



House of Representatives

Washington, DC 20515

August 6, 2021

The Honorable Martin J. Walsh
Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Secretary Walsh:

We write today to bring your attention to the increasing danger faced by workers exposed to excessive heat in the workplace and respectfully request that the Occupational Safety and Health Administration (OSHA) swiftly adopt a federal standard to protect these workers from heat illnesses and fatalities.

Extreme heat often causes more deaths in a year than all other weather-related disasters,¹ and workers are in particular danger. Bureau of Labor Statistics data show that, from 1992 through 2017, exposure to excessive environmental heat killed 815 U.S. workers and seriously injured almost 70,000.²

Recent events underscore the grave threat to workers. Last month was the hottest June on record for the U.S.³ As we move into the peak of the summer, record-breaking heat waves in the West and Pacific Northwest are dominating headlines. Just a few weeks ago, in St. Paul, Oregon, a farm crew moving irrigation lines in 104-degree weather found one of their coworkers, Sebastian Francisco Perez, unconscious and unresponsive. Mr. Perez died before reaching the hospital. He had just turned 38 years old the day before. Oregon OSHA's database lists the death as heat-related.⁴ It was a preventable tragedy.

¹ 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.

² Public Citizen, *Remembering Workers Who Died or Suffered on the Job Begins With Safeguards From Heat Stress*, April 24, 2019, <https://www.citizen.org/news/remembering-workers-who-died-or-suffered-on-the-job-begins-with-safeguards-from-heat-stress/> (compiling data available from BLS online database at <https://data.bls.gov/gqt/InitialPage>).

³ National Oceanic & Atmospheric Admin., *June 2021 Was the Hottest June on Record for U.S.* (July 9, 2021), <https://www.noaa.gov/news/june-2021-was-hottest-june-on-record-for-us>.

⁴ 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/>.

As climate change increases these risks, the costs will reverberate throughout the economy. According to a 2015 EPA report, the United States will lose 1.8 billion labor hours across the workforce in the year 2100 due to extreme temperatures under a business-as-usual climate change scenario.⁵ That adds up to \$170 billion in lost wages.⁶ The 2018 National Climate Assessment estimated that the costs of lower labor productivity under rising temperatures is estimated to reach up to \$160 billion in lost wages per year in the United States by 2090.⁷

Heat is a threat to workers in a wide range of indoor and outdoor workplaces, including farms, highways and construction sites, warehouses, laundries, steel mills, meat-packing plants, and vehicles. This threat is especially acute for farmworkers, who are roughly 20 times more likely to die of heat-related causes than workers in all other civilian occupations.⁸ The Department of Labor estimates that 49 percent of workers in the agriculture sector are undocumented;⁹ 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.

The facts speak for themselves: workers are in grave danger from extreme heat, and their lives are at risk unless OSHA acts with an effective standard. We are moved to act by these facts, what we have heard from our constituents, and the deeper injustices at stake. New research on social costs of rising temperatures in California, which was presented in recent testimony before the House Select Committee on the Climate Crisis, finds that occupational safety and health risks related to heat are greatest for low-income workers, and those risks include not only heat illness but also increased injury rates.¹⁰ Alarming, jobs at the highest risk of heat stress illness and death are disproportionately held by workers of color.¹¹ We are troubled to see longstanding racial and economic injustices underneath these grave public health risks of extreme heat.

Several states with OSHA State Plans, including California, Washington, Minnesota, and Oregon, have issued standards to protect workers from heat stress, and now Oregon and Washington are taking additional steps to protect workers from “extreme” heat. Earlier this month, Governor Kate Brown issued an executive order charging Oregon OSHA with

⁵ EPA, CLIMATE CHANGE IN THE UNITED STATES: BENEFITS OF GLOBAL ACTION 28 (2015), <https://www.epa.gov/sites/production/files/2015-06/documents/cirareport.pdf>.

⁶ *Id.*

⁷ U.S. GLOB. CHANGE RES. PROG., FOURTH NATIONAL CLIMATE ASSESSMENT (2018), <https://nca2018.globalchange.gov/chapter/1/>.

⁸ Rafer Ferguson, Kristina Dahl & Marcia DeLonge, Union of Concerned Scientists, *Farmworkers at Risk: The Growing Dangers of Pesticide and Heat* (Aug. 2019), <https://www.ucsusa.org/sites/default/files/2019-12/farmworkers-at-risk-report-2019-web.pdf>.

⁹ 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.”).

¹⁰ R. Jisung Park *et al.*, *Temperature, Workplace Safety, and Labor Market Inequality* (July 14, 2021), <https://equitablegrowth.org/wp-content/uploads/2021/07/071921-WP-Temperature-workplace-safety-and-labor-market-inequality-Park-Pankratz-and-Behrer.pdf>; Dr. R. Jisung Park, Testimony Before U.S. House of Representatives, Select Committee on the Climate Crisis, on Advancing Environmental Justice Through Climate Action (July 15, 2021), <https://docs.house.gov/meetings/CN/CN00/20210715/113894/HHRG-117-CN00-Wstate-ParkR-20210715.pdf>.

¹¹ Alan Derickson, “A Widespread Superstition”: *The Purported Invulnerability of Workers of Color to Occupational Heat Stress*, 10 AM. J. PUB. HEALTH 1329 (2019).

promulgating an emergency temporary standard to prevent heat illness,¹² which was adopted just two days later. That same week, the Washington State Department of Labor and Industries published an emergency rule to improve protections for workers exposed to outdoor heat.¹³ The Commonwealth of Virginia has initiated rulemaking as well.¹⁴ A federal OSHA standard would be an opportunity to fill in the gap for workers outside of these states and provide a thoughtful model for the State Plans that, like North Carolina's, typically follow OSHA's standards closely.

OSHA's reliance on the General Duty Clause is not sufficient to detect and prevent heat-related illness, as evidenced by a comparison between Cal/OSHA and federal OSHA. From 2013 to 2017, California used its heat standard to conduct 50 times more inspections discovering heat-related violations than OSHA did nationwide during the same period using the General Duty Clause, its fallback for enforcement in areas for which OSHA otherwise lacks a specific standard.¹⁵

In light of the grave danger from extreme temperatures and the likelihood of further heat waves to come, we request that you begin work on a permanent standard covering outdoor and indoor workers (where the environment is not climate-controlled), modeled after the provisions in H.R. 2193, the *Asunción Valdivia Heat Illness and Fatalities Prevention Act*. This bill directs OSHA to establish an enforceable federal standard to ensure workers and employers can recognize and respond to the signs of heat stress. This standard should require employers to provide 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 symptoms of heat-related illness; and
- 5) a plan for acclimatization to high-heat work conditions.

We ask that you move quickly to ensure the health and safety of workers who are essential to the nation's economy and communities.

If you have any questions concerning this request, please contact Kristen Torres, Legislative Assistant for Rep. Judy Chu, at (202) 807-8817.

Sincerely,

¹² State of Ore. Newsroom, *Governor Kate Brown Directs Oregon OSHA to Enact Emergency Rules to Protect Workers from High and Extreme Heat* (July 6, 2021), <https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=64091>; Oregon OSHA, *Adoption of Temporary Rules to Address Employee Exposure to High Ambient Temperatures* (July 8, 2021), <https://osha.oregon.gov/OSHArules/adopted/2021/ao6-2021-letter-heatillnessprevention.pdf>.

¹³ Wash. Dep't Lab. & Indus., News Release, *Washington State Emergency Heat Exposure Rule Increases Protection for Outdoor Workers* (July 9, 2021), <https://www.lni.wa.gov/news-events/article/?id=21-018>.

¹⁴ Safety & Health Codes Bd. Notice of Intended Regulatory Action, 37 Va. Reg. of Regs. 2761 (May 10, 2021).

¹⁵ 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.



House of Representatives

Washington, DC 20515

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RAUL M. GRIJALVA
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cc: Hon. Julie Su, Deputy Secretary of Labor