

**ATTORNEYS GENERAL OF NEW YORK, ARIZONA, COLORADO,
CONNECTICUT, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS,
NEW JERSEY, PENNSYLVANIA, AND THE DISTRICT OF COLUMBIA**

February 9, 2024

Via Email

Ali Zaidi

National Climate Advisor
White House Office of Domestic Climate Policy
1600 Pennsylvania Ave NW
Washington, DC 20500

Rachel West

Special Assistant to the President for Labor and Workers
White House Domestic Policy Council
1600 Pennsylvania Ave NW
Washington, DC 20500

Re: Federal Action on Extreme Heat in the Workplace

Dear Mr. Zaidi and Ms. West:

The Attorneys General of New York, Arizona, Colorado, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, Pennsylvania, and the District of Columbia submit this letter to urge the White House to support our States' petition to the Occupational Safety and Health Administration (OSHA) for an emergency temporary standard for extreme heat to protect America's most vulnerable workers this summer. We also encourage the Biden Administration to support the Asunción Valdivia Heat Illness, Injury, and Fatality Prevention Act, which would direct OSHA to establish both interim and permanent occupational heat standards, providing long-term extreme heat protections for workers.

The Biden Administration has demonstrated a strong commitment to mitigating the danger of extreme heat in the workplace, and we applaud those efforts. Early in his presidency, President Biden called on OSHA to initiate a long-awaited rulemaking for a federal heat standard for indoor and outdoor workers, which, once promulgated, will save workers' lives.¹ At the direction of President

¹ See Press Release, The White House, Statement by President Joe Biden on Mobilizing the Administration to Address Extreme Heat (Sept. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/20/statement-by-president-joe-biden-on-mobilizing-the-administration-to-address-extreme-heat/>; Press Release, The White House, FACT SHEET: Biden Administration Mobilizes to Protect Workers and Communities from Extreme Heat (Sept. 20, 2021),

Biden, OSHA has also ramped up enforcement of workplace heat hazards under the National Emphasis Program, and last year, OSHA issued the first-ever Hazard Alert for heat, which reaffirmed that workers have a right to a safe and healthy workplace free of extreme heat hazards.²

While we commend these actions, more work needs to be done, and soon. Each year, dozens of U.S. workers die from extreme heat in the workplace, and, as OSHA has acknowledged, these deaths are likely significantly undercounted.³ Last summer, millions of workers sweltered in unprecedented extreme heat, including a record-breaking 31 consecutive days at or above 110°F in Phoenix, Arizona.⁴ By all accounts, summer 2024 is expected to be even hotter, due to both the escalating climate crisis and the enduring effects of El Niño, putting workers at even greater risk of heat-related illness and death in the workplace.⁵ And while OSHA is developing a permanent standard for occupational heat exposure, a final rule is still years away.

Thus, we are calling on the White House to support our multistate petition to OSHA to issue an emergency temporary standard for extreme heat beginning

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/20/fact-sheet-biden-administration-mobilizes-to-protect-workers-and-communities-from-extreme-heat/>.

² *Id.*; see also Press Release, The White House, FACT SHEET: President Biden’s Executive Actions on Climate to Address Extreme Heat and Boost Offshore Wind (July 20, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/07/20/fact-sheet-president-bidens-executive-actions-on-climate-to-address-extreme-heat-and-boost-offshore-wind/>. Press Release, The White House, FACT SHEET: President Biden Announces New Actions to Protect Workers and Communities from Extreme Heat (July 27, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/27/fact-sheet-president-biden-to-announce-new-actions-to-protect-workers-and-communities-from-extreme-heat/>; Occupational Safety & Health Admin., National Emphasis Program—Outdoor and Indoor Heat-Related Hazards, CPL 03-00-024 (Apr. 8, 2022), https://www.osha.gov/sites/default/files/enforcement/directives/CPL_03-00-024.pdf.

³ 86 Fed. Reg. 59,309, 59,310 (Oct. 27, 2021) (OSHA recognizing that injuries, illnesses, and deaths from occupational heat exposure are significantly undercounted); see also Aryn Baker, *Extreme Heat Is Endangering America’s Workers—and Its Economy*, Time (Aug. 3, 2023), <https://time.com/6299091/extreme-heat-us-workers-economy/>.

⁴ Zach Levitt & Elena Shao, *Where This Summer Was Relentlessly Hot*, N.Y. Times (Oct. 8, 2023), <https://www.nytimes.com/interactive/2023/10/09/world/hottest-summer-global-map.html?mwgrp=c-dbar&smid=url-share>; Matthew Cappucci, *Phoenix Just Posted the Hottest Month Ever Observed in a U.S. City*, Wash. Post (Aug. 1, 2023), <https://www.washingtonpost.com/weather/2023/08/01/phoenix-record-hot-month-climate/>.

⁵ Press Release, NASA, NASA Announces Summer 2023 Hottest on Record (Sept. 14, 2023), <https://www.nasa.gov/news-release/nasa-announces-summer-2023-hottest-on-record>; see also Remarks by President Biden on Actions to Protect Communities from Extreme Heat (July 27, 2023), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/07/27/remarks-by-president-biden-on-actions-to-protect-communities-from-extreme-heat/> (noting that El Niño exacerbates the effects of climate change).

May 1, 2024, that covers, at minimum, the most heat-vulnerable workers in the United States: farmworkers and construction workers.

Under Section 6(c) of the Occupational Safety and Health Act, OSHA has an affirmative obligation to issue an emergency temporary standard if (1) “employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards,” and (2) “such emergency standard is necessary to protect employees from such danger.”⁶ Effective for six months, an emergency temporary standard carries the same legal weight as a permanent standard.⁷ As detailed below, our petition explains that both statutory factors are satisfied, and we urge OSHA to implement an emergency temporary standard that requires employers to provide common-sense and readily implementable protective measures, such as water, rest breaks, and access to cool or shaded areas.

First, extreme heat poses a grave danger to the health and safety of millions of workers across the nation, especially farmworkers and construction workers. In summer 2023, workers labored in dangerous levels of heat and humidity that caused untold numbers of heat-related illnesses and several deaths. To cite just a few examples, in June, a 46-year-old construction worker died from hyperthermia at an outdoor construction site in East Texas, when the region was experiencing daily high temperatures around 100°F.⁸ Just days later, a 35-year-old utility lineman from West Virginia died of heat-related causes while restoring powerlines in Harrison County, Texas.⁹ In July, a 26-year-old farmworker and father of two died of heat stroke after collapsing in a field near Yuma, Arizona, as temperatures soared above 110°F.¹⁰ On July 6, 2023, a 29-year-old Guatemalan immigrant died while picking fruit on a farm in Homestead, Florida during an unprecedented heatwave.¹¹

⁶ 29 U.S.C. § 655(c).

⁷ *Id.*

⁸ Adam Zuvanich, *Houston Man Working Outside Died from Overheating, According to Medical Examiner*, Houston Pub. Media (June 30, 2023), <https://www.houstonpublicmedia.org/articles/news/weather/2023/06/30/455869/houston-man-dies-working-outside-overheating/>.

⁹ Jordan Gartner & KLTV Staff, *Utility Lineman Dies While Helping Restore Power to Texas Residents Following Storms*, WSAZ: Huntington W. Va. (June 20, 2023), <https://www.wsaz.com/2023/06/21/utility-lineman-dies-while-helping-restore-power-texas-residents-following-storms/>.

¹⁰ Daniel Gonzalez, *Yuma Farmworker and Father of 2 Dies Amid Record Heat Wave*, Ariz. Republic (July 24, 2023), <https://www.azcentral.com/story/news/local/arizona/2023/07/24/yuma-farmworker-dies-arizona-heat-wave/70457694007/>.

¹¹ Arianna Otero, *Calls for Action After Immigrant Farmworker, 29, Dies in Miami-Dade Heat*, WLRN: Miami (July 20, 2023), <https://www.wlrn.org/south-florida/2023-07-20/efrain-lopez-garcia-heat-stress-death-farmworker>.

While nearly all outdoor and many indoor workers are susceptible to occupational heat illness—and last year, many of our States petitioned OSHA to promulgate an emergency standard for extreme heat that covered all workers—farmworkers and construction workers are disproportionately vulnerable to heat stress. This vulnerability is due to, among other things, their work environments, the physical nature of their work, and prevailing socioeconomic factors, such as language barriers, limited access to healthcare, and wage structures that disincentivize breaks.¹² Indeed, as President Biden has recognized, occupational heat exposure is an issue of environmental and racial justice, as people of color and low-wage workers are disproportionately burdened by heat stress in the workplace.¹³

Second, an emergency temporary standard is necessary to protect farmworkers and construction workers from the grave danger of extreme heat this summer. As OSHA has acknowledged, enforcement of heat hazards under the General Duty Clause of the Occupational Safety and Health Act presents substantial legal challenges because, without a defined heat standard, OSHA must prove on a case-by-case basis that a heat hazard existed in the workplace when the death or injury occurred.¹⁴ Thus, even with heightened enforcement under the National Emphasis Program, OSHA still has an uphill battle to hold employers accountable for failing to protect their workers from extreme heat.

In addition, federal action is urgently needed because many of the most heat-vulnerable states simply will not implement heat standards on their own. At least two states have acted to preempt local ordinances aimed at protecting workers,

¹² See, e.g., Anna Phillips, *As Temperatures Rise, Industries Fight Heat Safeguards for Workers*, Wash. Post (Aug. 9, 2022), <https://www.washingtonpost.com/climate-environment/2022/08/09/climate-change-heat-workers/>; Juley Fulcher, Pub. Citizen, *Hot Take: The Demand for Immediate Worker Protections Increases as Dangerous Temperatures Rise* (2023); Env't Def. Fund & La Isla Network, *Farmworkers and Heat Stress in the United States* (2023), https://www.edf.org/sites/default/files/2023-07/EDF040_Heat%20Stress_V5.pdf; Xiuwen Sue Dong et al., *Heat-Related Deaths Among Construction Workers in the United States*, 62 Am. J. Indus. Med. 1047–57 (2019).

¹³ See, e.g., The White House, *Fact Sheet: Biden Administration Mobilizes to Protect Workers and Communities from Extreme Heat*, *supra* note 1.

¹⁴ 86 Fed. Reg. at 59,314–15; see also *Sec'y of Lab. v. A.H. Sturgill Roofing, Inc.*, No. 13-0224, at 7 n.8, [https://www.oshrc.gov/assets/1/18/A.H. Sturgill Roofing Inc 13-0224 Decision](https://www.oshrc.gov/assets/1/18/A.H._Sturgill_Roofing_Inc_13-0224_Decision) (OSHRC Feb. 28, 2019) (noting “the difficulty in addressing this issue in the absence of an OSHA standard,” even when a fatality occurs); *Sec'y of Lab. v. U.S. Postal Serv., Nat'l Ass'n. of Letter Carriers (NALC) & Nat'l Rural Letter Carriers' Ass'n (NRLCA)*, OSHRC Dkt. Nos. 16-1713; 16-1813; 16-1872; 17-0023 & 17-0279, [https://www.oshrc.gov/assets/1/6/16-1713 Decision and Order](https://www.oshrc.gov/assets/1/6/16-1713_Decision_and_Order) (OSHRC July 29, 2020) (finding that OSHA had not met its burden of establishing a workplace hazard, even though there was evidence that the heat index was as high as 109°F, and workers were medically diagnosed with heat illnesses).

including local laws mandating water breaks for construction workers.¹⁵ Moreover, many other cities and states that have attempted to protect workers from extreme heat have faced coordinated pushback from lobbyists and business interests, resulting in significantly weakened proposals.¹⁶ By issuing an emergency temporary standard, however, OSHA could immediately provide a national, uniform rule to protect farmworkers and construction workers from the grave danger of extreme heat.

Relatedly, our States also support the Asunción Valdivia Heat Illness, Injury, and Fatality Prevention Act (S. 2501/H.R. 4897), which would direct OSHA to establish an interim occupational heat standard within one year of the law's enactment. The bill expressly provides that the interim standard would remain in place until OSHA promulgates a final standard, ensuring that workers have protections from extreme heat during the pendency of the rulemaking. We have called upon Congress to take swift action on this legislation, and we encourage the Biden Administration to strongly support the Act's urgent passage, especially because an emergency temporary standard would be effective for just six months.

An emergency temporary standard for extreme heat would significantly mitigate the risk of heat-related illness for farmworkers and construction workers this summer, and undoubtedly, it would save workers' lives. The Asunción Valdivia Heat Illness, Injury, and Fatality Prevention Act, once enacted, would provide all workers with much-needed interim protections from extreme heat while OSHA finalizes a permanent heat standard.

We urge the Biden Administration to express support for both measures. In doing so, President Biden will continue to deliver on his campaign promise to be the most pro-worker president in history.¹⁷

¹⁵ Tex. H.B. 2127 (2023); Andrew Schneider, "Death Star Law" Takes Effect on Schedule, *Following the State's Appeal of a Lower Court Ruling*, Tex. Pub. Radio (Sept. 3, 2023), <https://www.tpr.org/government-politics/2023-09-05/death-star-law-takes-effect-on-schedule-following-the-states-appeal-of-a-lower-court-ruling>; Fla. CS/SB-1492 (2024); Rachel Tucker, *Florida Bill Banning Heat Protection Laws for Outdoor Workers Moves Forward* (Jan. 23, 2024), <https://www.wfla.com/news/politics/florida-bill-banning-heat-protection-laws-for-outdoor-workers-moves-forward/>.

¹⁶ See, e.g., Jana Cholakovska & Nate Rosenfield, *Workers Are Dying from Extreme Heat. Why Aren't There Laws to Protect Them?*, *Grist* (Oct. 19, 2023), <https://grist.org/accountability/outdoor-worker-extreme-heat-protections-labor-law-osha/>; Joe Gorchow, *Miami-Dade Shelves Heat Protections for Outdoor Workers*, *CBS News Miami* (Nov. 7, 2023), <https://www.cbsnews.com/miami/news/miami-dade-shelves-protections-for-outdoor-workers/>.

¹⁷ See Press Release, The White House, A Proclamation on National Farm Safety and Health Week, 2023 (Sept. 15, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/09/15/a-proclamation-on-national-farm-safety-and-health-week-2023/>.

Sincerely,



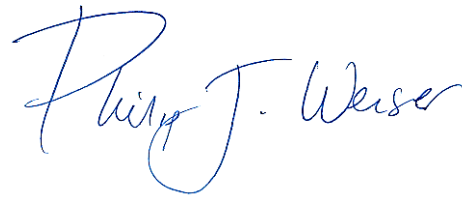
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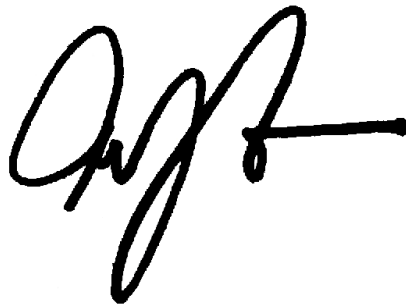
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Enclosures:

Petition for an Emergency Temporary Standard for Extreme Heat from the Attorneys General of New York, Arizona, Colorado, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, Pennsylvania, and the District of Columbia to the Honorable Julie Su, Acting Secretary, U.S. Department of Labor, and the Honorable Douglas L. Parker, Assistant Secretary for Occupational Safety and Health (February 9, 2024).

Letter from the Attorneys General of New York, Arizona, Colorado, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, Pennsylvania, and the District of Columbia to Senator Bernie Sanders, Senator Bill Cassidy, Representative Virginia Foxx, and Representative Bobby Scott in support of the Asunción Valdivia Heat Illness, Injury, and Fatality Prevention Act (S. 2501/H.R. 4897) (February 9, 2024).