

Statement of Javier Rodriguez, Warehouse Worker Resource Center

Subcommittee on Workforce Protections
Committee on Education and Labor
US House of Representatives

From the Fields to the Factories: Preventing Workplace Injury and Death from Excessive Heat
July 11, 2019

Chairman Adams, Ranking Member Byrne, and distinguished members of the Subcommittee.

My name is Javier Rodriguez. In the past 15 years, I have had experiences working in Southern California in several industries. I have experienced excessive heat both indoors and outdoors in workplaces operated by major global companies and small businesses. In all of these workplaces, I have personally witnessed employers neglecting workers affected by heat and even retaliating against them, not providing education or training, not providing workers dealing with extreme heat with basic protections like water and rest, and generally not taking the issue of heat seriously. I am now a staff member of the Warehouse Worker Resource Center, the organization where my co-workers and I received training in our rights at work.¹

In 2011- 2012, I worked at the NFI Crossdock in Jurupa Valley, Riverside County, CA, a facility moving goods 100% for Walmart. This facility had a roof but was not enclosed with walls, and we worked moving freight in and out of the building from metal shipping containers. The temperatures in Riverside County often go above 100 degrees in the summer, and inside the steel containers, the temperature can be ten degrees higher. When it is humid, we have documented the heat index at 115 degrees.

The work pace at the cross dock was extremely high. This is the rate sheet from the NFI warehouse where I worked. We had to load or unload 450 boxes per hour, boxes between 10 and 100 pounds, carry it up to 40 feet out of the container onto the warehouse floor, stack it neatly onto carts or pallets, and walk back, for eight hours per day. (See Exhibit 1) You would have to unload, carry and stack a box containing a microwave or TV every seven and a half seconds. If you don't keep up with the rate, it is likely you won't get to work the next day. In the five minutes of my testimony, a warehouse worker will unload 45 boxes, and then continue for another 115 minutes without stopping.

Despite the fact that this warehouse was operated by NFI, a global trucking and warehouse company that brings in \$2 billion per year and employs over 11,000 people, and the fact that we were loading and unloading freight for Walmart, the largest company in the world, this warehouse's managers did not provide us with any training or protections around the heat. The company took no extra precautions in the summer when the heat was above 90 or 100 degrees.

¹The Warehouse Worker Resource Center is a non-profit organization based in Southern California that supports low-wage workers in the goods movement sector through education, advocacy and action. For more detail see www.warehouseworkers.org.

There was only one water cooler on site, far from where we were working. If you wanted to get water you had to stop working and walk over to the cooler, which the managers didn't like. The cooler was often dirty and sometimes didn't work at all. Signs on the pipes said the water was recycled.

I personally witnessed workers at this warehouse faint from the heat. People would feel ill and not know how to get help. Instead of providing the rest of us with information on how to protect ourselves, the company told workers who fainted or felt ill and were facing heat stress to rest or go home, and told the rest of us to keep working, at the same pace as before. Even worse, because most of us worked for minimum wages, many of us could not afford air conditioning at home. The toll the body undergoes in the high heat and stress periods compounds the impacts on the body when the body does not get the ability to recover completely before going back to work under these same conditions for days on end.

We who worked at the warehouse knew that these conditions were dangerous. We educated ourselves about the effects of heat on the human body and the steps that should be taken to protect ourselves. We received trainings from educators and occupational health experts from institutions like UCLA. We began to ask for heat protections like clean water, education around heat, and more breaks. The managers refused. We ended up filing a complaint with Cal/OSHA in July 2012. The complaint named, among many other things, the heat and lack of training, but there was no standard for indoor heat and the state didn't take any action. There were a lot of other violations and the state issued serious citations to NFI and the staffing agency. But the heat continued to be a problem. Here is an image of some of my co-workers with a thermometer inside the warehouse showing 102 degrees that summer. (Exhibit)

We joined together and went as a group during our breaks to ask for heat protection, as well as other safety measures. The NFI and staffing agency managers refused, told us to get back to work. Workers who educated themselves about the heat grew concerned, and some of us who had heard of other workers getting injured or dying took breaks when we felt tired -- even though the company's managers threatened and punished us for it.

Some of the workers who spoke up for their co-workers, asking for protections or who took breaks, were not brought back to work. Both the NFI warehouse managers and the staffing agency leads would constantly remind us that we were temps -- even those of us who had been there for years, and that there would be no work for those who speak up or slow down. We knew this was retaliation and we told them and we also filed complaints with the state and the NLRB. This led to further retaliation. We were being punished for speaking up about the heat.

This experience showed us how retaliation prevents many workers from being able to speak up to protect their safety and health. Protecting workers from heat means we must also have strong protections against retaliation. At NFI, we the workers knew when the conditions were dangerous and when we needed protections or to slow down to stay safe, despite managers pushing us to keep going. Although employers must take responsibility for keeping the

workplace safe, workers must have the right to take a break from dangerous heat when they feel the need to, and to help decide what protections are needed in the workplace.

* * *

The previous summer, in August 2011, at a warehouse operated by the same company, NFI, with the same safety manager, about 10 miles away in Chino, California, a worker named Domingo Blancas fell ill on a hot day. He was employed by a staffing agency, Tristate, whose solution to Blancas reporting dangerous heat illness symptoms was to have another worker also complaining of heat illness symptoms drive him to a clinic. The clinic told him to go to the Emergency Room, but Domingo had no vehicle and no health insurance, and knew an ambulance could cost him thousands of dollars. Unsure of what to do, he went home from work and went back to work the next day, still sick. He waited for hours before his son, who also worked in the warehouse, could take him to the hospital, where he was treated and had surgery on his stomach for myostis related to the heat. He spent three days in the hospital and was told that if he'd arrived much later, he would have ended up even worse.

With the clear evidence of Blancas' serious heat illness and NFI's completely inadequate response, Cal/OSHA cited both NFI and Tristate for not having an adequate injury and illness prevention plan to deal with this issue. NFI and the staffing agency then spent much of the next five years fighting this case in court, denying the clear evidence that Domingo Blancas had suffered heat-related illness. It wasn't until July 2017 that the California Superior Court finally found "substantial evidence that ... Blancas suffered a serious heat illness requiring hospitalization", and NFI gave up fighting this violation.

Employers and policymakers should be listening to workers about how to protect us from heat, but the burden of providing safety should not be placed on the worker. Employers must also be required to take specific steps, such as using air conditioning, mandatory rest breaks, or acclimatization methods, to prevent heat conditions from becoming dangerous. If workers are having to protest because they are getting sick from heat and fear for their health, the employer has already failed in its duty to provide a safe workplace.

That experience led us to call for an indoor heat standard in California, which we won through Senate Bill 1167 in 2016. Cal/OSHA is currently working on this standard in rulemaking and we hope it will go into effect soon.

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In the years since my experience at NFI, I have been an organizer educating workers about their rights in the workplace, including their right to heat protection. I have seen too often that workers are not informed about the occupational clinics and the workers compensation system and the fact that they are guaranteed treatment for occupational injuries. Employers do little to inform workers of their rights to medical treatment for conditions like heat illnesses, and rarely report anything but the most direct injuries to the workers' compensation system. Workers face pressures from their employers to suppress anything that indicates they would not be able to

keep up in an intense work situation. This leads to the situation we see now in the warehouse industry, where heat illness is rarely reported and, when it is reported, is rarely the subject of an occupational medical examination or workers' compensation claim.

I have seen that this type of treatment is consistent across many warehouse operators and other sectors of the economy. They focus on the individual's inability to handle the heat, without changing their work rates, quotas or speeds to account for heat's impacts on the human body. So in the end, when the worker gets sick under these abusive conditions, the company ends up blaming the workers instead of taking responsibility for preventing the illnesses in the first place.

For example, last summer a worker I know became very sick after working in extreme heat conditions in a warehouse in Ontario, California, moving clothes for a major national fashion brand. A 40-year-old mother of three, she worked all day doing heavy and fast lifting surrounded by racks of clothing that trapped heat. There was no air conditioning in the warehouse and no ventilation in the workspace. Workers fanned themselves with cardboard, bought small handheld fans, and wrapped their heads in wet clothes to try to stay cool. The day she became sick, the worker was wearing a heat tracker she was given by a journalist, and it showed that the heat index inside the work area was 94 degrees, even well into the night.

After working in these extreme conditions, the worker felt dehydrated and complained to her supervisor who became angry and told her just to take a break. The worker nearly fainted and felt like she was going to throw up, and then noticed that her hands were starting to shake. Instead of helping her or providing any medical care or transportation, the supervisor told the worker to go home. The worker drove herself to a clinic and saw a doctor who diagnosed dehydration but refused to provide any documentation that her condition may have been caused by the conditions at work. The worker had to miss several days of work and received no sick pay, and no workers' compensation or other assistance to pay her medical bills. She still gets headaches in the heat. That worker is my wife.

This and many other experiences have shown me that workers facing deadly heat hazards would be much better protected if their supervisors were forced to recognize these dangers, and to act swiftly in addressing and implementing safety measures to protect workers from heat exposures when danger strikes. This includes keeping good records of these cases as they happen, so the company would clearly see the need to protect people.

And they would be much better off if doctors took workers more seriously when they reported feeling sick from heat. This includes doctors naming the plausible root cause of a heat related illness or injury, instead of shying away from naming a culprit because it might be related to occupational health and safety exposure.

But sadly that kind of recognition would be the exception in today's real world. Recently, OSHA's own doctors said that in almost one-quarter of the deaths they investigated in 2012 and

2013, the coroners called them heart attacks instead of heat illnesses.² And another recent study showed that non-US citizen workers are over 3 times more likely to die from heat-related illness, for various reasons, as compared to US citizens.³

Every day, workers have to put up with the doctors in the workers comp system -- often picked by the company -- who refuse to believe that they are sick from the heat at work. I know this personally.

Just last summer, I witnessed people I know who work in warehouses go home ill from heat, after going to their employers and being told it was not work-related, even workers who know well the causes and symptoms of heat illness and explained them to their supervisors or doctors. Occupational clinics are often set up to deny worker claims and workers affected by heat, already disoriented and confused about the process, rarely feel comfortable pushing back against a doctor's diagnosis.

This experience tells me there needs to be a policy solution to this problem. If employers are allowed to blame heat illness on a worker's inability to keep up, instead of taking into account that heat slows workers down and can make people sick or die, these kinds of situations will keep happening.

This is why it is so important for OSHA to create and enforce a strong heat standard to protect workers like myself, my wife, and my many coworkers who have experienced terrible and unsafe heat conditions working both outdoors and indoors. This is why I came all the way from California to speak with you today, to share my experiences so you can understand how bad the conditions are for so many workers and what it has taken for us to fight and win protections in our workplaces and our state legislature.

We support the legislation by Congresswoman Chu and Congressman Grijalva to require OSHA to create a heat stress standard. It includes many of the important things employers need to take responsibility for to protect their employees. I urge you to support this legislation, and to also remember that to truly protect workers from heat you must also ensure workers are protected against retaliation and provided with the right to speak up or take action to protect our health and our lives when heat puts them in danger.

² Arbury S, Lindsley M, Hodgson M. A critical review of OSHA heat enforcement cases: Lessons learned. *J Occup Environ Med.* 2016;58(4):359-363. p. 361.

³ Taylor EV, Vaidyanathan A, Flanders D, et al. Differences in heat-related mortality by citizenship status: United States, 2005–2014. *Am J Public Health.* 2018;108:S131–S136.

Thank you for your consideration.

Respectfully submitted,

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Attachments:

1. Assignment Goals Sheet, NFI Industries Crossdock
2. Image, David Garcia And Manolo Fernandez document 100+ temp in NFI Warehouse
3. Citation and Notification of Penalty, Cal/OSHA, Inspection 316208685, 11888 Mission Blvd, Mira Loma, CA 91752, 12/27/2012.
4. Stipulation of Appeal of National Distribution Center LP dba NFI, Docket 14-R3D3-2360
5. Citation and Notification of Penalty, Cal/OSHA, Inspection #314757121, 15835 San Antonio Ave., Chino, CA 91708, January 13, 2012.
6. Divison's Reply Brief, National Distribution Center LP and Tri-State Staffing, Docket Nos. 12-R6D2-0391, 12-R6D2-0378, December 10, 2014.
7. Decision After Reconsideration, National Distribution Center LP and Tri-State Staffing, Docket Nos. 12-R6D2-0391, 12-R6D2-0378, Oct. 5, 2015.