

The Honorable Judy Chu
U.S. House of Representatives
2423 Rayburn House Office Building
Washington, DC 20515

The Honorable Raúl Grijalva
U.S. House of Representatives
1511 Longworth House Office Building
Washington, DC 20515

The Honorable Robert “Bobby” Scott
U.S. House of Representatives
2328 Rayburn House Office Building
Washington, DC 20515

The Honorable Alma Adams
U.S. House of Representatives
2436 Rayburn House Office Building
Washington, DC 20515

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

The Honorable Alex Padilla
U.S. Senate
B03 Russell Senate Office Building
Washington, DC 20510

The Honorable Catherine Cortez Masto
U.S. Senate
516 Hart Senate Office Building
Washington, DC 20510

April 20, 2021

Dear Representatives Chu, Grijalva, Scott and Adams and Senators Brown, Cortez Masto and Padilla:

We, the undersigned organizations, write to express our support for introduction of the Asunción Valdivia Heat Illness and Fatality Prevention Act (H.R.2193/S.1068), 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.

Heat is the leading weather-related killer, and it is becoming more dangerous, as 20 of the last 21 years were the hottest on record.¹ 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,² including the hottest recorded temperature on the planet in more than a century, set on August 16th in Death Valley, Calif.³ 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,⁴ and crop workers die from heat stress at a rate 20 times greater than the rest of the U.S. workforce.⁵ More than 46% of laborers and freight, stock, and materials movers are Black and Hispanic/Latinx, as are more than 52% of laundry and dry-cleaning workers, 52% of cooks, and 58% of those working in warehouses and storage.⁶ While Black Americans only make up 12.1% of the total workforce, they make up 25% of postal workers and 23% of UPS drivers.⁷ They also make up nearly 28% of refuse and recyclable materials collectors nationally and account for well over half the collectors in many areas of the country.⁸ Grounds maintenance workers are more than 44% Latinx, while roofers are more than 53% Latinx.⁹

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 food and agricultural workers.¹⁰ Hot temperatures make wearing essential personal protection equipment (PPE) like cloth masks and respirators uncomfortable, and they contribute to heat stress,¹¹ 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.¹² 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,¹³ 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.¹⁴ 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. The Governor of Oregon issued an Executive Order on March 10, 2020 directing the Oregon Health Authority and Oregon OSHA to jointly develop a heat stress standard to protect workers.¹⁵ Maryland passed a law last year requiring the Maryland OSHA to develop and implement a heat stress standard by October, 2022.¹⁶ Both states are in the process of creating those standards. 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.¹⁷

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.¹⁸

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.¹⁹ 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.²⁰ The costs of lower labor productivity under rising temperatures is estimated to reach up to \$155 billion in lost wages per year in the U.S. by 2090 according to the 2018 National Climate Assessment.²¹ 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.²²

The Asunción 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,

350 Spokane
 ACORN8
 AFL-CIO
 Agricultural Justice Project
 Alianza Nacional de Campesinas
 American Federation of State, County & Municipal Employees (AFSCME)
 American Indian Mothers Inc
 American Postal Workers Union, AFL-CIO
 American Sustainable Business Council
 Amity Foundation
 Asian Pacific American Labor Alliance, AFL-CIO
 Association of Farmworker Opportunity Programs
 Association of Occupational and Environmental Clinics
 Association of Western Pulp and Paper Workers Union
 Awood Center
 Beyond Toxics
 Broome Tioga Green Party
 Cannabis Workers Coalition
 Catholic Labor Network
 Catskill Mountainkeeper
 Center for Biological Diversity
 Center for Health, Work and Environment
 Center for Progressive Reform
 Central Florida Jobs with Justice
 Centro de los Derechos del Migrante, Inc. (CDM)
 Child Labor Coalition
 Climate Health Now
 Climate Jobs PDX
 Climate Tucson
 Climate Psychiatry Alliance
 Climate Psychiatry Alliance-Early Career Network
 Climate Solutions

Climate Tuscon
College of Veterinary Medicine and Biomedical Sciences, Colorado State University
Communications Workers of America (CWA)
Concentra
Connecticut Council for Occupational Safety and Health
Courage California
CrearConSalud
CRLA Foundation
Department of Environmental and Radiological Health Sciences, Colorado State University
Disciples Refugee & Immigration Ministries
Earth Ethics
Earthjustice
Employee Rights Center
Episcopal Farmworker Ministry
Erotic Service Providers Union
Farm Worker Ministry Northwest
Farmworker Association of Florida
Farmworker Justice
Farmworker's Self-Help
Fayetteville Police Accountability Community Taskforce
Florida Center for Fiscal & Economic Policy
Florida Immigrant Coalition
Florida People's Advocacy Center
Food & Water Watch
Food Chain Workers Alliance
Friends of the Earth US
Garment Worker Center
Government Accountability Project
HEAL (Health, Environment, Agriculture, Labor) Food Alliance
Healthy Work Campaign - Center for Social Epidemiology
Healthy Workplaces
HeumannHealth Consulting
High Plains Intermountain Center for Agricultural Health and Safety
Honesty Home Care
Human Rights Watch
Ilana Slaff Medical PLLC
Institute for Agriculture and Trade Policy
Interfaith Workers Justice
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers
International Brotherhood of Teamsters
International Chemical Workers Union Council (ICWUC)
International Safety Equipment Association
International Union, UAW
IUE-CWA
Jersey Renews Coalition

Justice at Work
Justice at Work Pennsylvania
Justice for Black Farmers
Justice for Migrant Women
Korey Stringer Institute
La Isla Network
La Union Del Pueblo Entero
Labor Education Program, University of Massachusetts Lowell
Legal Aid Justice Center
Lomakatsi Restoration Project
MassCOSH
Methodist Federation for Social Action
Michigan Postal Workers Union
Mississippi Workers' Center for Human Rights
National Consumers League
National Council for Occupational Safety and Health
National Day Laborer Organizing Network
National Employment Law Project
National Farm Worker Ministry
Natural Resources Defense Council
New Mexico Center on Law and Poverty
NOFA NH
Northeast Organic Farming Association -- New York (NOFA-NY)
Northeast Organic Farming Association of Vermont
Northwest Center for Alternatives to Pesticides
NW Workers' Justice Project
OLE
Oregon Climate and Agriculture Network
Oregon Environmental Council
Oregon League of Conservation Voters
PHILAPOSH
Physicians for Social Responsibility, AZ Chapter
Pineros y Campesinos Unidos del Noroeste
Progressive Democrats of America
Progressive Democrats of America, Tucson, AZ Chapter
Public Citizen
Public Justice
Puerto Rico Clinicians for Climate Action
Refugee Women's Network
Retail, Wholesale and Department Store Union (RWDSU)
RICOSH
SafeWork Washington
San Francisco Bay Physicians for Social Responsibility
Service Employees International Union
Sisters of Charity, BVM
Sisters of Charity of Nazareth Congregational Leadership

Sisters of Charity of Nazareth Western Province Leadership
Sisters of the Humility of Mary
Solstice Market NYC
Student Action with Farmworkers
Sur Legal Collaborative
Teamsters Local Union No. 206
The CLEO Institute
Toxic Free North Carolina
Transport Workers Union Local 555
UFW Foundation
Union of Concerned Scientists
United at Respect
United Church of Christ, Justice and Local Church Ministries
United Farm Workers(UFW)
United Food and Commercial Workers International Union
United Scenic Artists Local USA 829, IATSE
United Steelworkers International Union
USDA Coalition of Minority Employees
Utility Workers Union of America
Virginia Clinicians for Climate Action
WeCount!
Whistleblowers of America
WNYCOSH
Women's Voices for the Earth
Work Environment Council of New Jersey
Worksafe

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

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³ 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>.

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