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**Written Testimony of Josue Alvarez, Misclassified Truck Driver for XPO Logistics, House Education and Labor Committee, Health, Employment, Labor and Pensions Subcommittee “The Protecting the Right to Organize Act: Modernizing America’s Labor Laws”**

Thank you, Chairwoman Wilson and Ranking Member Walberg.

My name is Josue Alvarez from Bell Gardens, California. I’m 26 years old and I am a misclassified truck driver at XPO Logistics.

I am honored to speak with you today about the “Protecting the Right to Organize Act,” or the PRO Act.

My parents came to the United States from El Salvador in search of a better future. Growing up, my father had many jobs but struggled to make ends meet, so when my dad’s friends, who said they were doing well as truck drivers, encouraged him to join, he jumped at the chance. My dad has been a truck driver now for 15 years, starting out at a company called Pacer Cartage, which is now owned by a \$15 billion-dollar global corporation called XPO Logistics.

We know that these companies have scams to hide their responsibilities towards their workers. One scam is calling drivers who own or lease trucks “independent contractors,” but then controlling them just like any employee. This is known as “misclassification”. The other scam is completely avoiding any responsibility to the drivers who work for them and drive someone else’s truck (the “truck owner”), usually on the night shift. They call these drivers “second seat drivers.” I have been exploited by XPO both as a second seat driver and more recently as a truck owner, but whatever they call us, at the end of the day, we’re all XPO’s employees, while XPO gets away with wage theft and union busting.

I didn’t always want to be a truck driver. In fact, I’ve been working hard for years to try and get myself through school. I am trying to finish a degree in aviation administration and I dream of becoming a pilot for a major U.S. airline; but those dreams are becoming more difficult. My family has struggled to make ends meet. I want to get my pilot’s license but it’s just too out of reach right now. I’ve taken out loans to help with my education but it’s still not enough. I became my dad’s second seat driver in hopes that my extra income would not only help my family but also cover my education. That has not been the case. With the extra income I bring home I cover costs like cellphones and internet so my two younger brothers can focus on their education. I’m slowly trying to finish my degree but it’s hard when you work 14 hours a day and are at the company’s mercy.

I cannot say enough just how much misclassification has badly impacted not just my life and my family’s, but also that of the thousands of other misclassified drivers and their families. In my three years of being in this industry, it didn’t take too long to discover that things are not as advertised. As a second seat driver you’re paid by the load, in cash, by the truck owner, a portion of what the truck owner is paid by XPO. While a truck owner receives a settlement check and a corresponding statement at the end of a pay period, second seat drivers do not receive any documentation from XPO. XPO reports the total number of loads hauled by the truck whether by a truck owner (often referred to as ‘first seat’) or the second seat driver and then the truck owner calculates what the second seat driver is owed. As a second seat, you often work nights and receive the worst dispatches. Whenever personal or health issues arise

that necessitate accommodation at work and you bring them to XPO management, they turn the second seat drivers away and tell us that the truck owner is our boss so we should deal with them. That doesn't make any sense to me because I had to apply directly to XPO to be a second seat driver. Even though my Dad owns his truck, he couldn't just hire me on as his second seat. XPO had to hire me and XPO controls our work.

The XPO dispatcher passes out work. The dispatcher contacts the drivers either by phone or on the tablet computer that XPO requires us to buy and asks the driver "yes" or "no" on an available job? Both as a second seat and as a truck owner, I don't get to select my customers or my deliveries from all available options. I take what I am offered by the dispatcher or I don't get paid. XPO determines what I pick up and when there is a problem on the road, I have to call the XPO dispatcher to find out what to do. One time I was passing through scales for an inspection and was issued a citation from DOT and given a report to return to dispatch. These citations fall onto XPO since it's their DOT number, but XPO has their own internal point system used to discipline us. For that instance, I received 55 points, once you hit 75 points XPO terminates you.

I have no say over what I am paid. XPO controls all relations with the customer. XPO obtains the customer, determines the service provided, negotiates how much the customer is charged and sets the appointments for me to pick up the container. My truck says XPO on it and I wear an XPO vest every day. My sole interaction with the customer is as an XPO representative doing business in XPO's name. And once that truck has XPO painted on the side, a truck owner can't use his truck for any load that XPO doesn't solicit or to make additional money from another company if work at XPO slows. In theory, I can choose the number of loads that I pick up, but as I said we are paid by the load and I need every load dispatch hands my way, over 14 hours straight just to make ends meet. So, that supposed flexibility doesn't really mean anything. I am fully dependent on XPO for my income. XPO wants to say that the truck owner is the boss, but It's clear who the boss is here – it's XPO.

Last year, I purchased my own truck. You may be wondering why I would take that step, seeing what my Dad goes through and knowing the struggle involved. The answer is that XPO misled me. They told me that they were going to be getting a bunch of new accounts and that work was going to pick up significantly. They said that with my Hazmat Endorsement and as a truck owner I'd make a lot more money. As I just described, I have no interaction with the customers, so I took XPO at their word, but we haven't seen these new accounts and work has not picked up. Now I'm stuck with this truck and as I just described, I can't use my truck to go make money elsewhere. XPO does what it can to fool workers into buying in to this business. They try to sell us a dream but they don't tell you that what they are really doing is pushing their operational costs onto you. Now that I'm a truck owner, my XPO paycheck comes with a statement attached – much like any employee's paycheck stub – it tells me how much I made per load and then lists deductions for insurance and miscellaneous administrative fees. Not only do I have no control over my pay, I have no control over much of these costs. For example, XPO deducts from my pay the cost of the insurance that they shop for and select. I have no idea what some of the administrative costs really are or if they are legitimate. And because I am misclassified, XPO is able to push operational costs like taxes, diesel, parking, tags and more onto me. I pay all of those costs, but see none of the benefits...and I view my "settlement check" statement on a tablet that XPO required me to purchase in order to work for them!

My dad and his coworkers started trying to organize a union back in 2015. They were met with intimidation and retaliated against and were told that they're independent contractors. XPO's misclassification made it impossible to organize. My dad tried to bring me around organizing meetings

and at first, I wanted no part in it. I believed XPO and their anti-union rhetoric. I was wrong. XPO is wrong.

I've seen my coworkers get sick or injured and lose everything because they couldn't get help at work and didn't have health insurance. Seeing that happen, I realized that things at XPO need to change. I'm 26 years old and I don't have health insurance. I simply can't afford it. Every day I pray that I do not get sick or injured. If I weren't misclassified, I could have access to health insurance and not live in fear every day. We don't have sick days or vacation days. Taking a vacation or sick leave could mean falling behind and losing the truck. We should be able to go to the bargaining table and negotiate higher pay and benefits, sick days, vacation days, a grievance procedure. Truck driving is a professional job, it takes a great deal of skill and we bear a lot of responsibility on our community's roads. That shirt you're wearing, the phone in your hands and the shoes on your feet have all been in the trailers of our trucks. We're not asking for a lot. We're asking for what's just and fair.

My Dad and co-workers filed charges with the NLRB in 2015 to try and exercise our right to organize. Because we are misclassified as independent contractors, we had to first prove to the NLRB that we were, in fact, employees. It took until 2017 just to have a hearing before an Administrative Law Judge. The hearing lasted twelve (12) days, most of it devoted to proving we were employees. The judge issued her decision over a year after that hearing ended and agreed that we were employees, not independent contractors and that XPO had violated national labor laws by misclassifying us, but the NLRB changed the definition and now the case has been sent back to the judge to reconsider her decision on our employee status.

Even though we had strong evidence of employee status, the multi-factor test used by the Board means that workers without the support and resources of a Union like the Teamsters will be hard pressed to establish employee status. Plus, some of the factors that the multifactor test focuses on are things that aren't very important, like whether I can choose what route to take in making a delivery. The law needs to be changed to make it easier to stop employers from misclassifying their employees. The current law allows XPO to say that it's a delivery business that doesn't actually employ any delivery drivers. That doesn't make any sense.

Employers like XPO count on the weaknesses in the law and the complexity of the judicial system to maintain the status quo and make money. If the PRO Act were law everything would change for us and so many other misclassified workers. Being properly classified as an employee would mean that we could finally form our union and bargain for the employee benefits and protections we've long been denied. It would also mean that XPO would have to start paying their own operational costs and not push them off onto their employees. Our community, that has long been exploited by this industry, could live the middle-class life they came to this country for, instead of being working poor. My family would finally be able to make ends meet and even thrive. I could go back to school and finally finish my education and fulfil my dream of becoming an airline pilot. We would finally be able to achieve the American Dream.

Thank you very much and I look forward to your questions.