

Amb. Susan Rice
Director, Domestic Policy Council
Eisenhower Executive Office Building
Washington, DC 20502

Hon. Antony J. Blinken
Secretary of State
2201 C Street, NW
Washington, DC 20520

Re: The Department of State's Planned Rulemaking on the J-1 Au Pair Program Undermines Labor Standards, Public Diplomacy; and is at Odds with the Administration's Support for Care Workers

Dear Director Rice and Secretary Blinken,

Earlier this year, the Department of State notified Congress that the Department intends to issue a Notice of Proposed Rulemaking (NPRM) on the J-1 Au Pair program that would allow the agency to preempt any local and state laws that it views as inconsistent with the program, including those that raise standards for domestic workers.¹ The more than a hundred undersigned organizations are workers' rights organizations, national organizations, and local and community organizations from across the country. **We urge you to withdraw the current plans for a new au pair program rule from the Department of State's Spring Regulatory Agenda.**

The Exchange Visitor J-1 program was established by Congress with the intention of providing cultural exchanges that would "increase mutual understanding" and "promote international cooperation." 22 U.S. C. § 2451. The J-1 au pair program annually facilitates tens of thousands of young people, mostly young women between the ages of 18 and 26 years old, coming to the United States to provide in-home child care services to their host families. Host families may require au pairs to provide up to 10 hours per day and 45 hours of child care services a week.

Yet, through the planned NPRM, first advanced by the Trump administration, the Department of State now seeks to issue a new au pair rule to expressly permit the Department to preempt state and local laws that it views as "inconsistent" with the program, including those that provide protections to au pairs and other domestic workers from substandard working conditions and protections against sexual harassment and unlawful retaliation. In our system

¹ U.S. Department of State, [Congressional Notification Transmittal Letter 21-118](#), April 30, 2021.

of workplace protections, the federal standards set the floor, and states and localities are empowered to set standards above the federal standards to improve conditions. This planned rule would do the opposite by allowing the Department of State to set a ceiling on labor standards for au pairs.

In 2014, Massachusetts enacted the Domestic Worker Bill of Rights (M.G.L. Chapter 149, Section 190), extending wage and hour, and other protections, to domestic workers and treating au pairs as domestic workers for the purposes of state labor standards protections. An au pair agency and host family sued to stop the state from enforcing the new legislation, which increased au pair wages and improved standards. The au pair agency lost, and the district court and the First Circuit Court of Appeals upheld Massachusetts' ability to raise standards for au pairs and other domestic workers, ruling that the federal regulations did not pre-empt the state law. *Cultural Care v. Office of the AG of Mass.*, Civ. No. 16-cv-11777, 2017 U.S. Dist. LEXIS 120649 (D. Mass. Aug. 1, 2017), *aff'd sub nom. Capron v. Office of the Att'y. Gen. of Mass.*, 944 F.3d 9 (1st Cir. 2019), *cert denied* 141 S.Ct. 150 (2020). The First Circuit also considered and rejected the Department of State's conclusion that the federal au pair regulations preempted the application of state labor standards laws. *Capron*, 944 F.3d at 40-44. The court's reasoning also dispels the Department of State's argument that state labor standards law are at odds with cultural understanding goals, noting, "[i]t is hardly evident that a federal foreign affairs interest in creating a 'friendly' and 'cooperative' spirit with other nations is advanced by a program of cultural exchange that, by design, would authorize foreign nationals to be paid less than Americans performing similar work." *Capron*, 944 F.3d at 26. This summer, another federal court ruled that federal law did not preempt state wage laws as applied to sponsor organizations. *Morales Posada v. Cultural Care*, No. 20-cv-11862, 2021 U.S. Dist. LEXIS 153230 (D. Mass. Aug. 13, 2021).

The Department of State's planned rulemaking is not only at odds with federal court rulings, but also undermines the Biden-Harris administration's stated commitment to improving the job quality of care work and empowering domestic workers. We respectfully urge the White House and Department of State to stop the planned rulemaking to preempt state and local protections.

Sincerely,

National and Regional Organizations

1. 9to5 Colorado
2. A Better Balance
3. The Advocates for Human Rights
4. Advocating Opportunity
5. AFL-CIO

6. Alliance to End Slavery and Trafficking (ATEST)
7. Center for Gender & Refugee Studies
8. Center for Law and Social Policy (CLASP)
9. Center for Progressive Reform
10. Centro de los Derechos del Migrante, Inc.
11. Coalition of Immokalee Workers
12. Disciples Refugee & Immigration Ministries
13. Economic Policy Institute
14. Farmworker Justice
15. The Festival Center
16. Freedom Network USA
17. Global Labor Justice- International Labor Rights Forum
18. Government Accountability Project
19. Haitian Bridge Alliance
20. Hand in Hand: The Domestic Employers Network
21. Immigrant Legal Resource Center
22. Immigration Hub
23. Jobs With Justice
24. Justice Action Center
25. Justice for Migrant Women
26. Justice in Motion
27. National Center for Law and Economic Justice
28. National Council for Occupational Safety and Health
29. National Domestic Workers Alliance
30. National Employment Law Project
31. National Employment Lawyers Association
32. National Immigration Law Center
33. National Network for Immigrant & Refugee Rights
34. National Partnership for Women & Families
35. National Women's Law Center
36. Oxfam America
37. Polaris
38. Restaurant Opportunities Centers United
39. Service Employees International Union (SEIU)
40. Southern Poverty Law Center
41. The Human Trafficking Legal Center
42. TIME'S UP NOW
43. United We Dream
44. Workplace Fairness

State and Local Organizations

45. Advocates for Basic Legal Equality, Inc.
46. Alliance of Filipinos for Immigrant Rights and Empowerment
47. Arise Chicago
48. Brazilian Women's Group
49. Carroll Gardens Association
50. Casa Latina
51. Central Texas Home Care Coalition
52. Church Women Unites in New York State
53. Cleveland Jobs with Justice
54. Colorado Jobs with Justice
55. Comunidades Sin Fronteras CSF-CT INC
56. Connecticut Worker Center
57. Damayan Migrant Workers Association, Inc.
58. Dolores St Community Services
59. Dominican Development Center, Inc
60. Dreamers Mothers In Action
61. El Centro Cultural de México
62. El CENTRO de Igualdad y Derechos
63. Encuentro
64. Fe y Justicia Worker Center Houston
65. First Shift Justice Project
66. Florida Policy Institute
67. Graton Day Labor Center/ALMAS
68. Greater Boston Legal Services
69. Instituto de Educacion Popular del Sur de California
70. Jobs with Justice of East Tennessee
71. Justice at Work Pennsylvania
72. Kids Forward
73. La Colmena
74. La Plaza de Encuentro Gathering Place
75. Legal Aid at Work
76. Legal Voice
77. Long Beach Alliance for Clean Energy
78. Massachusetts Coalition of Domestic Workers
79. Matahari Women Workers' Center
80. Metrowest Worker Center - Casa
81. Miami Workers Center
82. MISMA
83. Naugatuck Valley Project, Inc.
84. New Labor

85. New Mexico Center on Law and Poverty
86. North Bay Jobs with Justice
87. North Carolina Justice Center
88. Northwest Workers' Justice Project
89. Pilipino Workers Center of Southern California
90. Pomona Economic Opportunity Center
91. Red de Mujeres del Bajío AC, México
92. SEIU 775
93. Shine Bright Vision Service
94. Shriver Center on Poverty Law
95. Towards Justice
96. UCLA Labor Center
97. Unidad Latina en Acción CT
98. Virginia Coalition Against Human Trafficking
99. Voz Workers' Rights Education Project
100. WeCount!
101. Wind of the Spirit, Immigrant Resource Center
102. Wisconsin Faith Voices for Justice
103. Women Working Together USA
104. Women's Employment Rights Clinic of Golden Gate University's School of Law
105. Worksafe
106. Sur Legal Collaborative

CC: Hon. Martin J. Walsh, Secretary of Labor