Johnson, Remarks at the Signing of the Fair Labor Standards Amendments of 1966 (Sept. 23, 1966), *in* AM. PRESIDENCY PROJECT, https://www.presidency.ucsb.edu/documents/remarks-the-signing-the-fair-labor-standards-amendments-1966 ("very pleased to say [the amended act] includes farm workers for the first time [. . .] it will help minority groups who are helpless in the face of prejudice that exists.").

105. *History of Change to the Minimum Wage Law*, DEP'T OF LAB., https://www.dol.gov/agencies/whd/minimum-wage/history (last visited May 13, 2026).

106. *Id.*

107. Wiessner, *supra* note 34.

removing certain recognized sources of industrial strife and unrest."[108] All of these safeguards and benefits would still exist—and not be threatened by—the inclusion of agricultural employees.

B. Mutual Exclusivity

Although the racist origins of the NLRA are relevant to a greater discussion on labor relations, the Act's substance is independent of the protections and regulations for H-2A employees.[109] The Final Rule explicitly states it "does not require H–2A employers to recognize labor organizations or to engage in any collective bargaining activities such as those that may be required by the NLRA itself or by a State law" [110] and that "[n]othing in this final rule alters or circumscribes the rights of workers who are already protected by the NLRA."[111] Adversaries to the rule rely on an obscure depiction of "NLRA-style" rights,[112] claiming the Final Rule gives rights to farmers that are "almost identical" to the NLRA.[113] However, the magnitude of the NLRA is much greater than the Final Rule. The NLRA gives employees the right to engage in collective action and bargain as a unit, requires employers to bargain in good faith with a certified union, and protects its workers from retaliation.[114] The retaliation element is just one ingredient in a much larger system of labor relations.

Furthermore, the NLRA is not the sole indicator in granting union protection for all laborers, nor is the Act intended to limit the rights for the excluded workers. Public employees, who are covered

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108. 29 U.S.C. § 151 ("Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.")

109. Improving Protections for Workers in Temporary Agricultural Employment in the United States, 89 Fed. Reg. 33898, 33901 (Apr. 29, 2024) (to be codified at 20 C.F.R. pts 651, 653, 655, 658 and 29 C.F.R. pt. 501).

110. *Id.*

111. *Id.* at 33901 n. 9.

112. Compl., N.C. Farm Bureau Fed'n v. U.S. Dep't of Lab., 781 F. Supp. 3d 455 (E.D.N.C. 2025) (No. 5:24-CV-00527-FL), at 27.

113. *Id.*

114. NLRB, *supra* note 87.

by FLSA but not the NLRA, were given their own set of collective bargaining protections by the Civil Service Reform Act of 1978, which is now known as the Federal Service Labor Management Relations Statute (FSLMRS).[115] The FSLMRS has protections that are far more comparable to the NLRA than the Final Rule, protecting "the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them."[116]

The mere existence of the FSLMRS demonstrates that collective bargaining rights do not begin and end with the NLRA. Legislation related to collective bargaining may exist in any industry in which there are employees and employers. If the FSLMRS and NLRA can exclusively govern their distinct classes of employees, the Final Rule can do the same. As evidenced by the Final Rule and its conservative grant of worker protections, the H-2A program is mutually exclusive and divorced from the NLRA.[117]

IV. THE FINAL RULE'S LIFESPAN IN A *LOPER BRIGHT* WORLD

Despite its lack of interference with the NLRA, it was no surprise when the Final Rule was met with immediate criticism from those who disfavor administrative rulemaking. The rule was made effective on the same day *Loper Bright Enterprises et al. v. Raimondo* was decided, which overturned the *Chevron* doctrine and bolstered the authority of judicial discretion when a federal agency relies on ambiguous language for a decision.[118] The shift to a new *Loper Bright* standard influenced a wave of challenges to administrative rulemaking in hopes that increased judicial discretion would provide new barriers to administrative rulemaking.[119] In combination with another recent decision in *Ohio v. EPA*, the judicial standard of review has made two

115. Federal Services Labor Management Relations Statute, 5 U.S.C. § 7101.

116. *Id.* at § 7101(a)(1).

117. Improving Protections for Workers in Temporary Agricultural Employment in the United States, 89 Fed. Reg. 33898, 33901 (Apr. 29, 2024).

118. *Id.* at 33898; *see generally* Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024).

119. BENJAMIN M. BARCZEWSKI, CONG. RSCH. SERV., R48320, LOPER BRIGHT ENTERPRISES V. RAIMONDO AND THE FUTURE OF AGENCY INTERPRETATIONS OF LAW (2024).

notable changes as it relates to *N.C. Farm Bureau*.[120] First, the standard for blocking an agency rule as "arbitrary and capricious" is both upheld and more attainable.[121] Second, both decisions effectively eradicate the Major Questions Doctrine.[122] Even with the improved authority for courts to block agency rules, the Final Rule was not found in *Kansas et al.* to be "arbitrary and capricious."[123]

CONCLUSION

North Carolinians have a duty to protect their fellow laborers where their civil rights and autonomy are violated. This duty has been fulfilled in some instances, such as the recent efforts of the North Carolina Justice Center's recovery of over $300,000 in wage theft for H-2A employees against an FLC and farm in the state.[124] It is essential to expand regulations on the federal program so that states and organizations may step in and support migrant farmworkers from a system predisposed to coercion and abuse. The H-2A program cannot continue to be overlooked, and the basic needs of its farmworkers must not be forgotten.

120. Richard J. Pierce, Jr., *Two Neglected Effects of Loper Bright*, THE REGUL. REV. (Jul. 1, 2024), https://www.theregreview.org/2024/07/01/pierce-two-neglected-effects-of-loper-bright/.

121. *Id.*

122. *Id.*

123. Kansas v. U.S. Dep't. of Lab., 749 F. Supp. 3d 1363, 1376 (S.D. Ga. 2024).

124. Clermont Ripley, *NC Justice Center Secures $305,000 Wage Theft Settlement for H-2A Visa Farmworkers*, N.C. JUST. CTR. (Mar. 23, 2026), https://www.ncjustice.org/justice-center-secures-305000-wage-theft-settlement-for-h-2a-visa-farmworkers/.