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## SENT VIA ELECTRONIC MAIL

Ashley Werner  
Deputy Attorney General  
Bureau of Environmental Justice  
California Department of Justice  
Sacramento, CA 95820

February 29, 2024

### **Re: New evidence of civil rights violations in the State of California**

Dear Deputy Attorney General Werner:

We write to bring to your attention new evidence of civil rights violations in the State of California. In addition, we respectfully request to meet with you at your offices to discuss our findings, which are based on confidential interviews with farmworkers and their families, at your earliest convenience.

As you know, for the past two decades, a coalition of community-based organizations that focus on pesticide use and its impacts in California has worked with, and learned from, farmworkers. With little fanfare, the coalition amassed a record of state practices that limit the effectiveness of pesticide regulatory programs or result in their failure. In 2023, we worked with this coalition to interview farmworkers and their families, as well as members of the scientific and regulatory community who focus on pesticide use in California.

In addition, with Californians for Pesticide Reform, we organized a *People's Tribunal* in Lindsay, California on September 12, 2023.<sup>1</sup> The purpose of the Tribunal was to invite the public to meet and give testimony<sup>2</sup> in a forum that was not bound by the strictures of official proceedings such as a trial or legislative session. More than 100 farmworkers and their families attended.

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<sup>1</sup> *People's Tribunal on Pesticide Use and Civil Rights in California*, Lindsay CA (Oct. 13, 2023), <https://www.youtube.com/watch?v=YUYeZVwFTq4>. Tribunal speakers included residents of six counties – Kern, Tulare, Fresno, Ventura, Santa Cruz, and Monterey – as well as members of the scientific and legal community, including: Dr. Caroline Cox, Senior Scientist, Center for Environmental Health (retired); Dr. Irva Hertz-Picciotto, Professor, Department of Public Health Sciences and Chief, Division of Environmental and Occupational Health, UC Davis School of Medicine; Bianca Lopez, Co-Founder and Project Director, Valley Improvement Projects; Timothy Malloy, Professor of Law, UCLA School of Law; Dr. Gregg Macey, Director, Center for Land, Environment, and Natural Resources, UC Irvine School of Law; Nayamin Martinez, Executive Director, Central California Environmental Justice Network; Dr. Sarait Martinez, Executive Director, Centro Binacional para el Desarrollo Indígena Oaxaqueño; Asha Sharma, Organizing Co-Director, Pesticide Action Network North America; and Dr. Alexis Temkin, Senior Toxicologist, Environmental Working Group.

<sup>2</sup> Testimony was provided on September 12, 2023. It supplemented interview and focus group data gathered in Spring and Summer 2023. See *People's Tribunal* community testimony, *supra* note 1, at 31:25 – 52:50 (Monterey and Santa Cruz

Their combined testimony, presided over by individuals of great stature within the community, is summarized in an *Advisory Opinion* (enclosed).<sup>3</sup> The results are clear and consistent: time and again, farmworkers and their families reported a set of daily practices<sup>4</sup> that impair and defeat state-operated and -funded programs that are designed to protect public health and safety in areas of agricultural pesticide use.

Community testimony demonstrates, among other findings, that the California Department of Pesticide Regulation (DPR) and six County Agricultural Commissioners (CACs):

- Do not receive the vast majority of reports or complaints that they would otherwise receive from the Latino/a and transnational Indigenous communities they serve;
- Miss multiple opportunities to find that health hazards appear generally throughout those communities, triggering a field inspection and potentially canceling permits or specifying that no additional permits be issued;
- Do not ensure that warnings, trainings, and other essential protections for Latino/a and transnational Indigenous farmworkers are equally available;

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Counties), 53:00 – 1:11:45 (Ventura County), 1:26:48 – 1:58:20 (Kern, Tulare, and Fresno Counties); People’s Tribunal scientific testimony, *supra* note 1, at 24:30 – 30:35 (“The Department of Pesticide Regulation has failed to take advantage of California’s scientific expertise about pesticides”) (referencing UC Berkeley CHAMACOS “community studies” in California and related publications, such as Brenda Eskenazi et al., *Association of Lifetime Exposure to Glyphosate and Aminomethylphosphonic Acid (AMPA) with Liver Inflammation and Metabolic Syndrome at Young Adulthood: Findings from the CHAMACOS Study*, 131 ENVTL. HEALTH PERSPECT. 037001 (2023) (higher exposure to glyphosate during childhood linked to metabolic syndrome, increased risk for diabetes in children); Sharon K. Sagiv et al., *Prenatal Exposure to Organophosphate Pesticides and Functional Neuroimaging in Adolescents Living in Proximity to Pesticide Application*, 116 PROC. OF THE NATIONAL. ACAD. OF SCI. 18347 (2019) (higher exposure to organophosphates during pregnancy linked to changes in teen brain activity); and Sharon K. Sagiv et al., *Gestational Exposure to Organophosphate Pesticides and Longitudinally Assessed Behaviors Related to Attention-Deficit/Hyperactivity Disorder and Executive Function*, 190 AMER. J. OF EPIDEMIOLOGY. 2420 (2021) (higher exposure to insecticides during pregnancy linked to ADHD behaviors in pre-teens) as well as studies conducted by UCLA’s Fielding School of Public Health that utilize California state data and cooperation with patient groups, such as Negar Omidakhsh et al., *Thyroid Cancer and Pesticide Use in a Central California Agricultural Area: A Case Control Study*, 107 J. OF CLINICAL ENDOCRINOLOGY & METABOLISM e3574 (2022) (living near applications of ten pesticides in Tulare, Kern, and Fresno Counties linked to higher risk of thyroid cancer); Shiwen Li et al., *Proximity to Residential and Workplace Pesticide Application and the Risk of Progression of Parkinson’s Diseases in Central California*, 864 SCI. OF THE TOTAL ENVT. 160851 (2023) (living near farms that use any of ten pesticides linked to faster progression of Parkinson’s disease); and *Id.* (pregnant mothers living near farms that use any of nine pesticides linked to higher risk of their children developing brain tumors)). *See also* People’s Tribunal scientific testimony, *supra* note 1, at 1:18:30 – 1:26:30 (summarizing the results of thirty studies which detailed the impacts of pesticide exposure to neurodevelopment and brain-based outcomes, including cognition, memory, learning, executive function impairments, and behavioral change) (“Compelling evidence [from 27 studies] indicates that prenatal exposure [to organophosphates during pregnancy as well as childhood] at low levels is putting children at risk for cognitive and behavioral deficits and for neurodevelopmental disorders”).

<sup>3</sup> Robert Chacanaca, Caroline Farrell, Ann López, & Gregg Macey, *Advisory Opinion: People’s Tribunal on Pesticide Use and Civil Rights in California* (Feb. 15, 2024), [bit.ly/3OKDpGM](https://bit.ly/3OKDpGM).

<sup>4</sup> *Id.* at 15-18. The Tribunal was informed by research that included interviews with individuals in the scientific community who focus on pesticide use, exposure, and impacts as well as current and former pesticide regulators (n=21). In addition, UC Irvine conducted focus groups in Spanish and English with farmworkers (n=34) who reside in three regions within the State of California (Monterey/Santa Cruz, Ventura, and Fresno/Tulare/Kern Counties). The Advisory Opinion was written having considered detailed accounts provided during interview, focus group, and Tribunal community testimony. The accounts are representative of the shared experience of workers, co-workers, and families of those who agreed to provide testimony, with informed consent, under strict privacy and confidentiality protocols. Through their accounts, we identified patterns and practices that continue to impact, on an ongoing basis, hundreds if not thousands of people in the San Joaquin Valley, Central Coast, and elsewhere in the state. We are available to provide additional information to appropriate civil rights enforcement staff at the California Department of Justice.

- Do not give adequate attention to local conditions including the effects that pesticides will have on Latino/a and transnational Indigenous communities when granting permit approvals; and
- Fail to reevaluate pesticides and whether pesticide use practices must change when it has reason to believe that they may cause unreasonable adverse effects to people or environment.<sup>5</sup>

Community testimony points to adverse and disproportionate impacts to members of protected classes by state programs as well as state-funded programs. This begins with DPR's Restricted Materials Permitting, Pesticide Illness Surveillance, Pesticide Notification, Worker Health and Communication, and Registration and Reevaluation programs,<sup>6</sup> as well as six CACs responsible for enforcing state pesticide programs in the San Joaquin Valley and Central Coast: Kern, Tulare, Fresno, Ventura, Santa Cruz, and Monterey Counties.

In these counties, the breakdown of notification, reporting, and complaint processing, due to language and other barriers, including fear, isolation, misinformation, intimidation, and retaliation, mean that DPR fails to investigate all reports of potentially significant adverse effects, fails to adequately assess the effectiveness of existing controls, fails to ensure that CACs conduct inspections to prevent misapplication or drift and possible contamination of workers or the public, and fails to ensure that CACs adequately investigate pesticide illnesses and injuries, revise their understanding of local conditions, or condition approval of restricted materials permits on appropriate mitigation measures.<sup>7</sup>

California Government Code § 11135 provides that “No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.”<sup>8</sup> Section 11135 bans intentional discrimination as well as actions that have a negative, disparate impact on a protected group.

Under California law, state-operated or -funded programs and activities cannot utilize criteria or methods of administration which have the purpose or effect of subjecting members of a protected class to discrimination or defeating or substantially impairing a program with respect to members of a protected class. These programs and activities include state operations such as DPR programs related to pesticide use regulation and enforcement,<sup>9</sup> as well as recipients of state funds such as

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<sup>5</sup> See *Advisory Opinion*, *supra* note 3, at 18-21.

<sup>6</sup> DPR has broad authority over pesticide use and its impacts in California: “DPR’s strict oversight begins with pesticide product evaluation and registration and continues through statewide licensing of commercial applicators, dealers, consultants, and other pesticide professionals; evaluation of health impacts of pesticides through illness surveillance and risk assessment; environmental monitoring of air, water and soil; field enforcement (with county agricultural commissioners) of laws regulating pesticide use; residue testing of fresh produce; and encouraging development and adoption of least-toxic pest management practices through incentives and grants.” CAL. DEPT. OF PESTICIDE REGULATION, *A Guide to Pesticide Regulation in California* 1 (2017).

<sup>7</sup> *Advisory Opinion*, *supra* note 3, at 19-20.

<sup>8</sup> Cal. Gov’t Code § 11135(a).

<sup>9</sup> *Advisory Opinion*, *supra* note 3, at 6-10.

County Departments of Agriculture, which function as state regulatory bodies<sup>10</sup> and receive enforcement funding from DPR (likely in excess of \$10,000 per state fiscal year).<sup>11</sup>

Within these programs, breakdowns in notification, reporting, and complaint processing, due to language and other barriers, including fear, isolation, misinformation, intimidation, and retaliation, unlawfully deny full and equal access to the benefits of these pesticide regulatory programs. They have the effect of substantially impairing these programs with respect to California's Latino/a and transnational Indigenous farmworkers, their families, and their children.<sup>12</sup> They unlawfully subject California residents to discrimination based on race, national origin, and ethnic group identification, among other factors that were revealed in community testimony.

Civil rights violations related to pesticide use were recognized by the California Environmental Protection Agency (CalEPA) and DPR decades ago. California was among the first states in the U.S. to codify environmental justice into law. State law defines environmental justice as “the fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”<sup>13</sup> Environmental justice includes, “but is not limited to,” ensuring “a healthy environment for all people.”<sup>14</sup> CalEPA works with boards, departments, and offices, including DPR, “to achieve environmental justice through various efforts.”<sup>15</sup> As part of its research and program administration, CalEPA identifies areas of the state “that disproportionately experience pollution burdens, including pesticide exposure.”<sup>16</sup> Our Advisory Opinion cites further evidence of disproportionate exposure to pesticides among Latino/a farmworkers and agricultural communities in the State of California.<sup>17</sup>

Among the commitments made by CalEPA departments a quarter century ago, DPR stated that it would resolve sources of ambiguity over its role vis-à-vis CACs to better prevent disproportionate exposure.<sup>18</sup> In addition, DPR stated that it needed to design and implement performance standards – written, up-to-date, uniform guidelines for CACs to follow – and provide better protection of farmworkers via outreach and education, enhanced illness reporting, and improved incident investigation.<sup>19</sup> Our research makes clear that intermittent activities referenced in CalEPA program updates, such as appointing a liaison, limited hiring of bilingual staff, outreach and workshops,

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<sup>10</sup> *Id.* at 7-10.

<sup>11</sup> *Id.* at 10-13.

<sup>12</sup> See Cal. Code Regs. tit. 2, § 11154.

<sup>13</sup> Cal. Gov. Code. § 65040.12(e)(1).

<sup>14</sup> Cal. Gov. Code. § 65040.12(e)(2)(a).

<sup>15</sup> CAL. ENVTL. PROT. AGENCY, *Environmental Justice Program* (2024), <https://calepa.ca.gov/envjustice/>.

<sup>16</sup> CAL. ENVTL. PROT. AGENCY, *Environmental Justice Compliance & Enforcement Working Group Fresno Initiative Report* (2015), <https://calepa.ca.gov/wp-content/uploads/sites/6/2016/10/Enforcement-Publications-2015yr-FresnoReport.pdf>.

<sup>17</sup> *Advisory Opinion*, *supra* note 3, at 3-5.

<sup>18</sup> Victoria Clark, *Enforcement of Pesticide Regulation in California: A Case Study of the Experience with Methyl Bromide*, 31 GOLDEN GATE U. L. REV. 465, 482-483 (2001).

<sup>19</sup> *Id.*

declaring environmental justice “a priority,” or the distribution of brochures<sup>20</sup> have done little to address more insidious dynamics that result in disproportionate harm, which are described in community testimony and the Advisory Opinion.

Civil rights violations by DPR and six CACs are ongoing, ubiquitous, and damaging to Latino/a and transnational Indigenous farmworkers and their families. They do not require a statistician or an epidemiologist to point them out. But they do warrant urgent action by the California Attorney General’s office, the California State Legislature, and the Environmental Protection Agency.

The persistence of civil rights violations poses a grave threat, not only to farmworker and community health and wellbeing, but also to California’s leadership in civil rights and environmental protection.<sup>21</sup> In a memorandum<sup>22</sup> drafted in 2012, California Attorney General Kamala Harris highlighted two sources of environmental justice-related responsibilities for California local governments: the California Environmental Quality Act and California Government Code § 11135. In the memo, Attorney General Harris summarized the state’s authority to enforce § 11135 as follows:

Government Code section 11136 provides for an administrative hearing by a state agency to decide whether a violation of Government Code section 11135 has occurred. If the state agency determines that the local government has violated the statute, it is required to take action to “curtail” state funding in whole or in part to the local agency. (Gov. Code, § 11137.)<sup>23</sup>

The California Attorney General memorandum mirrors the federal government’s initial focus on environmental justice. Executive Order 12898<sup>24</sup> and an accompanying memo, signed by the President of the United States in 1994, describe how federal agencies can address “disproportionately high and adverse human health or environmental effects” of their programs, policies, and activities through the National Environmental Policy Act and Title VI of the Civil Rights Act of 1964.<sup>25</sup>

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<sup>20</sup> See CAL. ENVTL. PROT. AGENCY, *Environmental Justice Program Update, 2016-2018* 8, 26-27, 37, 53 (Dec. 2019), [https://calepa.ca.gov/wp-content/uploads/sites/6/2020/10/ej\\_report\\_2016-2018\\_a.pdf](https://calepa.ca.gov/wp-content/uploads/sites/6/2020/10/ej_report_2016-2018_a.pdf) (note: this is the most current program update available on the CalEPA website).

<sup>21</sup> See, e.g., GOVERNOR’S OFFICE OF PLANNING AND RESEARCH, *Environmental Justice in California State Government* 3 (Oct. 2003), [https://cawaterlibrary.net/wp-content/uploads/2017/05/Environmental\\_Justice\\_CA\\_Govt.pdf](https://cawaterlibrary.net/wp-content/uploads/2017/05/Environmental_Justice_CA_Govt.pdf) (“California has remained a national leader in taking the initiative to protect the environment and the public from environmental and health risks”).

<sup>22</sup> Kamala D. Harris, California Attorney General, *Environmental Justice at the Local and Regional Level: Legal Background* (July 10, 2012), [https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej\\_fact\\_sheet.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf).

<sup>23</sup> *Id.* at 2.

<sup>24</sup> Exec. Order No. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 Fed. Reg. 7629 (Feb. 16, 1994).

<sup>25</sup> William Clinton, *Memorandum for the Heads of All Departments and Agencies re: Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (Feb. 11, 1994), [https://www.epa.gov/sites/default/files/2015-02/documents/clinton\\_memo\\_12898.pdf](https://www.epa.gov/sites/default/files/2015-02/documents/clinton_memo_12898.pdf).

But while the federal government has since updated its environmental justice Executive Order,<sup>26</sup> issued specific recommendations for how to address civil rights enforcement,<sup>27</sup> defined “federal activities”<sup>28</sup> subject to strategic planning requirements, expanded agency obligations to not only identify but also analyze “disproportionate and adverse human health and environmental effects (including risks)”<sup>29</sup> of those activities, called for “just” rather than “fair” treatment so that people “are *fully protected* from disproportionate and adverse human health and environmental effects,”<sup>30</sup> and required the U.S. Attorney General to oversee agency compliance with and enforcement of civil rights laws<sup>31</sup> – including affirmative compliance review under Title VI<sup>32</sup> – California has barely begun to take similar steps to limit the daily discrimination that Latino/a and transnational Indigenous farmworkers and their families face, let alone ensure their full protection under law.<sup>33</sup>

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<sup>26</sup> Exec. Order No. 14096, Revitalizing Our Nation’s Commitment to Environmental Justice for All, 88 Fed. Reg. 25,251 (Apr. 21, 2023).

<sup>27</sup> Exec. Order No. 14096, *id.*, at 25,256. The U.S. Attorney General is required to oversee agency compliance with civil rights laws, including Title VI, and to report annually to the Council on Environmental Quality regarding compliance and enforcement, including for “programs and activities receiving Federal financial assistance.” We note in the Advisory Opinion that the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) grants primary authority to enforce pesticide-related regulations to the states. *See Advisory Opinion, supra* note 3, at 5.

<sup>28</sup> Exec. Order No. 14096, *supra* note 26, at 25,252.

<sup>29</sup> Exec. Order No. 14096, *supra* note 26, at 25,253.

<sup>30</sup> *Id.* (emphasis added). *See also* WHITE HOUSE ENVIRONMENTAL JUSTICE ADVISORY COUNCIL, *Final Recommendations: Justice40, Climate and Economic Justice Screening Tool, and Executive Order 12898 Revisions* 80 (May 21, 2021), <https://www.epa.gov/sites/default/files/2021-05/documents/whiteh2.pdf> (defining “just treatment”).

<sup>31</sup> Exec. Order No. 14096, *supra* note 26, at 25,256.

<sup>32</sup> *See* U.S. ENVTL. PROT. AGENCY, *External Civil Rights Compliance Office (ECRCO) Process and Criteria for Prioritizing and Selecting Affirmative Compliance Reviews* (Jan. 6, 2022), <https://www.epa.gov/system/files/documents/2022-01/01-06-20-ecrco-process-for-prioritizing-and-selecting-affirmative-compliance-reviews.pdf>; U.S. EPA, DRAFT FY 2022-2026 EPA STRATEGIC PLAN 21 (Oct. 1, 2021).

<sup>33</sup> It is notable that Executive Order 14096 requires federal agencies to create internal mechanisms, including performance measures, to achieve its objectives. Exec. Order No. 14096, *supra* note 26, at 25,255. It mandates that all federal agencies develop Environmental Justice Strategic Plans linked to performance measures. The Council on Environmental Quality (CEQ) created a template for such performance measures under E.O. 14096 and encouraged federal agencies to identify “outcome-oriented metrics” to align their environmental justice plans with other obligations under federal law, including the Government Performance and Results Act and Office of Management and Budget Circular No. A-11. WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY, *Strategic Planning to Advance Environmental Justice Under Executive Order 14096, Revitalizing Our Nation’s Commitment to Environmental Justice for All* 7-10 (Oct. 2023), [https://www.whitehouse.gov/wp-content/uploads/2023/11/Strategic-Planning-to-Advance-Environmental-Justice\\_final-Oct-2023.pdf](https://www.whitehouse.gov/wp-content/uploads/2023/11/Strategic-Planning-to-Advance-Environmental-Justice_final-Oct-2023.pdf) (“Metrics should ideally include a measurable, quantitative component, which is then supplemented by qualitative information that provides context”). Performance measures are viewed as an essential element of a “culture of performance improvement and evaluation.” *Id.* at 11. In California, by contrast, staff at multiple environmental agencies and programs note that there is “not a lot of understanding of civil rights laws,” civil rights claims are “not in common discussion,” and state civil rights law in particular “lacks visibility.” State agencies “need guidance” similar to CEQ guidance. Staff note that “11135 expertise is lacking,” with no system in place to “gauge disparate impacts of programs or decisions” or “adapt equity metrics and add them to various programs.” Perceived roles are difficult to change; the California Department of Fair Employment and Housing, for example, is viewed as “enforcing civil rights laws” while other agencies “enforce environmental law.” Interviews with California Agency Officials by UC Irvine Center for Land, Environment, and Natural Resources Staff (2021). In the absence of proper guidance, performance and accountability measures, and the state’s ability to track or analyze compliance with California Government Code § 11135, the abuses documented in our Advisory Opinion will persist, even flourish.

Only through similar efforts by the State of California, starting with a full investigation by the California Attorney General and administrative hearings into civil rights violations by the above-named County Agricultural Commissioners under California Government Code § 11135, can we ensure that the rights of human beings – including their civil rights – are fully protected.

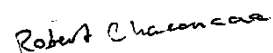
We await your reply and look forward to sharing additional evidence with you at your offices.

Sincerely yours,



**Gregg Macey**

Director, Center for Land, Environment & Natural Resources, UC Irvine School of Law



**Robert Chacanaca**

President, Monterey Bay Central Labor Council (retired)



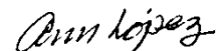
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**Mark Weller**

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cc.: Robert Bonta, Attorney General of California

Encl.: *Advisory Opinion: People's Tribunal on Pesticide Use and Civil Rights in California* (Feb. 15, 2024).