

The Honorable Kamala Harris  
U.S. Senate  
112 Hart Senate Office Building  
Washington, DC 20510

The Honorable Sherrod Brown  
U.S. Senate  
503 Hart Senate Office Building  
Washington, DC 20510

October 8, 2020

Dear Senator Harris and Senator Brown:

We, the undersigned organizations, write to express our support for introduction of the Asuncion Valdivia Heat Illness and Fatality Prevention Act (S.4781), legislation that directs the Occupational Safety and Health Administration (OSHA) to issue a standard on the prevention of excessive heat in the workplace for outdoor and indoor workers. We are part of a nationwide network that is raising awareness around the dangers of the climate crisis on workers, by advocating for occupational heat protections. We appreciate your leadership on this bill, in partnership with Senators Tammy Baldwin, Jeff Merkley and Elizabeth Warren.

Heat is the leading weather-related killer, and it is becoming more dangerous, as 19 of the last 20 years were the hottest on record.<sup>1</sup> The summer of 2020 saw new heat records set throughout the nation for both record high temperatures and record number of days at extreme high temperatures,<sup>2</sup> including the hottest recorded temperature on the planet in more than a century, set on August 16th in Death Valley, Calif.<sup>3</sup> Excessive heat can cause heat stroke and even death if not treated properly. It also exacerbates existing health problems like asthma, kidney failure, and heart disease. Workers in agriculture and construction are at highest risk, but the problem affects all workers exposed to heat, including indoor workers without climate-controlled environments. This threat is projected to intensify with global heating, yet, the U.S. does not have a federal heat stress standard for workers.

It is important to understand the racial injustice in workplace heat hazard risks. Essential jobs that experience the highest rates of heat illness are disproportionately held by Black and Brown workers. For example, while Latinx workers make up 17.6% of the entire workforce, they make up 65% of farm laborers, graders, and sorters,<sup>4</sup> and farmworkers die from heat stress at a rate 20 times greater than the rest of the U.S. workforce.<sup>5</sup> More than 70% of laborers and freight, stock, and materials movers are Black and Brown, as are more than 55% of those working in warehouses and storage.<sup>6</sup> While Black Americans only make up 12.3% of the total workforce, they make up 27% of postal workers and 23% of UPS drivers.<sup>7</sup> They also make up almost 20% of refuse and recyclable materials collectors nationally and account for well over half the collectors in many areas of the country.<sup>8</sup> Grounds maintenance workers are nearly 44% Latinx, while painters, construction and maintenance workers are 55.5% Latinx.

The COVID-19 pandemic both compounds heat stress and has disproportionately harmed Black and Brown communities. Workers susceptible to heat-related illness and death have some of the highest rates of coronavirus infection, especially agricultural workers.<sup>9</sup> Hot temperatures make wearing essential personal protection equipment (PPE) like cloth masks and respirators uncomfortable, and they contribute to heat stress,<sup>10</sup> an issue that requires a reasoned balance of risks and mitigation standards.

When coupled with dehydration, heat stress can cause depressed kidney function and even chronic kidney disease, conditions that increase the risk of severe illness from COVID-19. Fever and depressed respiratory and kidney functions associated with COVID-19 may increase susceptibility to heat stress.<sup>11</sup> It can be very difficult to distinguish between heat illness and COVID-19 because they share common symptoms, including high body temperature, muscle pain, fatigue, difficulty breathing, nausea, vomiting, confusion and loss of consciousness. The signs and symptoms of heat stress and COVID-19 may confuse efficient diagnosis of both,<sup>12</sup> and more importantly may interact to yield acute illness that is especially deadly.

The National Institute for Occupational Safety and Health (NIOSH) issued criteria for a heat standard in 1972, updating it in 1986 and 2016. However, OSHA has failed to adopt a heat standard. In 2018, more than 130 organizations and former OSHA administrators petitioned OSHA for a heat stress standard that builds upon the NIOSH criteria.<sup>13</sup> At the time of this bill's introduction, OSHA has yet to issue a formal response to the petition. Meanwhile, California, Washington, Minnesota and the U.S. military have issued heat protections. Absent a federal standard, OSHA currently polices heat-related injuries and deaths only by enforcing its "catch all" general duty clause that requires employers to ensure that their workplaces are "free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees." Enforcement is scarce and, by definition, reactive rather than preventive. Notably, from 2013 through 2017, California used its heat standard to conduct 50 times more inspections resulting in a heat-related violation than OSHA did nationwide under the general duty clause.<sup>14</sup>

The Occupational Safety and Health Review Commission, an independent federal agency created to adjudicate appeals of OSHA citations and penalties, has held that the general duty clause places a high burden on OSHA to demonstrate that the employer failed to provide safe workplaces. On July 15, 2020, the Commission handed down decisions in five cases that virtually guarantee that workers will not be protected from heat stress under the general duty clause. OSHA had issued citations against the U.S. Postal Service for exposing its employees "to recognized hazards of working outside during periods of excessive heat." In all five cases, the Commission vacated the citations because OSHA made no attempt to defend the validity of NIOSH heat stress guidelines that define what constitutes dangerous levels of heat and, when asked, would not give any temperature ranges it believes constitute excessive heat.<sup>15</sup>

The Commission went out of its way to point out that its findings did not necessarily mean that excessive heat didn't exist in the cases, but rather there were no clear OSHA standards. The Commission went on to say that the lack of a binding OSHA standard on heat stress also made it extremely difficult to make sure employers can recognize the hazard.<sup>16</sup> These Commission findings demonstrate the difficulty in holding employers accountable for failure to protect workers from heat hazards under OSHA's general duty safety requirement and the critical need for an OSHA heat stress standard.

Protecting workers from heat also has economic benefits. In high heat, people work less effectively due to "diminished ability for physical exertion and for completing mental tasks," which reduces productivity, increases the risk of accidents, and drives up medical expenses.<sup>17</sup> Employers in the U.S. spend \$220 billion every year on injuries and illnesses related to excessive heat.<sup>18</sup> The costs of lower labor productivity under rising temperatures is estimated

to reach up to \$160 billion in lost wages per year in the U.S. by 2090 according to the 2018 National Climate Assessment.<sup>19</sup> These impacts can be mitigated by heat protections. For instance, in 2011 a central Texas municipality implemented a heat illness prevention program for outdoor municipal workers that not only resulted in a significant decrease in heat-related illnesses, but a decrease in worker's compensation costs by 50% per heat-related illness.<sup>20</sup>

The Asuncion Valdivia Heat Illness and Fatality Prevention Act is named after a farmworker who died of a heat stroke in 2004, after picking grapes for 10 hours straight in 105-degree temperatures. Unfortunately, Mr. Valdivia's tragic story is not unique, and yet heat-related fatalities, injuries and illnesses are completely preventable. This bill will direct OSHA to develop a heat stress standard for indoor and outdoor workers to prevent further heat-related tragedies. Specifically, it will require employers to develop a heat-illness prevention plan that includes the following commonsense requirements:

- Develop and implement the standard with meaningful participation of covered employees, and their representatives when applicable, and tailor it to the specific hazards of the workplace;
- Ensure it is written in a language understood by the majority of the employees;
- Ensure that workers who are exposed to high heat receive paid breaks in cool environments, access to water for hydration, and not be continually subjected to extreme heat beyond specified time limits.
- Create emergency response procedures for employees suffering from heat illness;
- Provide training for employers and employees on heat stress illness and prevention;
- Include acclimatization plans to ensure workers can adjust to their working conditions;
- Ensure engineering and administrative controls are used to limit heat exposure, i.e., ventilation and/or protective clothing;
- Maintain records on heat-related illnesses and deaths, and other heat data; and
- Refrain from retaliating against a covered employee for reporting violations of this standard or exercising any other rights under this bill.

We look forward to working with your offices and the Committee to advance this vital health and safety measure to protect workers from extreme heat and the climate crisis.

Sincerely,

Academic Health Resource  
AFGE  
Alabama State Association of Cooperatives  
Alianza Nacional de Campesinas  
American College of Occupational and Environmental Medicine, Section on Underserved  
Occupational Populations  
American Indian Mothers Inc

Association of Farmworker Opportunity Programs  
Association of Occupational and Environmental Clinics  
Beyond Toxics  
Catholic Labor Network  
Center for Biological Diversity  
Center for Progressive Reform  
Central Florida Jobs with Justice  
Centro de los Derechos del Migrante, Inc.  
Child Labor Coalition  
Climate for Health, ecoAmerica  
Climate Jobs PDX  
Climate Solutions  
Communications Workers of America  
CRLA Foundation  
D4CC  
Doctors for Camp Closure-- Oregon Chapter  
Earth Action, Inc.  
Ellen Widess, former Chief of Cal/OSHA  
Episcopal Farmworker Ministry  
Farmworker and Landscaper Advocacy Project-FLAP  
Farmworker Association of Florida  
Farmworker Justice  
Farmworker's Self-Help  
Florida People's Advocacy Center  
Food & Water Action  
Food Chain Workers Alliance  
HEAL (Health Environment Agriculture Labor) Food Alliance  
HeumannHealth Consulting  
Human Rights Watch  
Institute for Agriculture and Trade Policy  
Int'l Safety Equipment Assn  
Interfaith Worker Justice  
International Brotherhood of Teamsters  
International Union, UAW  
IWJSD  
Justice for Migrant Women  
Korey Stringer Institute  
Legal Aid Justice Center  
MassCOSH  
MESA  
Migrant Clinicians Network  
Mississippi Workers' Center for Human Rights  
National Consumers League  
National Council for Occupational Safety & Health  
National Employment Law Project  
National Farm Worker Ministry

National Resources Defense Council  
National Young Farmers Coalition  
Northeast Sustainable Agriculture Working Group  
NW Workers' Justice Project  
Oklahoma Black Historical Research Project, Inc.  
Oregon Climate and Agriculture Network  
Oregon Environmental Council  
Oregon League of Conservation Voters  
Oregon Physicians for Social Responsibility  
PCUN  
PDA - Tucson Arizona Chapter  
Physicians for Social Responsibility  
Physicians for Social Responsibility - TN Chapter  
Progressive Democrats of America  
PSR- Arizona  
Public Citizen  
Rural Advancement Fund  
Rural Coalition  
SafeWork Washington  
Sierra Club  
South Florida Council on Occupational Safety & Health  
South Florida Interfaith Worker Justice  
Southern Oregon Climate Action Now  
Student Action with Farmworkers  
The CLEO Institute  
Toxic Free NC  
TWU Local 591  
UAW  
UFW Foundation  
Union of Concerned Scientists  
UNITE HERE! International Union  
United Steelworkers (USW)  
Virginia Clinicians for Climate Action  
WeCount!  
Women's Voices for the Earth  
Worksafe

cc: Members of the Senate Health, Education, Labor and Pensions Committee

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<sup>1</sup> *Severe Weather Awareness – Heat Waves*, NATIONAL WEATHER SERVICE (viewed on Jul. 8, 2019), <https://bit.ly/2CQ3X6u>; *Global Temperature, Latest Annual Anomaly: 2019*, NASA Global Climate Change, <https://climate.nasa.gov/vital-signs/global-temperature/>; *Global Temperature, Latest Annual Anomaly: 2019*, NASA, <https://go.nasa.gov/30gTpqR>; Rebecca Lindsey and LuAnn Dahlman, *Climate Change: Global*

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Temperature, NOAA Climate.gov, <https://bit.ly/3kVLR4Y>; Brady Dennis, Andrew Freedman and John Muyskens, *2019 Capped World's Hottest Decade in Recorded History*, WASHINGTON POST (Jan. 15, 2020), <https://wapo.st/338ogrp>.

<sup>2</sup> Summer 2020 Ranked as One of the Hottest on Record for U.S., NOAA (Sep. 9, 2020), <https://bit.ly/3cFMlJf>; Audrey Jensen, *Record-Breaking August Cements Summer 2020 as Hottest in Phoenix History*, ARIZONA REPUBLIC (Sep. 5, 2020), <https://bit.ly/34cuq9A>; Jonathan Erdman, *July and All-Time Heat Records Smashed in Texas, New Mexico; Searing Heat to Return This Weekend to Midwest, East*, THE WEATHER CHANNEL (July, 15, 2020), <https://bit.ly/2Gk43WB>.

<sup>3</sup> Bob Henson, *We May Have Just Seen the World's Highest Recorded Temperature Ever. Has That Sunk in?*, THE GUARDIAN (Aug. 19, 2020), <https://bit.ly/2FY9zic>.

<sup>4</sup> United States Department of Agriculture Economic Research Service, Farm Labor (data from 2018), <https://bit.ly/339Ks4F>.

<sup>5</sup> CDC, Heat Related Deaths Among Farmworkers, United States — 1996-2006, <https://bit.ly/3i9XgMw>.

<sup>6</sup> BLS, Labor Force Statistics from the current population (2019), <https://www.bls.gov/cps/cpsaat18.htm>

<sup>7</sup> BLS, Labor Force Statistics from the current population (2019), <https://www.bls.gov/cps/cpsaat18.htm>; UPS: Who We Are, <https://bit.ly/3n0FKOo>.

<sup>8</sup> DataUSA: Refuse and Recyclable Material Collectors, <https://bit.ly/3j9QJmk>; Cole Rosengren and E.A. Crunden, *Risk and Race Concerns Fuel Ongoing Debate around Hazard Pay During Pandemic*, WASTE DIVE (July 9, 2020), <https://bit.ly/2S3Iz39>; Juliana Feliciano Reyes, *Trash is Piling Up but People Aren't Blaming Philly Sanitation Workers*, PHILADELPHIA INQUIRER (Aug. 4, 2020), <https://bit.ly/3kXoV5o>.

<sup>9</sup> Helena Bottemiller Evich, Ximena Bustillo and Liz Crampton, *Harvest of Shame: Farmworkers Face Coronavirus Disaster*, POLITICO (Sep. 8, 2020), <https://politi.co/33a16Bh>.

<sup>10</sup> Coronavirus Disease 2019 (COVID-19): Employer Information for Heat Stress Prevention, Centers for Disease Control and Prevention (Aug. 26, 2020), <https://bit.ly/30eYnEt>.

<sup>11</sup> Lt. Col. David Degroot, MS and Capt. Ryan Zimmerman, MC, *Exertional Heat Illness and Coronavirus: What's the Connection*, Jun. 4, 2020, <https://bit.ly/2Ga0Zg5>; Marco Morabito et al., *Heat Warning and Public Workers' Health at a Time of COVID-19 Pandemic*, SCI TOTAL ENVIRON (June 18, 2020), <https://bit.ly/3kUuwsT>; Be Prepared for Extreme Heat During COVID-19, AMERICAN RED CROSS (July 20, 2020), <https://rdcrss.org/33ZkfEU>.

<sup>12</sup> Marilyn V. Howarth, MD and Judith Green-McKenzie, MD, MPH, *How Can an Employer Differentiate Between Heat-related Illness and COVID-19 in High Risk Vulnerable Worker Populations?*, AMERICAN COLLEGE OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE COVID-19 RESOURCE CENTER (May 7, 2020), <https://bit.ly/339JjKk>.

<sup>13</sup> Petition from Public Citizen et. al. to Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor (Jul. 17, 2018), <https://bit.ly/2wjJSzy>. Press Release, Public Citizen, *As Climate Heats Up, Government Must Protect Workers From Heat* (Jul. 17, 2018) <https://bit.ly/2LIHIoD>.

<sup>14</sup> CA has over 14 years of experience with a heat standard, confirming the practicality and effectiveness of such a standard. Its standard resulted in greater compliance by more employers and prevention of heat illness and death among workers in CA. Petition from Public Citizen et. al. to Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor 17 (Jul. 17, 2018) <https://bit.ly/2wjJSzy>.

<sup>15</sup> Secretary of Labor v. United States Postal Service, National Association of Letter Carriers (NALC) and National Rural Letter Carriers' Association (NRLCA) OSHRC Docket No. 16-1713; Secretary of Labor v. United States Postal Service, National Association of Letter Carriers (NALC) and National Rural Letter Carriers' Association (NRLCA) OSHRC Docket No. 16-1813; Secretary of Labor v. United States Postal Service, National Association of Letter Carriers (NALC) and National Rural Letter Carriers' Association (NRLCA) OSHRC Docket No. 16-1872; Secretary of Labor v. United States Postal Service, National Association of Letter Carriers (NALC) and National Rural Letter Carriers' Association (NRLCA) OSHRC Docket No. 17-0023; Secretary of Labor v. United States Postal Service, National Association of Letter Carriers (NALC) and National Rural Letter Carriers' Association (NRLCA) OSHRC Docket No. 17-0279.

<sup>16</sup> *Id.*

<sup>17</sup> *Climate Change and Labor: Impacts on Health in the Workplace*, UNITED NATIONS DEVELOPMENT PROGRAMME (viewed on Oct. 15, 2018), <https://bit.ly/2dGd79p>; Sidney Shapiro & Katherine Tracy, *Public Law and Climate Disasters Occupational Health and Safety Law* (Rosemary Lyster et al. eds., 1<sup>st</sup> ed., Edward Elgar Pub, 2018), <https://amzn.to/2QTBWxJ>.

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<sup>18</sup> Heidi E. Lehmann, *Hidden Heat: The Costly Impact of Heat-Related Injuries*, *North American Clean Energy* (July 15, 2020), <https://bit.ly/2S6slWR>.

<sup>19</sup> U.S. Global Change Research Program, *Fourth National Climate Assessment, Volume II* (Nov. 2018), <https://bit.ly/2r3WZ5S>.

<sup>20</sup> Ronda B. McCarthy et. al., *1536 Occupational Heat Illness in Outdoor Workers Before and After Implementation of a Heat Stress Awareness Program*, *75 BMJ JOURNALS OCCUPATIONAL AND ENVIRONMENTAL MEDICINES* (2018) <https://bit.ly/32j3XFA>.