

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

ANIMAL LEGAL DEFENSE FUND, ET AL.,

Plaintiffs-Appellees,

v.

KIMBERLEY K. REYNOLDS, in her official capacity as Governor of Iowa, ET
AL.,

Defendants-Appellants.

On Appeal from the U.S. District Court for the
Southern District of Iowa,
Case No. 4:17-cv-362-JEG-HCA

BRIEF OF *AMICUS CURIAE* UNITED FARM WORKERS OF
AMERICA IN SUPPORT OF PLAINTIFFS-APPELLEES

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(c)(1), United Farm Workers of America certifies that it does not have a parent corporation and that no publicly-held corporation owns 10% or more of its stock.

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STATEMENT OF COMPLIANCE WITH FED. R. APP. P. 29(C)(5)

Counsel for the parties did not author this brief, nor have the parties contributed money intended to fund preparing or submitting this brief. No person other than *amicus curiae* and its counsel contributed money that was intended to fund preparing or submitting this brief.¹

CONSENT OF THE PARTIES

UFW obtained affirmative consent from Plaintiffs-Appellees to file the proposed *amicus curiae* brief. On June 19, 2019, UFW sought consent from Defendants-Appellants. In response, Defendants-Appellants stated, “Counsel for the Defendants-Appellants will not object to a request for leave to file an amicus brief in this matter.”

¹ Attorneys from Advancing Law for Animals prepared this brief *pro bono* for United Farm Workers of America.

INTERESTS OF *AMICUS CURIAE*

Founded in 1962, the United Farm Workers of America (“UFW”) is the nation’s oldest and largest farm workers’ union. To promote a just food supply, UFW works to protect the health and safety of farm workers from occupational injuries due to unsafe working conditions, sexual harassment, physical violence, and violations of labor and human rights. UFW vindicates farm workers’ rights through, among other things, assisting in investigating and documenting violations of the law, filing complaints with state and federal agencies, assisting farm workers in finding attorneys to represent them in civil litigation against agricultural employers, assisting in organizing farm workers for collective-bargaining purposes, educating the public regarding farm-related issues of public concern, and engaging with retailers regarding social-justice, food safety, and health issues affecting the food supply chain. UFW has thousands of members, many of whom are highly vulnerable migrant and seasonal farm workers, and serves farm workers across the country, including Iowa.

UFW respectfully submits this Brief, as Iowa Code § 717A.3A (the “Ag-Gag Law”) threatens not only the First Amendment rights of farm

workers in Iowa, but their physical safety and livelihood. As the Ag-Gag Law criminalizes reasonable steps taken in the investigation and documentation of unlawful employment conditions, it chills the ability of UFW and the farm workers UFW represents from investigating, documenting, and if necessary, filing formal complaints to vindicate their rights. The Ag-Gag Law also stifles the ability the UFW and farm workers it represents to investigate and document concomitant matters in the public interest, such as food safety and animal welfare. Accordingly, UFW and the farm workers UFW represents have a significant interest in the outcome of this case.

SUMMARY OF ARGUMENT

UFW joins the arguments of Plaintiffs-Appellees and other *amici curiae*, which articulate in detail how the Ag-Gag Law violates the First Amendment. In this brief, UFW clarifies how such constitutional violations expose an already-marginalized segment of the work force to increased risk of physical danger, harassment, sexual abuse, wage theft, and forced labor. This brief further illustrates how the Ag-Gag Law interferes with the ability of UFW and farm workers it represents to (i) document evidence necessary for farm workers to vindicate their legal rights; (ii) petition courts and government agencies to redress legal grievances of farm workers; (iii) organize farm workers for collective-bargaining purposes; (iv) document evidence of conditions harmful to public safety and in violation of the public interest; and (v) engage with and educate retailers about conditions in the food supply chain that threaten workers, public health, the environment, and animals.

ARGUMENT

I. INTRODUCTION

Farm workers are seminal to the production and distribution of food. They are literally responsible for our nourishment as a society. But

limitations in regulatory enforcement, isolation, educational and language barriers, and immigration status leave farm workers uniquely vulnerable to employer mistreatment and exploitation. UFW works to improve conditions for farm workers by helping them to identify violations and enforce their rights, assisting in their organization and collective bargaining, and educating the public and retailers as to concomitant dangers to public health and welfare associated with unsafe work conditions.

Iowa's Ag-Gag Law criminalizes appropriate efforts to investigate and document violations of farm worker rights, as well as the attendant consequences of unsafe working conditions on the public interest. In doing so, the law violates the First Amendment rights of UFW and farmworkers.

II. IOWA'S AG-GAG LAW FURTHER ENDANGERS ALREADY-VULNERABLE FARM WORKERS BY PREVENTING THEM FROM VINDICATING THEIR RIGHTS

A. Farm Workers are Among the Most Vulnerable and Marginalized Worker Population in the United States

Because farm workers face serious barriers in vindicating their legal rights, agricultural production facilities are able to extract greater profits by exploiting this vulnerable employment population. Farm

workers are entitled to a work place free from known health or safety hazards, a right to a workplace free sexual harassment, a right to a workplace free of employment discrimination, to receive a minimum wage for one's labor, and the right to be free from all forms of labor trafficking. *See, e.g.*, Occupational Safety and Health Act of 1970 ("OSHA"), 29 U.S.C. § 651 *et seq.*; Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e *et seq.*; Fair Labor Standards Act ("FLSA") 29 U.S.C. § 206; Migrant and Seasonal Agricultural Worker Protection Act ("AWPA") 29 U.S.C. § 1822; Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102 (9)(B); Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1964(c); Human Trafficking, Iowa Code Ann. § 710A.2 and Iowa Code Ann. § 915.51.

But farm workers face formidable impediments in enforcing these rights. According to the Department of Labor, approximately 78 percent of farm workers were born outside the United States, and 44 percent of farm workers do not speak any English.² Farm workers, on average, have

² Dep't of Labor, *A Demographic and Employment Profile of United States Farm Workers: Findings from the National Agricultural Workers Survey (NAWS) 2001-2002, Research Report No. 9* (March 2005).

only a seventh-grade education.³ Approximately 16 percent are foreign migrant workers and 53 percent are undocumented immigrants;⁴ as a result, when farm workers do submit a formal complaint, authorities may view them as complicit criminals because of their immigration status.⁵ And, even foreign migrant workers who come to the United States under the H-2A guest worker program could face deportation, as they are authorized to work for only the specific employer on their H-2A visas and cannot seek other employment if they are fired for complaining about work conditions.⁶

These barriers are exacerbated, as farm workers have access to no or limited resources to vindicate their rights. The average annual total family income for farm workers ranges from \$17,500 to \$19,999; this figure does not take into account the even lower incomes of unauthorized

³ *Id.*

⁴ *Id.*

⁵ National Institute of Justice, *Identifying Challenges to Improve the Investigation and Prosecution of State and Local Human Trafficking Cases* (April 2012), at 184.

⁶ See *Hidden Slaves: Forced Labor In The United States*, Human Rights Center, University of California, Berkeley (Sept. 2004), <http://www.freetheslaves.net/wp-content/uploads/2015/03/Hidden-Slaves.pdf> (hereinafter, “Hidden Slaves”).

workers.⁷ Fear of retaliation—in the form of termination, harassment, or violence—strongly discourage farm workers from reporting violations by their employers. *See, e.g., Beliz v. W.H. McLeod & Sons Packing Co.*, 765 F.2d 1317, 1332-33 (5th Cir.1985) (“[F]arm workers who attempt to assert their rights must overcome a general background of fear and intimidation caused by the widespread practice of retaliation against those who complain about violations.”). Retaliation is even more formidable, as few safety nets exist for those who lose their jobs. Only 39 percent of farm workers are eligible for unemployment insurance, and less than 50 percent of farm workers are eligible for workers’ compensation.⁸ Approximately one in six farm workers live in employer-provided housing; for them, losing their job could mean immediate homelessness or housing insecurity for their entire family.⁹

⁷ *Cultivating Fear*, Human Rights Watch (May 15, 2012), at 18, https://www.hrw.org/sites/default/files/reports/us0512ForUpload_1.pdf.

⁸ Human Rights Watch, *supra* note 7, at 18.

⁹ Inventory of Farmworker Issues and Protections in the United States, Bon Appétit Management Company (Mar. 31, 2011), at 23, http://www.bamco.com/content/uploads/2016/06/farmworkerinventory_updated2016.pdf.

These factors leave agricultural workers in a “climate of fear,”¹⁰ feeling “disposable,” and often reluctant to report injuries or health or safety violations.¹¹ They fear being fired for work-related injuries or even for seeking medical treatment from someone other than the company nurse or doctor.¹² One report describes supervisors discouraging workers from reporting work-related injuries, despite constant pain.¹³ Several news outlets have covered the common practice of poultry processing facilities denying farm workers restroom breaks—forcing them to urinate and defecate while standing, or wear diapers to work.¹⁴

¹⁰ *Unsafe at These Speeds*, Southern Poverty Law Center (Feb. 28, 2013), at 4, https://www.splcenter.org/sites/default/files/Unsafe_at_These_Speeds_web.pdf.

¹¹ *Injustice on Our Plates*, Southern Poverty Law Center (Nov. 7, 2010), at 23, https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/Injustice_on_Our_Plates.pdf (reporting based on interviews of approximately 150 women who were either undocumented or had spent time in the U.S. as undocumented immigrants, and who worked in the U.S. food industry in Arkansas, California, Florida, Iowa, New York or North Carolina.).

¹² Southern Poverty Law Center, *supra* note 10, at 4.

¹³ *Id.*

¹⁴ *See, e.g.*, Roberto Ferdman, ‘I had to wear Pampers’: The cruel reality the people who bring you cheap chicken allegedly endure, *The Washington Post* (May 11, 2016).

The vulnerability of farm workers, coupled with the incidence of systemic workplace legal violations and abuse, underscore the critical need for organizations like UFW. Through aiding in the investigation and documentation of violations of farm workers' rights, and utilizing this data to support petitions for legal redress, UFW's work is essential for the vindication of worker and human rights.

B. Iowa's Ag-Gag Law Criminalizes and Effectively Chills the Investigation and Documentation of Violations of Farm Workers' Rights, as Well as Organization for Collective Bargaining

Although the investigation and documentation of workplace conditions for farm workers is essential, the Iowa Ag-Gag Law criminalizes these efforts, effectively chilling petitions for redress. Specifically, the Ag-Gag Law prohibits “[o]btain[ing] access to an agricultural production facility by false pretenses[,]” or “[m]ak[ing] a false statement or representation as part of an application or agreement to be employed” with an “intent” to commit an “an act not authorized by the owner of the agricultural production facility, knowing that the act is not authorized.”). Iowa Code Ann. § 717A.3A(1)(a)-(b). This sweeping prohibition deters the investigation and documentation of illegal

workplace conditions, and therefore petitions for redress, for several reasons.

First, the Ag-Gag Law prohibits standard practices used in farm worker advocacy, including the collection of evidence of unlawful working conditions and the organization of employees, because such actions would likely never be “authorized by the [farm] owner.” At the outset, “an act not authorized by the owner of the agricultural facility” could be construed as limitless. *See* Iowa Code Ann. § 717A.3A(1)(b). Based on the plain words, the Ag-Gag Law prohibits any activity disfavored by an agricultural production facility, regardless of whether such activity might otherwise be legal. For example, the prohibition does not expressly ban covert audio and video recordings,¹⁵ but these standard practices used to document violations of farm workers’ rights would almost certainly be unauthorized by the agricultural production facility. Similarly, the Ag-Gag Law does not expressly prohibit unionization efforts, but it is reasonable to assume such activities would be disfavored,

¹⁵ Iowa law does not prohibit “[t]he recording by a sender or recipient of a message or one who is openly present and participating in or listening to a communication from recording such message or communication.” *See* Iowa Code Ann. § 727.8.

and therefore unauthorized. This broad ban on “unauthorized” activities would exacerbate the already-existing “climate of fear,”¹⁶ discussed *supra*, effectively chilling workers’ petitions for redress, their ability to organize, and other First Amendment rights.

Second, the prohibition against committing “an act not authorized by the owner of the agricultural production facility, *knowing that the act is not authorized[,]*” impliedly requires UFW and farm workers to obtain express consent from agricultural production facilities before engaging in activities relating to redressing workplace exploitation. *See* Iowa Code Ann. § 717A.3A(1)(b) (emphasis added). Because a broad range of acts, including recording and organizing, impliedly require consent to ensure compliance with the law, the prohibition applies even if (1) the person creating the recording is an employee or otherwise has lawful access to the agricultural production facility, and (2) the underlying purpose for creating the recording is to document violations of farm worker rights. An implied consent requirement, though, would expose farm workers or

¹⁶ *Unsafe at These Speeds*, Southern Poverty Law Center (Feb. 28, 2013), at 4, https://www.splcenter.org/sites/default/files/Unsafe_at_These_Speeds_web.pdf.

UFW representatives to criminal prosecution or retaliation, whether through termination, harassment, or violence. As harassment and violence are all too common in farm work,¹⁷ these threats are more than mere speculation.

Third, Iowa Code Ann. § 717A.3A(1)(b) would prohibit UFW representatives from gaining access to an agricultural production facility—whether by obtaining employment or otherwise—if the entry involves a false statement or representation. Just as the acts prohibited are broad and unknown, so too are the false statements and representations prohibited. It is unclear whether the Ag-Gag Law prohibits, for example, a false statement about an applicant’s name, a false statement about an applicant’s motive, a false statement about an applicant’s work history, or a false statement as simple as being excited to begin work. Nonetheless, any attempt to gain access to, document conditions in, or request records from, an agricultural production facility necessarily involves some degree of misrepresentation—unless the UFW representative or farm worker expressly discloses that the purpose for the request is to document a violation of farm worker rights. *See, e.g.,*

¹⁷ *See* Section II.A, *supra*.

Stewart v. Wyoming Cattle Ranche Co., 128 U.S. 383, 386-88 (1888) (holding that material omissions are actionable as “misrepresentations”). But this disclosure requirement carries the same danger as the implied consent requirement, discussed above.

Iowa’s prohibition of lawful activities in this context is best exemplified by the common practice of Union “salting,” where paid Union organizers seek employment at non-union facilities for the purpose of organizing the operation, sometimes doing so secretly. Pursuant to the Supreme Court, “salting” is protected lawful activity, “even if a company perceives those protected activities as disloyal. After all, the employer has no legal right to require that, as part of his or her service to the company, a worker refrain from engaging in protected activity.” *NLRB v. Town & Country Electric*, 516 U.S. 85, 95-96 (1995); *see also*, *Town & Country Elec. v. NLRB*, 106 F.3d 816 (8th Cir. 1997) (affirming that employer violated the law in refusing to hire Union “salts”).¹⁸ Iowa’s law

¹⁸ As recognized by the Supreme Court, a Union “salt” can legally perform duties for both her employer and the Union she works for. Similarly, an animal rights activist can properly perform her duties at an ag facility, while documenting animal rights abuses occurring there. *NLRB v. Town & Country*, *supra*, 516 U.S. at 9 (rejecting employer argument that “salts” will “harm” a company because they serve another “master.”).

here would prohibit the clearly lawful activity of Union salting because it would never be “authorized by the owner of the agricultural production facility.”

Fourth, the scope of persons to which the law applies is likewise unknown. *See* Iowa Code Ann. § 717A.3A(3) (rendering liable a “person who conspires to commit agricultural production facility fraud[,]” a “person who aids and abets in the commission of agricultural production facility fraud[,]” and making one person liable for the acts of another “[w]hen two or more persons[] act[] in concert ”). For example, the prohibition of “aiding and abetting” seemingly renders liable any one to whom a farm worker seeks guidance in documenting employment conditions or organizing. This, in turn, exposes UFW and similar advocates to liability for counseling individuals suffering from violence, sexual harassment, wage theft, or forced labor.

Finally, while the full scope of activity prohibited under the Ag-Gag Law is unknown, UFW and farm workers are hindered from even the most basic efforts in furtherance of their legal rights. *See* Iowa Code Ann. § 717A.3A (“A person who commits agricultural production facility fraud under subsection 1 is guilty of the following: [¶] a. For the first conviction,

a serious misdemeanor. [¶] b. For a second or subsequent conviction, an aggravated misdemeanor.”). At a minimum, they are deterred from monitoring and documenting workplace misconduct, and organizing for the purpose of collective bargaining. Taken together, and given the stakes, the Ag-Gag Law chills the collection and documentation of evidence critical to initiating state or federal complaints against employers. In so doing, the Ag-Gag Law unlawfully restricts the right of UFW and farm workers to petition government.

C. Iowa’s Ag-Gag Law Violates UFW’s and Farm Workers’ First Amendment Right to Petition Government

UFW and farm workers are unable to seek legal redress for unlawful workplace conditions without collecting evidence of underlying violations. But the Ag-Gag Law renders such investigation and documentation illegal. As a result, the Ag-Gag Law violates the First Amendment by impermissibly restricting the ability to petition government.

The Petition Clause provides that “Congress shall make no law ... abridging ... the right of the people...to petition the Government for a redress of grievances.” U.S. Const. amend. I. This includes the right to seek redress for harms by petitioning courts and government agencies.

California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972); *Gable v. Lewis*, 201 F.3d 769, 772 (6th Cir. 2000); *Martin v. City of Del City*, 179 F.3d 882, 887 (10th Cir. 1999).

The right to redress is essential for the vindication of farm workers' rights. Documentary evidence is critical to convincing government regulators and other fact-finders about the urgency and credibility of farmworker petitions. For example, OSHA, a part of the United States Department of Labor, has primary responsibility for enforcing federal laws requiring employers to provide a workplace free of known health and safety hazards. But OSHA is responsible for inspecting 7 million workplaces, lacks the resources to do so effectively, and cannot adequately protect workers on its own.¹⁹ One estimate reports it would take OSHA 115 years to inspect each workplace in the country just once.²⁰ Because of its limited resources, OSHA relies heavily on employees to report credible workplace hazards; namely, it prioritizes

¹⁹ *OSHA Factsheet: OSHA Inspections*, Dep't of Labor, https://www.osha.gov/OshDoc/data_General_Facts/factsheet-inspections.pdf (last visited June 20, 2019).

²⁰ *Blood, Sweat, and Fear: Workers' Rights in U.S. Meat and Poultry Plants*, *Human Rights Watch* (Jan. 24, 2005), at 28, <https://www.hrw.org/sites/default/files/reports/usa0105.pdf>.

complaints if that demonstrate reasonable grounds to believe that there is a violation of an OSHA standard.²¹ This can often be done through the taking of pictures or videos. The more credible the complaint, the more likely OSHA is to investigate the workplace at issue.²² As a result, it is crucial that the initial complaint be as comprehensive and detailed as possible.

But the Ag-Gag Law undermines the ability of UFW and farm workers to obtain and document evidence of violations of farm workers' rights before filing a formal petition or otherwise seeking resolution of grievances. For already-vulnerable farm workers, this chilling effect has serious consequences, implicating both the livelihood and physical safety of farm workers and their families.

D. Iowa's Ag-Gag Law Violates UFW's and Farm Workers' First Amendment Right to Speech

In addition to violating the First Amendment right to petition government, the Ag-Gag Law similarly violates the First Amendment right to speech by imposing upon UFW and farm workers content-based

²¹ *OSHA: Federal OSHA Complaint Handling Process*, Dep't of Labor, <https://www.osha.gov/as/opa/worker/handling.html> (last visited June 20, 2019).

²² *Id.*

speech restrictions. UFW joins Plaintiff-Appellee's Answering Brief at Sections I-VI.

III. IOWA'S AG-GAG LAW INCREASES FARM WORKERS' RISK OF SERIOUS EXPLOITATION AND PHYSICAL DANGER IN THE WORKPLACE

The Ag-Gag Law applies to “agricultural production facilit[ies],” which include “animal facilit[ies]” or “crop operation propert[ies].” *Id.* §717A.1(3). An “animal facility” includes “a location where an agricultural animal is maintained for agricultural production purposes, including . . . a location dedicated to farming . . .” *Id.* § 717A.1(5). A “crop operation” is any “commercial enterprise where a crop is maintained on the property of [a] commercial enterprise.” *Id.* § 717A.1(8).

This broad definition applies to a broad spectrum of farm workers, whether on dairy operations, in carcass-processing plants, or in fields of produce. Without the Ag-Gag Law, workers in these environments face serious risk of health and safety violations, sexual abuse, labor trafficking, and wage theft. With the Ag-Gag Law in place, these risks only fester and worsen because of its prohibition on documenting violations.

A. Risk of Health and Safety Violations

The First Amendment right to free speech and right to petition government is essential to offset the risk of health and safety violations to which farm workers are subject. At the outset, agriculture is among the most dangerous industries in the country. Farm workers are at high risk for fatalities and injuries, work-related lung diseases, noise-induced hearing loss, skin diseases, and certain cancers associated with chemical use and prolonged sun exposure.²³ Because farm workers regularly experience exposure to high levels of pesticides without proper training or protective equipment, they suffer more chemical-related injuries and illnesses than any other workforce nationwide.²⁴ And, across midwest farm fields, including Iowa, pesticide exposure is tracked unevenly or not at all.²⁵

²³ *OSHA Safety and Health Topics: Agricultural Operations*, Dep't of Labor, <https://www.osha.gov/dsg/topics/agriculturaloperations/> (last visited June 20, 2019).

²⁴ Farmworker Justice, *Exposed and Ignored: How Pesticides are Endangering our Nation's Farmworkers* (2011), at 5-6.

²⁵ A recent investigation highlighted the lack of adequate state and national records on pesticide exposure incidents, based on information from the departments of agriculture in various Midwestern states, including Iowa. Some departments do not track incidents at all, while others do not distinguish between human and other types of exposures.

Harvesting Justice, Farmworker Justice,

Meat and poultry processing is likewise dangerous, due to close proximity with hooks and knives, coupled with high-speed carcass processing lines. For instance, under federal law, the maximum line speed for chicken slaughter under the New Poultry Inspection System is 140 birds per minute. 9 C.F.R. § 381.69(a).²⁶ It is no surprise, then, that poultry workers are injured at a rate more than double the average for all private industries, and that one out of every seven poultry workers is injured on the job.²⁷

UFW is regularly engaged in reducing the high risk of health and safety violations to farm workers. UFW has done outreach work to dairy workers and other farm workers in Iowa regarding working conditions, including protection from harmful pesticides. In 2014 and 2015, UFW

<https://www.farmworkerjustice.org/fj-blog/main-blog-categories/farmworkers-us> (last visited June 20, 2019).

²⁶ The maximum line speed for turkey slaughter establishments that operate under the New Poultry Inspection System is 55 birds per minute. 9 C.F.R. § 381.69(b).

²⁷ *Blood, Sweat, and Fear: Workers' Rights in U.S. Meat and Poultry Plants*, Human Rights Watch (Jan. 24, 2005), at 36, <https://www.hrw.org/sites/default/files/reports/usa0105.pdf>. Of course, these statistics under-represent the actual rate of injury, due to pattern and practice of under-reporting. And, while the industry itself is inherently dangerous, the incidence of injury is exacerbated, as employers exploit the leverage they hold over marginalized workers by setting (or failing to set) policies that increase risk.

conducted outreach work to farm workers in Iowa and across the United States regarding the dangers of pesticide exposure. This larger effort led to the EPA amending its Worker Protection Standards to create stronger protections for farm workers handling pesticides. 40 CFR Part 170 (Agricultural Worker Protection Standard Revisions) (Revised Nov. 2, 2015)

The rules for the first time prohibit children from handling pesticides, and require workers to be at least 18 years old to mix, load or apply the chemicals on fields. The revisions also require mandatory pesticide training for farm workers each year instead of every five years. Training now must include information on how workers can avoid bringing home pesticide residue on clothing, boots and other items. These efforts, however, would be futile if workers and organizers feared criminal prosecution for investigating and documenting violations.

B. Risk of Sexual Harassment and Violence

The First Amendment right to free speech and right to petition government is essential to offset the rampant sexual abuse and harassment against farm workers.²⁸ Complaints to the Equal

²⁸ While sexual abuse is generally under-reported, the rate of reporting

Employment Opportunity Commission (“EEOC”) lodged by farm workers commonly refer to agricultural fields as the “field de calzon” [field of panties] and the “green motel” due to supervisors’ routine rape of female farmworkers in the fields.²⁹

In Iowa specifically, migrant workers and undocumented immigrants said the risk of sexual harassment and violence is so pervasive that they believed it was standard practice to exchange sex for job security in the United States.³⁰ ASISTA, a legal and advocacy group dedicated to helping immigrant survivors of sexual assault, surveyed women working in Iowa meatpacking plants. Forty-one percent said they had experienced unwanted touching, and thirty percent reported

rape or sexual assault is particularly low in the Latino community; a recent survey reported only 6.6 percent of Latinas who had experienced sexual victimization reported that they had contacted the police, and only 21 percent reported that they had sought formal help of any kind. *Cultivating Fear*, Human Rights Watch (May 15, 2012), at 77, https://www.hrw.org/sites/default/files/reports/us0512ForUpload_1.pdf.

²⁹ *Cultivating Fear*, Human Rights Watch (May 15, 2012), at 23, https://www.hrw.org/sites/default/files/reports/us0512ForUpload_1.pdf.

³⁰ *Injustice on Our Plates*, Southern Poverty Law Center (Nov. 7, 2010), at 46, https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/Injustice_on_Our_Plates.pdf.

receiving sexual propositions.³¹ In 2002, the EEOC reached an \$1,525,000 settlement in an employment discrimination lawsuit against DeCoster Farms on behalf of women who alleged they were subjected to sexual harassment, including rape, abuse, and retaliation by certain supervisory workers at Iowa plants.³²

The nature of the work also heightens the vulnerability of female farmworkers, as agricultural workers face geographic isolation in vast rural farms and fields, contributing to a culture of fear and lawlessness.³³ Many women report their attacks took place in remote almond or apple orchards or vast hidden groves of tall bushes, trees, or grapevines.³⁴ Moreover, reports indicate that foremen commonly view the possibility of sexual relations with subordinates as a perk of the job.³⁵ But farm

³¹ Bernice Yeung & Grace Rubenstein, *Female Workers Face Rape, Harassment in US Agriculture Industry*, Center for Investigative Reporting (June 25, 2013), <https://www.pbs.org/wgbh/pages/frontline/social-issues/rape-in-the-fields/female-workers-face-rape-harassment-in-u-s-agriculture-industry/>.

³² Press Release, EEOC, EEOC and DeCoster Farms Settle Complaint for \$1,525,000 (Sep. 30, 2002) <http://www.eeoc.gov/eeoc/newsroom/release/9-30-02-b.cfm> (last visited June 20, 2019).

³³ Joseph S. Guzmán, *State Human Traffic Laws: A New Tool to Fight Sexual Abuse of Farmworkers*, 46 Colum. Hum. Rts. L. Rev. 288, 297.

³⁴ *Id.*

³⁵ *Id.*

workers who lodge complaints of abuse often experience retaliation in the form of job loss, more difficult or dangerous job assignments, lower pay, or even more violence.³⁶ One in six workers live at their worksites and also face potential homelessness for their families. Moreover, survivors of sexual assault face significant barriers to justice.³⁷ Law enforcement and prosecutors may opt not to pursue investigations and prosecutions, whether due to prejudice or other difficulties such as lack of evidence.³⁸

Unable to rely on authorities, farm workers often turn to UFW to investigate claims and assist in filing civil suits. For example, in *EEOC v. Giumarra Vineyards Corporation*, a teenage female farm worker experienced sexual harassment, including sexual advances, abusive sexual comments, and inappropriate touching, at Giumarra Vineyards, one of the largest growers of table grapes in the nation.³⁹ A group of farm

³⁶ *Cultivating Fear*, Human Rights Watch (May 15, 2012), at 46-48, https://www.hrw.org/sites/default/files/reports/us0512ForUpload_1.pdf.

³⁷ *I Used to Think the Law Would Protect Me*, Human Rights Watch (July 7, 2010), <https://www.hrw.org/report/2010/07/07/i-used-think-law-would-protect-me/illinoiss-failure-test-rape-kits>.

³⁸ *Cultivating Fear*, Human Rights Watch (May 15, 2012), at 77-79, https://www.hrw.org/sites/default/files/reports/us0512ForUpload_1.pdf.

³⁹ Complaint at 4-5, No. 1:09-cv-02255, 2009 WL 8747241 (E.D. Cal. Dec. 29, 2009); *see also*, Press Release, EEOC, *Giumarra Vineyards Sued by EEOC for Sexual Harassment and Retaliation Against Farm Workers*

workers intervened and complained to their employer about the abuse. Only one day after lodging the complaint, the vineyard retaliated and fired the teenage victim and each worker who filed the complaint.⁴⁰ UFW representatives investigated the claims and referred the victims to a local attorney. The EEOC later brought an action against the vineyard, securing a settlement of \$350,000 to resolve the case and implement preventative measures, such as sexual harassment training and notices of workers' rights.⁴¹ UFW's investigation and referral of this case was vital to enforce the rights of these vulnerable workers, but, as discussed above, UFW would be severely hampered in investigating such claims under Iowa's Ag-Gag Law. Nor could workers experiencing repeat harassment or retaliation record such interactions.

C. Risk of Labor Trafficking

The First Amendment right to free speech and right to petition government is essential to offset the dangers of labor trafficking. Although labor trafficking is prohibited under federal and Iowa state

(Jan. 13, 2010), <https://www.eeoc.gov/eeoc/newsroom/release/1-13-10.cfm>.

⁴⁰ *Id.*

⁴¹ *Id.*

law,⁴² it remains a serious problem in the United States. From December 7, 2007 to June 30, 2018, over 7,190 instances of labor trafficking were reported in the United States, involving from 15,544 to 18,229 victims.⁴³ The agricultural industry is especially susceptible to labor trafficking, and it ranks as one of the top five sectors for forced labor in the United States.⁴⁴ For example, an Idaho-based tree cutting company, Pure Forest, settled a civil case involving labor trafficking charges.⁴⁵ According to the complaint, Pure Forest brought migrant workers into the U.S. through the H-2B visa program⁴⁶ under false promises of a 40-hour work week with good pay and free lodging.⁴⁷ Instead, the company confiscated the

⁴² See *id.*; RICO, 18 U.S.C. § 1964(c); Human Trafficking, Iowa Code Ann. § 710A.2 and Iowa Code Ann. § 915.51.

⁴³ See Labor Trafficking, National Human Trafficking Resource Center, <https://traffickingresourcecenter.org/type-trafficking/labor-trafficking> (last visited June 20, 2019).

⁴⁴ See Hidden Slaves, *supra* note 6.

⁴⁵ See Notice of Settlement, *John Doe I v. Pure Forest, LLC*, No. 2:14-cv-00879 (E.D. Cal. Jan. 14, 2016), ECF No. 30.

⁴⁶ H-2B visas are available for non-agricultural workers, but, Iowa's Ag-Gag Law is so broadly written that a lumber business would likely fall under the statute. See Iowa Code § 717A.1(8) (Defining a "crop operation field" to which the Ag-Gag Law applies as any "commercial enterprise where a crop is maintained on the property of [a] commercial enterprise.").

⁴⁷ See Complaint ¶¶ 11-13, 16, *John Doe I v. Pure Forest, LLC*, No. 2:14-cv-00879, 2014 WL 1593351 (E.D. Cal. Apr. 8, 2014), ECF No. 1.

workers' passports and took them to a remote work location in the Sierra Nevada.⁴⁸ Pure Forest forced the workers to sleep in a crowded tent and charged them for sleeping bags.⁴⁹ The company forced the workers to plant trees and spray dangerous chemicals without proper equipment for 12 to 13 hours a day, six days a week, while illegally deducting expenses for travel, their visas, food, and a separate \$60 cooking fee from their pay, consuming nearly the workers' entire paychecks.⁵⁰ Pure Forest supervisors were always armed and constantly threatened the workers with physical violence.⁵¹ Trapped in a remote part of a foreign country where they did not speak the language, the workers escaped only when Pure Forest determined it no longer needed their services and boarded the workers on a bus back to Mexico.⁵² Similarly, UFW investigates labor-trafficking operations around the country, including the Midwest; a recent investigation took place on an Idaho dairy farm, which resulted in a lawsuit against that dairy for violating federal forced labor provisions.

⁴⁸ *Id.* ¶¶ 14, 19-22.

⁴⁹ *Id.* ¶¶ 15, 20.

⁵⁰ *Id.* ¶¶ 23-41.

⁵¹ *Id.*

⁵² *Id.* ¶ 43.

That case is now before the 9th Circuit. *Martinez-Rodriguez, et al. v. Funk Dairy, et al.* (9th Cir. Case No. 19-35526).

The geographic isolation of agricultural work renders it particularly prone to labor trafficking.⁵³ For example, in *U.S. v. Kaufman*, farm owners forced mentally ill persons to perform hard manual labor on their farm, often in the nude, for years before children on a school bus happened to notice naked men working in the fields.⁵⁴ Similarly, in *John Does I-V v. Rodriguez* farm labor contractors illegally smuggled dozens of farm workers into the United States and forced them to live in squalid, insect-infested labor camps, without access to safe drinking water, with only two showers for 40 workers. Amended Complaint at 11, No. 06-cv-00805 (D. Colo. Nov. 2, 2006), ECF No. 7. The workers were told that they owed the traffickers \$1,300 in fees for getting them into the U.S. and could not leave their employment until they paid back that debt. *Id.* Despite working 12 hours a day, the workers made almost no money because their trafficker deducted for rent, transportation, and for

⁵³ See *Hidden Slaves*, *supra* note 6.

⁵⁴ *U.S. v. Kaufman*, 546 F.3d 1242, 1246 (10th Cir. 2008); see also *U.S. v. Kaufman*, No. CRIM.A.04-40141-01, 2005 WL 2304345, at *1 (D. Kan. Sept. 21, 2005).

“bathroom cleaning,” even though three out of four toilets were not functional.⁵⁵ The workers were isolated, under constant surveillance.

Even when they were out working in the fields, their trafficker would watch them with binoculars to make sure they didn’t escape, and at night their trafficker would drive around the labor camp—which was already surrounded by a chain link fence—to prevent workers from leaving. Amended Complaint at 12-15, *Rodriguez*, No. 06-cv-00805. Eventually, the workers were able to escape with the help of a nun, who was supposed to be on the labor camp only to lead prayers, and an attorney for a legal aid service, who videotaped the workers and helped them seek civil and criminal redress.⁵⁶ But under Iowa’s Ag-Gag Law, the nun and attorney who helped the workers seek justice would have committed criminal acts.

In 2015, UFW launched a Forced Labor Program to address labor trafficking, debt peonage, and slavery in U.S. agriculture. This program uses education, outreach, and collaboration with law enforcement to support reporting, investigation, and prosecution of labor and human

⁵⁶ *Id.*

rights violations. One of UFW's first documented labor trafficking cases involved a group of dairy workers in rural Idaho. UFW investigated the allegations, and referred the victims to attorneys who have since prosecuted their case. But, as discussed above, UFW could not continue to investigate those claims under Iowa's Ag-Gag Law.

D. Risk of Wage Theft

The First Amendment right to free speech and right to petition government is essential to combat wage theft. Even though FLSA⁵⁷ and AWPA⁵⁸ require employers to pay agricultural workers a minimum wage, wage theft is rampant. For example, a 2012 survey of New Mexico farm workers found that over two-thirds experienced wage theft in 2011, and nearly half were paid less than the minimum wage.⁵⁹ One of the most widespread practices is paying farm workers "piece-rates," which means that the farm worker is paid a set amount for each piece of crop

⁵⁷ 29 U.S.C. § 206.

⁵⁸ 29 U.S.C. § 1822.

⁵⁹ *Human Rights Alert: New Mexico's Invisible and Downtrodden Workers*, New Mexico Center on Law and Poverty, http://fronterasdesk.org/sites/default/files/field/docs/2013/07/Report-FINAL-PDF-2013-06-28_0.pdf (last visited June 20, 2019).

harvested.⁶⁰ Piece-rates often fail to pay farm workers the minimum wage; although the law requires employers to make up the difference, many do not. For example, a 2009 study found that Oregon farm workers paid on “piece-rate” basis earned less than the minimum wage 90 percent of the time and on average received 37 percent less than the minimum wage.⁶¹

The lax regulation of the agricultural industry encourages wage theft and leaves workers to enforce their right to lawful pay on their own. The agricultural industry is exempt from many worker regulations, including many FLSA protections.⁶² Moreover, there is little government enforcement of the current regulations, and the penalties for violations are low. In 2008, less than 1 percent of the investigations conducted by the Department of Labor involved alleged wage theft under the AWPA, and the average penalty was a paltry \$342.⁶³

⁶⁰ *U.S. Department of Labor Enforcement in Agriculture*, Farmworker Justice, [https://www.farmworkerjustice.org/sites/default/files/FarmworkerJusticeDOLenforcementReport2015%20\(1\).pdf](https://www.farmworkerjustice.org/sites/default/files/FarmworkerJusticeDOLenforcementReport2015%20(1).pdf) (last visited June 20, 2019).

⁶¹ *Id.*

⁶² 29 U.S.C. § 207.

⁶³ *Weeding Out Abuses*, Farmworker Justice and Oxfam America (2010), <http://www.oxfamamerica.org/static/media/files/weeding-out-abuses.pdf>.

Absent effective government enforcement, farm workers must rely on civil litigation in order to receive their agreed-upon wages for all hours worked. These cases often rely on pay and time records that are often withheld from farmworkers. UFW assists many farm workers each year in investigating wage theft complaints before formal litigation. A number of these have resulted in major class action wage and hour litigation brought on behalf of tens of thousands of farm workers, including suits against major fruit growers in California, such as Delano Farms, Gerawan Farming, Giumarra Vineyards, and Sunview Vineyards.

The class action against Delano Farms is particularly instructive. As a result of UFW's pre-suit investigation, the complaint was able to include detailed factual allegations regarding the myriad ways in which the defendants engaged in wage theft, including: (a) forcing farmworkers to work "off-the-clock" organizing tables, wheelbarrows, trays, packing material, bags, boxes and other materials and equipment essential for the harvest; (b) forcing farm workers to work "off-the-clock" by attending training before the official, recorded start of the work day; (c) forcing farm workers to work "off-the-clock" by cleaning up or finishing packing boxes after the official, recorded end of the work day; (d) forcing farm workers

to work “off-the-clock” by requiring them to arrive before the start of the work day and wait for their designated foremen to arrive; (e) forcing farm workers work “off-the-clock” by carrying out certain tasks at home without compensation; (f) forcing farm workers to purchase and/or maintain tools and equipment at their own cost; (g) failing to provide farm workers with accurate itemized wage statements; and (h) failing to maintain accurate time-keeping records.⁶⁴

Obtaining records and contemporaneous video recordings of actual workplace conditions can be crucial to proving a wage theft claim. For example, in *Chavez v. IBP, Inc.*, No. 01- cv-5093, 2005 WL 6304840 (E.D. Wash. May 16, 2005), meat processing employees relied on videotapes to prove their claims. Specifically, the employees’ video recordings proved that employees removed their equipment before entering the cafeteria for lunch, which entitled them to back pay for the time it took to remove the equipment. *See also, Whole Foods Market, Inc.*, 363 NLRB No. 87 (Dec. 24, 2015) (listing dozens of cases). Yet under Iowa’s Ag-Gag Law these workers would have committed criminal acts.

⁶⁴ Class Action Complaint, *Arredondo, et al. v. Delano Farms Co.*, No. 1:09-cv-01247 (E.D. Cal. July 17, 2009), ECF No. 2.

IV. IOWA'S AG-GAG LAW ENDANGERS THE PUBLIC INTEREST BY SUPPRESSING CRITICAL INFORMATION REGARDING FOOD SAFETY AND ANIMAL WELFARE

The Ag-Gag Law chills more than efforts to vindicate workers' rights; it similarly chills efforts to educate the public and retailers about features of the food-supply system impacting the public interest. For example, UFW and farm workers' it represents, in the process of investigating and documenting unlawful employment conditions, have also investigated and documented the unsafe working conditions and poor animal welfare. For example, UFW's current dairy worker campaign has revealed unsafe manure lagoons that workers have died in, in addition to milking operations where cows with bloody utters are still milked.⁶⁵ While these conditions impact workers' rights, they also directly impact public health and safety. As agricultural producers seek

⁶⁵ *Land of Milk and Money: Inside the Wild World of Washington Dairy*, by Stefam Milne (Feb. 2019) (describing death of dairy worker by drowning in manure lagoon and describing animal abuse against dairy cows). Available at <<https://www.seattlemet.com/articles/2019/2/26/land-of-milk-and-money-inside-the-wild-world-of-washington-dairy>>
UFW releases photos of Darigold's sick cows (May 2014), The Stand. Available at <<http://www.thestand.org/2014/05/ufr-releases-photos-of-darigolds-sick-cows/>>

to obfuscate violations of the law to extract greater profits, the public's only insight into the unscrupulous origin of the food supply is through the light that farm workers can shine on those operations. Iowa's Ag-Gag Law criminalizes these efforts, to the detriment of public health and wellness.

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CONCLUSION

For the reasons set forth above, and the reasons Plaintiffs-Appellees and fellow *amici* state, this Court should affirm the District Court's ruling that Iowa's Ag-Gag Law is unconstitutional and void.

Dated: June 27, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I caused the electronic filing of this paper with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit through the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and therefore will be served by the appellate CM/ECF system.

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