

Congress of the United States

Washington, DC 20510

January 14, 2025

The Honorable Julie Su
Acting Secretary
United States Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

The Honorable Douglas L. Parker
Assistant Secretary of Labor for Occupational
Safety and Health
United States Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

RE: Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings (Docket No. OSHA-2021-0009)

Dear Acting Secretary Su and Assistant Secretary Parker:

We thank the Biden Administration, U.S. Department of Labor, and the Occupational Health and Safety Administration (OSHA) for their commitment to protect workers from occupational exposure to extreme heat by publishing the Notice of a Proposed Rulemaking (NPRM) titled “Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings,” and we appreciate this opportunity to provide comment. We urge your office to finalize a strong and enforceable rule that is as protective of workers as possible, consistent with the standards outlined in the *Asunción Valdivia Heat Stress Injury, Illness, and Fatality Prevention Act*. Importantly, we further urge that the final rule maintain the proposed rule’s inclusion of specific, objective, evidence-based heat triggers that prompt certain minimum employer requirements to protect workers from heat. And finally, we urge that your office finalize this strong proposed rule as soon as possible, as record-breaking temperatures each summer are putting workers increasingly at risk. All workers deserve a safe work environment.

August 2024 was Earth’s hottest August on record and was also the fifteenth month in a row of record-breaking monthly global temperatures.¹ At one point this past summer, close to one third of the entire population of the United States lived in areas expected to have dangerous levels of heat.² Researchers estimate that 2024 was almost certainly the world’s hottest year on record—a title previously held by the year 2023.³ Additionally, out of all 174 years that the National Oceanic and Atmospheric Administration’s (NOAA) has been keeping global climate records, the hottest 10 years have all occurred during the last decade.⁴

¹ *Earth Had Its Hottest August in 175-Year Record*, NAT’L OCEANIC & ATMOS. ADMIN. (Sept. 12, 2024), <https://www.noaa.gov/news/earth-had-its-hottest-august-in-175-year-record>.

² *100 Million in U.S. Under Heat Alerts as First Summer Weekend Arrives*, N.Y. TIMES (June 21, 2024), <https://www.nytimes.com/live/2024/06/21/us/heat-wave-news>.

³ Austyn Gaffney, *2024 Temperatures Are on Track for a Record High, Researchers Find*, N.Y. TIMES (Nov. 6, 2024), <https://www.nytimes.com/2024/11/06/climate/2024-temperatures-hottest-year.html>.

⁴ NOAA Nat’l Ctrs. for Env’tl. Info., *2023 Was the Warmest Year in the Modern Temperature Record*, CLIMATE.GOV (Jan. 17, 2024), <https://www.climate.gov/news-features/featured-images/2023-was-warmest-year-modern-temperature-record>.

It is no coincidence that heat-related emergency room visit rates are higher this year than last year in almost every region of the U.S.⁵ Exposure to extreme heat can result in conditions of varying severity including heat rashes, heat syncope, acute kidney injury, heat stroke, cardiac arrest, and death. In fact, extreme heat is responsible for the highest number of annual deaths out of all weather-related hazards, including natural disasters.⁶ In the workplace, extreme heat also increases the likelihood of accidents and injury: research shows that when temperatures are between 85 and 90 degrees Fahrenheit, workplace injuries are 5% to 7% more likely.⁷ According to the Bureau of Labor Statistics (BLS) Census of Fatal Occupational Injuries, 436 U.S. workers died from occupational heat stress between 2011 and 2021, an average of 40 per year.⁸ But because heat-related illnesses have symptoms common with other illnesses, and heat-related fatalities are often recorded only by the immediate cause of death such as “heart attack” or “kidney failure” without noting heat as the underlying cause, these fatalities, illnesses, and injuries are likely significantly undercounted.⁹ In fact, by examining BLS data and other relevant research, Public Citizen estimates that occupational heat stress actually causes as many as 2,000 worker deaths and 170,000 worker illnesses and injuries annually in the United States.¹⁰

Workers in a wide range of outdoor and non-climate-controlled indoor workplaces—including farms, highways and construction sites, iron and steel mills, meat-packing plants, warehouses, laundries, kitchens and bakeries, delivery vehicles, fire service, and more—are in danger of heat-related illness, injury, and death. This threat is especially acute for farmworkers, who are roughly 35 times more likely to die of heat-related causes than workers in all other civilian occupations.¹¹ The Department of Labor estimates that about half of workers in the agriculture sector are undocumented;¹² these workers justifiably fear employer retaliation for speaking out against hazardous working conditions. In addition, many of these workers are paid by their rate of productivity; if they stop work to drink water or take a break in the shade, that choice can reduce their earnings.

These facts speak for themselves: workers are in grave danger from extreme heat, and as global temperatures continue to rise and summer heat waves become more severe, their lives

⁵ *Extreme Heat*, HHS.GOV, <https://www.hhs.gov/climate-change-health-equity-environmental-justice/climate-change-health-equity/climate-health-outlook/extreme-heat/index.html> (last visited Dec. 2, 2024).

⁶ Federal Emergency Management Agency, *Be Prepared for Extreme Heat* (June 2018), https://www.ready.gov/sites/default/files/2021-01/ready_extreme-heat_info-sheet.pdf.

⁷ Christopher Flavelle, *Work Injuries Tied to Heat Are Vastly Undercounted, Study Finds*, N.Y. TIMES (July 15, 2021), <http://www.nytimes.com/2021/07/15/climate/heat-injuries.html>.

⁸ Juley Fulcher, *Hot Take – Urgent Heat Crisis for Workers*, PUB. CIT. (May 25, 2023), <https://www.citizen.org/article/hot-take/>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Moussa El Khayat *et al.*, *Impacts of Climate Change and Heat Stress on Farmworkers' Health: A Scoping Review*, 10 FRONTIERS IN PUB. HEALTH 782811 (2022), <https://doi.org/10.3389/fpubh.2022.782811>.

¹² TRISH HERNANDEZ & SUSAN GABBARD, JBS INT’L, U.S. DEP’T OF LAB., FINDINGS FROM THE NATIONAL AGRICULTURAL WORKERS SURVEY (NAWS) 2015-2016: A DEMOGRAPHIC AND EMPLOYMENT PROFILE OF UNITED STATES FARMWORKERS 4-5 (2018), https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS_Research_Report_13.pdf (“A series of related questions in the survey provides a picture of whether foreign-born respondents have work authorization [and] address the foreign-born worker’s existing status.... Fifty-one percent of the hired crop labor force had work authorization in 2015-2016.”).

are increasingly at risk. We are moved to act not just by the data, but by the many heartbreaking stories we have heard from our constituents and workers across the nation, of which the below are just a few examples:

- Asunción Valdivia was a 53-year-old farmworker from California who tragically died of heat stroke in 2004. After picking grapes for 10 hours straight in 105-degree temperatures, he fell over unconscious. Instead of calling an ambulance, his employer told his son to drive Mr. Valdivia home. He passed away in the car before making it home.¹³
- Maria Isavel Vasquez Jimenez was a 17-year-old farmworker at a vineyard east of Stockton, California when the temperature rose above 95 °F. The nearest water cooler was a 10-minute walk away, and workers weren't allowed a break long enough to get a drink. After tying grape vines for more than nine hours under these conditions, she collapsed. The farm labor contractor delayed bringing her to the hospital, and by the time she got there she was in a coma with a body temperature of 108 °F. She died two days later on May 16, 2008.¹⁴
- Sebastian Francisco Perez was 38 years old when his coworkers found him unconscious and unresponsive while the farm crew was moving irrigation lines in 104-degree weather in St. Paul, Oregon in 2021. Mr. Perez died before reaching the hospital.¹⁵
- Esteban Chavez Jr. was 24 years old when he passed away from a heat stroke in 2022. He was in Pasadena, California finishing his deliveries for the day in a UPS truck without air conditioning when he collapsed. Records show temperatures in Pasadena that day were in the upper 90s.¹⁶
- Eugene Gates Jr., a USPS employee of over 40 years, died from heat stroke while on his route in 115 °F heat in 2023 in Dallas, Texas.¹⁷ This employee did not receive his mandatory heat risk training, and managers falsified records indicating that he had.¹⁸

¹³ Juliana Barbassa, *The Heat Is on to Protect Workers*, CBS NEWS (Aug. 4, 2024), <https://www.cbsnews.com/news/the-heat-is-on-to-protect-workers/>.

¹⁴ Sasha Khokha, *Teen Farmworker's Heat Death Sparks Outcry*, NPR (June 6, 2008), <https://www.npr.org/2008/06/06/91240378/teen-farmworkers-heat-death-sparks-outcry>.

¹⁵ Andrew Selsky & Nathan Howard, *'He Liked to Be in the United States': Family Remembers Farm Worker Who Died in Heat*, SALEM STATESMAN J. (July 2, 2021), <https://www.statesmanjournal.com/story/news/2021/07/02/family-remembers-oregon-farmworker-who-died-record-heat-earnst-farm-sebastian-francisco-perez/7843812002/>; Dora Totoian, *Farmworker Dies in Willamette Valley Record Heat*, SALEM STATESMAN J. (June 29, 2021), <https://www.statesmanjournal.com/story/news/2021/06/29/oregon-farmworker-dies-willamette-valley-record-heat/7800594002/>.

¹⁶ <https://abc7.com/heat-exhaustion-ups-driver-pasadena-esteban-chavez/12010038/>

¹⁷ Simone Carter, *Critics Blast New Law After Dallas Postman Dies Amid Extreme Heat*, DALLAS OBSERVER (June 27, 2023), <https://www.dallasobserver.com/news/dallas-usps-worker-dies-in-extreme-heat-critics-slam-hb-2127>; Zaeem Shaikh, *Autopsy Reveals Cause of Death for Mail Carrier Who Collapsed in Dallas Heat*, DALLAS MORNING NEWS (Sept. 30, 2023), <http://www.dallasnews.com/news/2023/09/30/autopsy-reveals-cause-of-death-for-mail-carrier-who-collapsed-in-dallas-heat/>.

¹⁸ Ariel Wittenberg, *A Deadly Delivery Highlights 'Falsified' Heat Records at USPS*, POLITICO (Dec. 11, 2023), <http://www.politico.com/news/2023/12/11/usps-major-heat-deaths-00128875#>.

- Justin Cory Foster, a 35-year-old lineman working to restore power, died likely from heat exhaustion in 2023 in Harrison County, Texas.¹⁹
- Wednesday "Wendy" Johnson, a 51-year-old USPS employee in Fayetteville, North Carolina died on June 6 of this year shortly after an hours-long shift working in an un-airconditioned postal vehicle, referred to by a colleague as “easy bake ovens,” in 95-degree heat.²⁰

These tragedies were preventable. The government and places of business must act with urgency to ensure not one more person dies in the workplace from heat stress.

As Members of Congress, we have been calling on OSHA for years to implement a national standard to protect indoor and outdoor workers from extreme heat and are extremely pleased with your leadership in moving forward with this proposed rule. We urge that the final rule be as protective of workers as possible and that it be consistent with the standards outlined in the *Asunción Valdivia Heat Stress Injury, Illness, and Fatality Prevention Act* (H.R. 4897). This bill directs OSHA to establish a permanent and enforceable federal standard to ensure workers and employers can both prevent heat-related illness and recognize and respond to the signs of heat stress. This comprehensive standard must require employers to provide workers the following:

- 1) adequate hydration;
- 2) rest breaks;
- 3) areas for rest breaks that are shaded (in the case of outdoor work) or air-conditioned (in the case of indoor work);
- 4) medical services and training to address signs and symptom of heat-related illness; and
- 5) a plan for acclimatization to high-heat work conditions.

We are also pleased that the proposed rule sets forth clear, specific, evidence-based temperature thresholds for what constitutes hazardous heat—called “heat triggers”—for the purpose of triggering certain employer requirements to protect workers under the standard. This is essential to the efficacy of this rulemaking. We have ample evidence as to the temperature conditions known to cause heat illness, injury, and death in the workplace. Furthermore, specific heat triggers provide employers with needed clarity and simplicity in determining when their workers are at risk from heat and what is required of them to mitigate that risk. An Occupational Safety and Health Review Commission (OSHRC) Administrative Law Judge noted in five similar rulings in 2020 that “without a temperature- or heat index-specific standard, it is difficult for employers to know when heat is ‘excessive.’”²¹ We therefore strongly urge that such specific,

¹⁹ Luke Whitney, *35-Year-Old Lineman Dies After Working to Restore Power in East Texas*, KETK (June 20, 2023), <https://www.ketk.com/news/local-news/35-year-old-lineman-dies-after-working-to-restore-power>.

²⁰ Jonathan Limehouse, *North Carolina Postal Worker Died in Truck from Possible Heat Stroke, Family Says*, USA TODAY (July 15, 2024), <https://www.usatoday.com/story/news/nation/2024/07/15/usps-worker-heat-stroke-death-wendyjohnson/74414304007/>.

²¹ Secretary of Labor v. United States Postal Service, National Association of Letter Carriers (NALC) and National Rural Letter Carriers’ Association (NRLCA), OSHRC Docket Nos. 16-1713, <https://bit.ly/3zY8EHX>; 16-1813, <https://bit.ly/39LQdf1>; 16-1872, <https://bit.ly/3NeBsyT>; 17-0023, <https://bit.ly/3bo2XJc>; 17-0279, <https://bit.ly/3xNO0Yf> (July 15, 2020).

evidence-based heat triggers and clear methods for employers to measure them be maintained in the final rule.

Several states with OSHA State Plans, including California, Colorado, Maryland, Minnesota, Oregon, and Washington have already issued similar standards to protect workers from heat stress. For example, California requires employers to allow outdoor workers to take preventative cooldown rest in a shaded area at any time they feel at risk of overheating when the temperature is above 80 °F.²² In Minnesota, indoor workers may not be required to perform heavy work when the indoor heat index is too high.²³ We urge that your office continue to take into account the best practices from these state rules when finalizing the proposed federal rule.

We applaud these state-level rules, but there are still millions of workers in other states across the U.S. who are not guaranteed basic protections from heat. The urgent need for a strong federal standard covering workers in every state is further underscored by the recent efforts of a handful of state governments to *deny* basic heat protections for workers in their states. For example, last summer during a week of temperatures above 100 °F, Texas Governor Greg Abbott signed House Bill 2127 into law, which nullified local protections against extreme heat, such as the Austin and Dallas ordinances that required water breaks for construction workers. This is especially shocking considering Texas is the leading state for construction worker fatalities,²⁴ and a University of Texas study found that 39% of Texas construction workers do not receive rest breaks on the job.²⁵

Additionally, a federal rulemaking on heat protections for workers is essential because the General Duty Clause, OSHA's fallback for enforcement in areas for which OSHA otherwise lacks a specific standard, has proven insufficient authority for enabling OSHA to detect and prevent heat-related illness.²⁶ This is evidenced by a comparison between the state of California's Division of Occupational Safety and Health (Cal/OSHA) and federal OSHA which shows that, from 2013 to 2017, Cal/OSHA used its state-level heat standard to conduct 50 times more inspections discovering violation for unsafe heat exposure practices in California alone than federal OSHA did nationwide during the same period using the General Duty Clause.²⁷

We thank you, again, for your commitment to protecting workers from preventable heat illness, injury, and death by publishing the proposed rule. We appreciate the opportunity to comment and thank you for your full and fair consideration of the facts presented. We urge OSHA to finalize a strong, enforceable rule with objective, evidence-based heat triggers that is as protective of workers as possible, as soon as possible, to ensure robust and life-saving heat protections are

²² CAL. CODE REGS. tit. 8, § 3395 (2020).

²³ MINN. R. 5205.0110 (2014).

²⁴ *Construction Fatality Map Dashboard*, CTR. FOR CONSTR. RSCH. & TRAINING, <https://www.cpwr.com/research/data-center/data-dashboards/construction-fatality-map-dashboard/> (last visited Dec. 3, 2024).

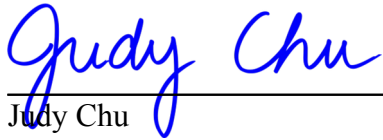
²⁵ WORKERS DEFENSE PROJ., BUILD A BETTER TEXAS: CONSTRUCTION WORKING CONDITIONS IN THE LONE STAR STATE (2013), https://constructioncitizen.com/sites/constructioncitizen.com/files/Build_a_Better_Texas.pdf.

²⁶ H. REP. NO. 117-543, at 26-31 (report accompanying H.R. 2193, 117th Cong. (2022)).

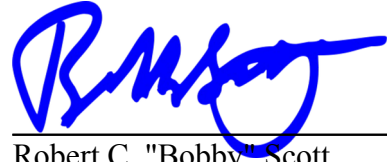
²⁷ Public Citizen, *85+ Groups Endorse Workplace Heat Protection Bill* (Oct. 8, 2020), https://www.citizen.org/article/85-groupendorse-workplace-heat-protection-bill/#_edn14, at text accompanying note 14.

finally put in place for tens of millions of vulnerable workers in every ZIP code. No one should be forced to risk their health and their life just to provide for their family.

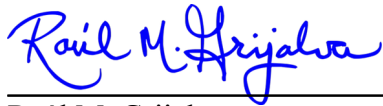
Sincerely,



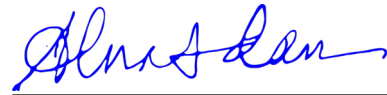
Judy Chu
Member of Congress



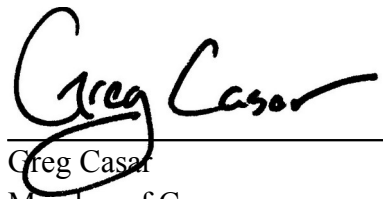
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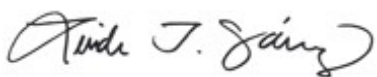
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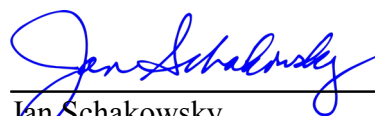
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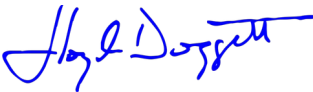
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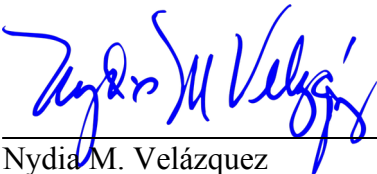
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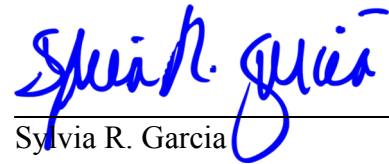
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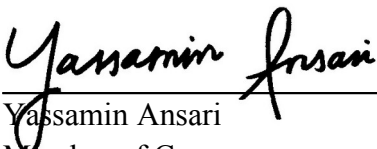
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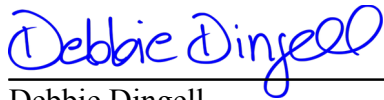
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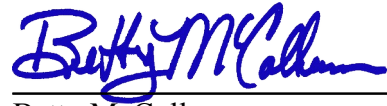
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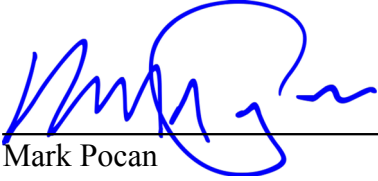
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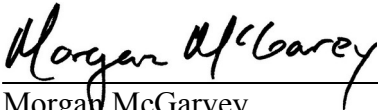
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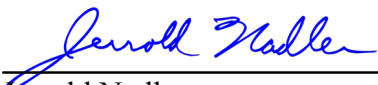
Maxwell Alejandro Frost
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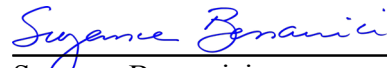
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Suzanne Bonamici
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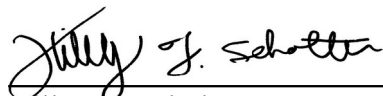
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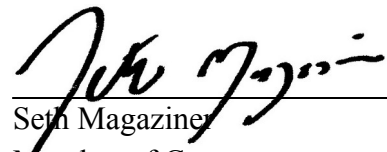
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