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Transcript of Day 4

Friday, June 20, 2025

OSHA Heat Injury and Illness Prevention Hearing

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

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OSHA'S INFORMAL RULEMAKING HEARING

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FOR HEAT INJURY AND ILLNESS PREVENTION IN OUTDOOR AND

11

INDOOR WORK SETTINGS

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Day 4 of 12

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Friday, June 20, 2025

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9:30 a.m.

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PRESIDING:

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Judge, Office of Administrative Law Judges, United

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States Department of Labor

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AMY WANGDAHL

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1	PARTICIPANTS, IN ORDER OF TESTIMONY:	
2	UFW FOUNDATION	
3	Zenaida Huerta	10
4	FARMWORKER ASSOCIATION OF FLORIDA	
5	Jeannie Economos	25
6	REPRESENTATIVES FROM NEW YORK	
7	Allyson Jones-Brimmer	54
8	Kim Skellie	59
9	Julie Sorensen	64
10	WECOUNT!	
11	Dominique Burkhardt	84
12	Danielle McManamon	89
13	PRIVATE CITIZENS	
14	Elizabeth Rojo	110
15	Nancy Rudner	116
16	NATIONAL COTTON GINNERS ASSOCIATION	
17	Larry Black	131
18	THE OKLAHOMA FARM BUREAU	
19	Trace Justiss	159
20	CALIFORNIA RURAL LEGAL ASSISTANCE	
21	David Cremins	165
22	FARMWORKER JUSTICE & MIGRANT CLINICIANS NETWORK	

1	Alexis Guild	176
2	Amy Liebman	180
3	LIDERES CAMPESINAS	
4	Yuridiana Alvarado	202
5	Lizbeth Mastache	207
6	Maria Jazmin Villicana	211
7	ALIANZA NACIONAL DE CAMPESINAS & GRUPO AMOR	
8	Mily Trevino-Sauceda	218
9	Maria Guadalupe Gamino	220
10	Enriqueta Martinez	226
11	EL FUTURO ES NUESTRO	
12	Leticia Zavala	250
13	PRIVATE CITIZEN	
14	Linda Pryor	260
15		
16	ALSO PRESENT:	
17	MARIAM CARLON, Abt Global	
18		
19		
20		
21		
22		

P R O C E E D I N G S

JUDGE HILLEREN-WILKINS: We're on the record and this hearing will come to order. This is an informal public hearing on the Occupational Safety and Health Administration's proposed rule for heat illness and injury prevention in outdoor and indoor work settings. The Notice of Proposed Rulemaking was published to the Federal Register on August 30th, 2024, in volume 89 of the Federal Register, beginning at 70698.

I am an Administrative Law Judge, Christine Hilleren-Wilkins, for the United States Department of Labor, and I'll preside over the hearing today. The purpose of this hearing is to receive, from interested parties, oral testimony, as well as other information pertinent to the proposed rule. After this hearing and the post-hearing comment period have closed, OSHA will review the entire record in determining the content of the final rule.

My role as presiding judge will be limited to conducting this hearing to ensure that a complete and accurate record is made, and that all interested parties receive a fair hearing and have an opportunity

1 to submit their information. The hearing schedule and
2 OSHA's procedures governing this hearing are available
3 on the website for this hearing: [www.osha.gov/heat-](http://www.osha.gov/heat-exposure/rulemaking)
4 [exposure/rulemaking](http://www.osha.gov/heat-exposure/rulemaking). These documents were sent to
5 people and organizations who filed a timely notice of
6 intention to appear at this hearing.

7 A few words here about the nature of the hearing.
8 Despite the informal nature of the hearing, it is
9 governed by rules, both OSHA's rules governing hearings
10 at 29 CFR 1911 and the hearing procedures issued
11 specific to this rulemaking. These rules are meant to
12 ensure that everyone has a fair opportunity to speak
13 and express an opinion about the proposed rule. To
14 that end, they also allow me to hold witnesses to their
15 allotted times, limit undue repetition or excessive
16 argument, and generally keep the hearing on schedule.

17 Any written comments you have submitted to the
18 docket are already part of the record of this
19 rulemaking. In the rare case where witnesses wish to
20 provide any other documents that have not already been
21 entered in the docket, they should provide them by
22 email to OSHAevents_dsg@dol.gov before the witness

1 begins their testimony, so they can be entered as
2 exhibits in the record.

3 Because all pre-submitted documents are already
4 part of the record, your oral testimony should
5 concentrate on presenting the highlights of your
6 written comments or clarifying your written submission.
7 Hearing participants may also submit additional
8 evidence or statements for a period of 90 days from the
9 end of the hearing, which will be September 30th, 2025.
10 At that point, the record for this rulemaking will
11 close.

12 Today, after each speaker or panel of speakers
13 completes giving oral testimony, OSHA representatives
14 will have an opportunity to ask questions of the
15 speaker or panel. When OSHA has finished asking
16 questions, there will be an opportunity, as time
17 permits, for persons who filed a timely notice of
18 intention to appear to question the witness or panel.
19 Participants may only direct questions to witnesses
20 with whom they have no organizational affiliation.

21 This is the process I intend to follow. After OSHA
22 has finished questions of a witness or panel, I will

1 ask participants who wish to ask questions of the
2 witness to identify themselves by pressing the raise
3 hand button in Webex, or by pressing star three on
4 their phones for those who've called in.

5 Based on the hearing schedule and the number of
6 participants who wish to ask questions, I will
7 determine the order in which participants will question
8 the particular witness or panel and any time
9 restrictions on that questioning. If there are more
10 questions than we have time for today, it may be
11 possible to ask additional questions after the
12 conclusion of the final witness's testimony. Further,
13 if witnesses are unable to answer a question during
14 today's hearing or would like to expand on the answers
15 provided, they are welcome to use the post-hearing
16 comment period to submit such information.

17 I would also like to remind you that this
18 proceeding is being recorded and transcribed by a court
19 reporter. To ensure that the reporter is able to
20 provide an accurate record of all of the testimony,
21 questions and responses, please try to remember to
22 provide verbal responses to all questions. The court

1 reporter may have a hard time seeing you if you only
2 nod or shake your head in response to a question. In
3 addition, please remember to identify yourself before
4 beginning your testimony and before asking or answering
5 a question. And don't worry, I know many participants
6 are not accustomed to doing these things. I'll remind
7 you as we go along. The transcript of the hearing will
8 be uploaded to the hearing docket on regulations.gov
9 approximately two weeks following the hearing.

10 Now, unless there are any further announcements or
11 other housekeeping matters, I believe we can proceed
12 with the public testimony. The expected speaking order
13 is currently displayed on screen. Our contractor will
14 introduce each speaker in turn and promote them to be
15 panelists. When you are called to testify, please
16 state your name and affiliation for the record and
17 speak slowly and clearly so our court reporter can
18 record these proceedings accurately. Mariam, will you
19 please announce the first speaker?

20 MS. CARLON: Yes, Your Honor. The first speaker
21 will be Zenaida Huerta. Please state your name and
22 affiliation for the record.

1 MS. HUERTA: Good morning. My name is Zenaida
2 Huerta, and I serve as the Government Affairs
3 Coordinator for the UFW Foundation. I'm submitting
4 this testimony today on behalf of our organization in
5 strong support of OSHA's proposed rule on heat injury
6 and illness prevention in outdoor and indoor work
7 settings.

8 The UFW Foundation is one of the nation's largest
9 farmworker serving organizations dedicated to advancing
10 the rights, safety, and dignity of agricultural workers
11 across the United States. In 2024 alone, we assisted
12 more than 83,000 workers in accessing disaster relief
13 across 49 states and three territories. Our mission is
14 rooted in ensuring human dignity for the people who
15 feed this nation, and that includes protecting their
16 health and safety on the job, especially as they face
17 increasingly dangerous heat conditions due to climate
18 change.

19 Farmworkers are on the front lines of climate
20 change, working in intensifying heat with little to no
21 protection. The data is stark. Farmworkers are 35
22 times more likely to die from heat exposure than

1 workers in any other civilian occupation. In 2023, the
2 UFW Foundation surveyed farmworkers in Georgia,
3 Arizona, and Michigan, three states without heat
4 protections. In Georgia -- in Georgia, 87 percent of
5 respondents reported experiencing symptoms of heat
6 illness; in Arizona, 78 percent; in Michigan, 58
7 percent. These statistics are devastating, but they
8 are not abstract. They are rooted in real people, real
9 losses, and too often, real funerals. Here are just a
10 few of the many individuals whose lives illustrate the
11 urgent need for this rule.

12 Maria Isabel Vasquez Jimenez, a 17 year old
13 undocumented farm worker, collapsed in California's
14 Central Valley after working nine hours in 95 degree
15 heat with no access to water or shade. She was
16 pregnant. Her supervisor delayed medical care and told
17 her fiancé to lie about what happened. She died in the
18 hospital the next day with a body temperature of 108
19 degrees.

20 Miguel Angel Guzman, a 24 year old H-2A worker in
21 Georgia, died after showing visible signs of heat
22 illness. When he begged for help, his supervisor

1 accused him of faking it. He died in route to the
2 hospital.

3 Dario Mendoza collapsed and died in 2023, in Yuma,
4 Arizona, while working in 116 degree heat. He died
5 before 10:00 a.m.

6 Yolanda, a longtime farm worker in California,
7 told us about the death of her coworker Emiliano.
8 Yolanda told us, we were both feeling terrible that
9 day. I told him to go home, but he didn't want to lose
10 the hours. Emiliano eventually left the field sick
11 from the heat. Two days later, he was found dead in
12 his home. He never returned to work.

13 These are not tragic accidents. They are
14 predictable consequences of inaction. Without a
15 national standard, they will keep on happening. That
16 is why we have spent years advocating for both the
17 Asuncion Valdivia Heat Illness and Fatality Prevention
18 Act and the creation of this very OSHA heat standard.
19 We strongly support the proposed rule and urge OSHA to
20 finalize it without delay.

21 Our call for action is grounded in what we hear
22 every day from farmworkers themselves. Farmworkers

1 tell us about coworkers fainting in the fields,
2 suffering seizures, or vomiting from heat exposure,
3 sometimes with no one around who is trained or willing
4 to help. Others have miscarried after being forced to
5 work through extreme heat while pregnant. Long term
6 damage is common; kidney stones, vision loss, and
7 chronic exhaustion.

8 One worker, Oscar, told us that during a contract
9 job, his throat began to swell shut from the lack of
10 heat and -- or from the heat and lack of water. He
11 said, sometimes we don't take breaks because we're paid
12 by the piece. To win a little extra money, we work
13 during our breaks, even when it's dangerous.

14 Iraida, a 23 year old farm worker in Washington,
15 shared that on a hot summer day, she was asked for help
16 carrying a ladder -- or she asked for help carrying a
17 ladder while picking pears. Her supervisor refused.
18 She was pregnant, dizzy and exhausted, and on her
19 eighth step up the ladder, she fell. She lost her baby
20 at four months. Both she and her husband were fired
21 shortly after.

22 Some workers are forced to bring their own water

1 because the supply is dirty or too far from the fields,
2 and in some cases, employers dump it out early so they
3 don't have to carry it back. Workers who speak up are
4 punished, sent home, or denied future work. And for
5 those paid by the piece, taking a break can mean losing
6 your income or your job.

7 That is why we urge OSHA to finalize and
8 strengthen this rule without delay. We support
9 guaranteed access to clean, cool and nearby water,
10 ready access to shade, paid breaks that apply to all
11 workers, including those on piece rate, employer
12 obligations to respond to symptoms of heat illness, and
13 to train workers and supervisors accordingly, strong
14 anti-retaliation provisions, a required heat illness
15 and injury prevention plan at every worksite with
16 meaningful worker input.

17 These protections are not theoretical. They are
18 urgently needed, and they are proven to work. States
19 in California and Washington, where similar standards
20 are already law, we've seen lives saved. Employers
21 have complied and they've continued to thrive. Strong
22 federal rule would ensure that all workers, regardless

1 of the state that they live in, are protected from
2 dangerous heat.

3 California's example shows that clear, enforceable
4 standards like mandatory access to water, shade, and
5 rest can dramatically reduce preventable deaths.
6 Critically, the rule must guarantee that all workers,
7 including those paid by piece, are entitled to paid
8 protected rest time. Paid breaks are not a luxury.
9 They are a basic necessity, and without them, many
10 workers skip rest to avoid lost wages -- to avoid lost
11 wages.

12 To be clear, this is not a question of whether the
13 rule is feasible. It is a question of whether workers
14 lives are worth protecting. As one farmworker, Jesus,
15 told us after moving from California to Arizona,
16 sometimes you feel like you're going to melt down to
17 nothing. I would just lay on the ground, bugs crawling
18 on me, about to pass out. Then someone yells, get up
19 and you have to force yourself to keep working. I
20 cannot believe that there aren't any heat protections.
21 If they could prevent deaths, why wouldn't they do it?

22 And why wouldn't we? Every OSHA official, every

1 policy maker, every person listening today depends on
2 the labor of farmworkers. The entire nation depends on
3 their labor for its food supply. At a minimum, federal
4 policy must ensure that farmworkers return home safely
5 each day. On behalf of the UFW Foundation and the
6 thousands of farmworkers we serve, thank you for the
7 opportunity to provide this testimony. We strongly
8 urge OSHA to finalize and strengthen this rule without
9 delay. That concludes my testimony.

10 JUDGE HILLEREN-WILKINS: Thank you. Are there any
11 questions for this witness from OSHA panel?

12 MR. SCHAYER: Yes, Your Honor. My name is Stephen
13 Schayer. I'm from the Directorate of Standards and
14 Guidance. And thank you, Ms. Huerta, for your
15 testimony today. I just had one question, and then
16 there are some questions from others on the panel. My
17 question is, do you have any information either now or
18 in your post-hearing comments on the percentage of
19 workers in agriculture that are paid on a piece rate
20 basis?

21 MS. HUERTA: I don't have that information in
22 front of me, but I'd be happy to -- to identify that

1 information and include it in the post-hearing comment.

2 MR. SCHAYER: Okay. Great. Thank you very much.

3 I'd now like to turn to Amy Wangdahl on the panel here.

4 MS. WANGDAHL: Good morning. Amy Wangdahl,
5 Directorate of Standards and Guidance. Ms. Huerta, I
6 just have a few questions for you. In your experience,
7 what are the most common challenges for employers in
8 consistently providing suitably cold water throughout
9 the workday, especially when you have a large field?

10 MS. HUERTA: Right. We - we've seen - we've seen
11 several low cost effective practices used in the field
12 for this. And for example, in California, staggered
13 shifts to avoid peak heat, mobile shade pop ups, a
14 designated water carriers using ATVs, scheduled rest
15 breaks based on -- based on the heat index. These are
16 already happening on farms where -- that take heat
17 risks seriously, but -- and -- but we believe that they
18 need to be built in and supported through - supported
19 through this enforceable heat standard. And I'd be
20 happy to provide more information on this in our post-
21 hearing comment.

22 MS. WANGDAHL: Okay. Thank you. And then in your

1 opinion, what would be the maximum reasonable distance
2 that a worker should have to walk to go get some water?

3 MS. HUERTA: Yeah. So we believe that access
4 means more than technically available. It means
5 functionally -- functionally usable. We support the
6 proposed 2.5 minute walk standard, or a quarter mile,
7 which is consistent with what California uses. This
8 distance is already feasible on large scale operations,
9 and employers commonly use water coolers, trailers, or
10 ATVs to meet that threshold, and it works in
11 California's agricultural fields. So it's realistic
12 nationally.

13 MS. WANGDAHL: And then maybe in your post-hearing
14 comments as well, if you could, how would you define
15 readily accessible? How would you define that so that
16 it's able to capture the agricultural setting?

17 MS. HUERTA: Right. As mentioned, it's more than
18 just what's technically available. We know
19 sometimes -- sometimes water may be on the premises,
20 but it's not accessible during work hours or during the
21 work period as crews are moving through the field. So
22 what we believe -- you know, functionally usable would

1 have to be within meaningful time distance as well.
2 Can a worker access it within the -- that period as
3 mentioned? The 2.5 minute walk standard meets that
4 threshold too. So that's -- for us, readily accessible
5 means that at any time the workers able to access it
6 without impediment.

7 MS. WANGDAHL: Thank you.

8 MR. SCHAYER: Thank you. I'd now like to turn to
9 Tiffany DeFoe.

10 MS. DEFOE: Hi. For the record, this is Tiffany
11 Defoe with the Directorate of Standards and Guidance,
12 OSHA. Thank you very much for your testimony. And in
13 your comments and your testimony, you -- you raised
14 some of the issues that farm workers face with
15 requesting rest breaks when they need them. We have
16 received comments from some other parties that have
17 recommended OSHA provide guidance for workers and
18 employees on the use of as-needed breaks to make sure
19 that everyone understands the importance of them and
20 how they are appropriately used. And I'd like to know
21 either now or in your post-hearing comments, if you
22 believe that such guidance could help to normalize the

1 use of as use -- as needed breaks. And furthermore, if
2 you do think that could be helpful, any specific
3 information you think it should contain?

4 MS. HUERTA: Yeah. Yes. Of course, we -- we
5 believe this guidance would be helpful. I'd be -- I'd
6 be happy to provide more information in the post-
7 hearing comments. But one consideration I that you
8 know would be helpful for workers is multilingual
9 access, of course. You know, we've worked with workers
10 from a variety of languages, Mixteco, Zapotec and in
11 some cases Haitian Creole. So that would be necessary
12 to provide, either through visual cues or, you know,
13 written --written translation, that guidance available
14 to workers on site.

15 MS. DEFOE: That's all I have.

16 MR. SCHAYER: Thank you very much. This is
17 Stephen Schayer again. I'd now like to turn to Bob
18 Blicksilver on the panel in the room.

19 MR. BLICKSILVER: Hi, Bob Blicksilver, OSHA
20 Standards and Guidance. Among your survey results,
21 some workers reported that their employers were not
22 compliant with provisions like training, despite being

1 in states like California, Washington, and Oregon with
2 state heat standards that require compliance with such
3 provisions in farming industries. Do you think this
4 noncompliance is due to a compliance lag, for example,
5 the compliance takes time or any other factors that
6 you'd like to consider and share with us, please?

7 MS. HUERTA: That's something that I'd like to be
8 able to answer in the post-hearing comment, just to
9 ensure accuracy. But that -- I'd prefer to send it in
10 the post-hearing comment just to ensure the information
11 is correct.

12 MR. BLICKSILVER: Thank you. Bob Blicksilver,
13 OSHA. In one submitted response to the survey, a
14 worker from Washington state reported that instead of
15 providing required breaks, the employer sent them home.
16 How prevalent are cases such as this one, where
17 employers stop work instead of providing paid breaks?

18 MS. HUERTA: This is absolutely very common. You
19 know, a lot of times we've heard from workers who say
20 that, you know, when they're experiencing any symptoms
21 of heat illness or any distress, their employer will
22 just send them home. And -- and many of times, such as

1 the worker stories that I've mentioned, where -- that
2 they've, you know, died at work due to heat illness,
3 that's been the underlying case of how that happened.
4 They were sent home and they've died at home.

5 So that's something that we hear often is, you
6 know, whenever someone's feeling unwell due to heat
7 illness, employers tend to encourage workers to just go
8 home, which is -- provides more danger than anything,
9 given the nature of heat stress and any possible injury
10 related to that.

11 MR. BLICKSILVER: Thank you Bob Blicksilver, OSHA.
12 Is there any relationship to the geography as far as
13 the stopping work situations? For example, Washington
14 has a limited number of days above 90, so it may be
15 more feasible there relative to states with warmer
16 climates. Have you noticed any relationship? And we
17 invite any post-hearing comments you have as you think
18 about these questions.

19 MS. HUERTA: I can -- I can address this in the
20 post-hearing comment just to ensure that I'm capturing
21 information on more temperate climates, like you know,
22 with members that we have in those areas.

1 MR. BLICKSILVER: Thank you very much.

2 MR. SCHAYER: And thank you. This is Stephen
3 Schayer again. Finally, I'd like to turn to Patti
4 Downs.

5 MS. DOWNS: Good morning, everyone. Patti Downs
6 with the Directorate of Standards and Guidance. And I
7 just have a couple of questions that I'm going to read
8 into the record, Ms. Huerta, for you to consider and
9 respond to in your post-hearing brief.

10 OSHA has heard from several commenters that the
11 proposal is unrealistic for the farming and
12 agricultural industry, including the requirements to
13 monitor for environmental conditions using heat index
14 sensors and to provide fans and shade. And we're just
15 curious if this has been the experience of your
16 members?

17 The second question is what are members observing
18 at their work sites in terms of control measures to
19 reduce exposures to heat?

20 And then finally, are fans ever used to cool work
21 areas? And if so, what has the experience been with
22 fans and are there any places where fans could not be

1 used? That's it. Thank you.

2 MS. HUERTA: Thank you. I'll address the vast
3 majority of those in the post-hearing comment. But for
4 the first one that you mentioned about the - the
5 feasibility, I think we - I mean, we've seen this rule,
6 you know, already implemented since 2007, in
7 California. And California farms have already --
8 (break in audio) -- and these operations still continue
9 to thrive. And California remains a top agricultural
10 producer for the nation. So employers are complying
11 and this is a - at least for the large picture
12 feasibility, we point to that as an example.

13 MR. SCHAYER: Okay. Thank you so much, Ms.
14 Huerta, for your testimony. Your Honor, that completes
15 OSHA questions.

16 JUDGE HILLEREN-WILKINS: Thank you. Are there any
17 questions from the Solicitor?

18 MS. LEVIN: Your Honor the Solicitor -- this is
19 Jennifer Levin for the Office of the Solicitor. I have
20 no questions for the witness.

21 JUDGE HILLEREN-WILKINS: Thank you. And Mariam,
22 are there any questions from any participant for the

1 witness?

2 MS. CARLON: There are none, Your Honor.

3 JUDGE HILLEREN-WILKINS: All right. Thank you
4 very much, ma'am. We appreciate your testimony today.
5 Mariam, if you please announce the next witness.

6 MS. CARLON: The next speaker is Jeannie Economos.
7 Please state your name and affiliation for the record.

8 MS. ECONOMOS: Yes. Good morning. This is
9 Jeannie Economos. I am the Pesticide Safety and
10 Environmental Health Project Coordinator at the
11 Farmworker Association of Florida. Our headquarters is
12 in Apopka, Florida, which is near Orlando. We are a
13 grassroots farmworker organization statewide with a
14 history of 41 years of working with farmworkers.

15 I want to affirm and acknowledge everything that
16 Zenaida said previously, as we've submitted multiple
17 interviews in the public docket to comments to OSHA
18 with testimonies from farmworkers. So I would like to
19 reiterate what she said in terms of the importance of
20 heat stress protections for farmworkers.

21 I would like to say it's very interesting that we
22 should be having this hearing today, as we're having a

1 high heat day across the nation, and there are notices
2 and concerns across the country for workers and people
3 in sports. And so it's pretty important that we
4 acknowledge that as part of this hearing.

5 I would like to bring up a few points that are
6 specific to some of the comments that we made and to
7 our farmworkers. The Farmworker Association has been
8 working with Emory University for close to 14 years,
9 looking at heat stress of farmworkers. We have
10 submitted our comments, so I'm not going to reiterate
11 things that we have submitted.

12 What I would like to add that is a little bit
13 different is that farmworkers are also simultaneously
14 exposed to pesticides on a daily basis. There have
15 been several studies that have looked at the
16 compounding effects of exposure to pesticides and heat.
17 And from those studies, it has been shown that in high
18 heat conditions, the absorption of pesticides of
19 farmworkers is higher. So that needs to be considered
20 as well. That's another added reason that farmworkers
21 need to be protected from heat stress.

22 In addition to that we would like to say that

1 unfortunately, the deaths of farmworkers from heat get
2 the most attention. What does not get - attention is
3 the long term consequences, both physiologically - and
4 that's in terms of -

5 JUDGE HILLEREN-WILKINS: Ma'am, we're having some
6 difficulty --ma'am -- excuse me ma'am?

7 MS. ECONOMOS: Yes, I'm here.

8 JUDGE HILLEREN-WILKINS: Yes, excuse me for --

9 MS. ECONOMOS: Yes. I'm here. I'm here. Can you
10 hear me?

11 JUDGE HILLEREN-WILKINS: Excuse me -- excuse me
12 for interrupting. We can now. Excuse me for
13 interrupting you. If you would please repeat about the
14 last sentence or two of your testimony. There was some
15 feedback, and I think there were some buffering issues.
16 So if you'd please repeat those so we can get an
17 accurate record. Thank you.

18 MS. ECONOMOS: Sure. I would like to say that
19 it's really important to recognize the long term health
20 consequences, including chronic kidney disease of farm
21 workers. But what most people don't mention is the
22 quality of life of farmworkers. I interviewed multiple

1 farmworkers, and one in particular, Lettie, would say
2 that she would come home after work repeatedly, and she
3 was so exhausted she didn't have the energy to cook
4 dinner for her family. She didn't have time to play
5 with her children. It took her all evening to recover,
6 to be able to get to work the next day. And weekends,
7 she would spend laying in bed trying to recover and
8 rehydrate and restore herself from exhaustion. So this
9 is a quality of life issue.

10 And I would like to address industry's concerns.
11 If industry is able -- the -- the labor -- the farm
12 industry and other industries are able to get their
13 equipment out to the fields and they're able to get
14 their machinery out to the fields, then they can
15 certainly get water out to the fields to protect their
16 farmworkers as well.

17 There are also studies, not enough, unfortunately,
18 but it's common sense that if you have well hydrated,
19 healthy workers, your product industries to have
20 healthy, protected workers that will have better
21 productivity and their workers need to be healthy and
22 hydrated to be able to perform well. So it's not only

1 the farmworkers themselves, but it's for the - the
2 business itself.

3 And another thing I would like to say is that, in
4 terms of some of the questions that were asked earlier,
5 we recognize that -- (break in audio) -- around the
6 country so far regarding fans -- (break in audio) --
7 will have lots of ornamental plants and grasses.
8 Probably - there are fans - taking the heat out of the
9 nursery, but not to cool the workers. So it's really
10 important to understand we've had workers tell us that
11 employers care more about their plants than they care
12 about their workers. This has got to change. And so -
13 - (break in audio) -- protect workers -- (break in
14 audio) -- both justice issue -- (break in audio) -- a
15 health -- (break in audio) -- for -- (break in audio)
16 -- industry.

17 I can say this as well. We had a student do an
18 entire paper on mental health and farmworkers,
19 reproductive health of farmworker women. There are
20 multiple reasons why it's important to have heat stress
21 standards for workers, and it is complicated. But we
22 are willing to work with OSHA to -- to resolve those

1 complications. And I'm happy to answer any questions.
2 Thank you for this opportunity. And I hope this makes
3 a difference, because we've been fighting for this for
4 more than 10 years and workers need protection. Thank
5 you.

6 JUDGE HILLEREN-WILKINS: Thank you, ma'am. Are
7 there any questions from the OSHA panel?

8 MR. SCHAYER: Yes, Your Honor. This is Stephen
9 Schayer from Directorate of Standards and Guidance. We
10 do have some questions. Thank you, Ms. Economos, for
11 your testimony. I'm just going to start with a few
12 questions on acclimatization.

13 So in your written comments, you mentioned that
14 OSHA should consider guidance from the University of
15 California's agricultural personnel management program
16 that includes recommendations for acclimatization
17 protocols, including reducing work during hotter
18 conditions to 50 percent of the usual duration and
19 scaling back the overall workload. So I just wanted to
20 clarify, are you recommending that OSHA should include
21 a provision in the rule to address heat waves? And if
22 so, how would you recommend that the agency define a

1 heat wave?

2 MS. ECONOMOS: So regarding acclimatization,
3 first, we have several cases in Florida that we're
4 aware of where people actually died because they were
5 not acclimatized. For example, there was a Haitian
6 worker -- I don't remember what year it is, but I could
7 look it up -- who was in his first week of work. He
8 had not worked before, and he died on the way back on
9 the bus. Nobody recognized that he was sick and he
10 died on the bus back to Immokalee from the fields
11 because he was not acclimatized. We had another case
12 just a couple of years ago in Homestead, Florida, where
13 a worker died because of lack of acclimatization. So
14 yes, it's really important.

15 In terms of the heat index, I think it really is
16 going to -- have to look at all different factors,
17 including humidity, including -- and I know -- it's
18 complicated.

19 JUDGE HILLEREN-WILKINS: Ma'am, I'm having a
20 little trouble hearing you. The last word I heard was
21 humidity. Could you please repeat everything after
22 that?

1 MS. ECONOMOS: As a few years ago -- it --

2 JUDGE HILLEREN-WILKINS: Excuse me, ma'am, are you
3 able to hear us?

4 MS. ECONOMOS: Yes, I can hear you -- you hear me?

5 JUDGE HILLEREN-WILKINS: It's in and out. And
6 so --

7 MS. ECONOMOS: I can hear you.

8 JUDGE HILLEREN-WILKINS: Okay. It's good that you
9 can hear us. We're hearing some of the words you're
10 saying, but not all. So can you please say everything
11 that you said after humidity? That was the last thing
12 I heard.

13 MS. ECONOMOS: Okay. I'm sorry. So -- also
14 the -- heat index --

15 MS. CARLON: Jeannie, are you able to hear me?

16 MS. ECONOMOS: Wind direction -- I can hear you.

17 MS. CARLON: Okay. I -- I appreciate. I'm so
18 sorry to interrupt you, but I want to see if I can just
19 get you switched over to hopefully make it easier for
20 you to be able to answer these questions. Do you have
21 your mobile device by you, by chance?

22 MS. ECONOMOS: I'm on a laptop. Yes, I have --

1 MS. CARLON: Okay. Okay. So do you see the drop
2 down arrow by the mute option for you in Webex?

3 MS. ECONOMOS: Yes.

4 MS. CARLON: Click on that and then you should see
5 an option towards the bottom that says Switch Audio.

6 MS. ECONOMOS: Okay. Okay. So okay -- so you
7 want me to call in?

8 MS. CARLON: Yes. It'll go ahead and it'll ask
9 you for your phone number. Just put your phone number
10 in and Webex will give you a call. And then you
11 essentially will just use that as your microphone. And
12 I think that might help us just be able to hear you a
13 little more clear.

14 MS. ECONOMOS: Okay. Let's see. Did you get it?
15 Okay. Let's see. I'm trying to put it in. Let's
16 see -- (XXX) XXX-XXXX. 6. Okay. I put my phone
17 number in, but it's not -- it's not -- it's not
18 working, doesn't seem to be working.

19 MS. CARLON: It's not switching over to your
20 phone.

21 MS. ECONOMOS: It's not switching to my phone.
22 Let's see. Switch. Oh, maybe -- there. Okay. Okay,

1 I think that's. Can you hear me now on my phone?

2 MS. CARLON: Yes, I can. Yeah.

3 MS. ECONOMOS: Okay, great. Okay, great. Sorry
4 about that. Thank you. Yes.

5 MS. CARLON: No problem.

6 MS. ECONOMOS: Okay. So I think I left off on a
7 humidity.

8 JUDGE HILLEREN-WILKINS: Yes, that's correct. You
9 can pick up there.

10 MS. ECONOMOS: I'm sorry about that.

11 JUDGE HILLEREN-WILKINS: That's okay.

12 MS. ECONOMOS: So, yes. There are lots of factors
13 involved including microclimates. We did one study
14 where we had farmworkers use heat buttons, and they
15 looked at microclimates in different conditions, such
16 as in greenhouses. So it is complicated and I'm not
17 denying that it's -- it's not an issue. But that
18 doesn't mean that it doesn't need to be taken into
19 consideration and resolved.

20 And I think different areas of the Country need to
21 be looked at. So for example, in Oregon, I think it
22 was maybe as many as five years ago now, there was an

1 unprecedented heat wave in Oregon, and there were lots
2 of deaths of workers there. So -- so acclimatization
3 might look a little bit different in different places.
4 And so that needs to be taken into consideration.
5 It -- so -- but there can be a standard for
6 acclimatization, but based on looking at conditions in
7 different areas. So does that make sense? I don't
8 know if that answers it correctly.

9 Again, we are very happy to work with OSHA
10 directly on these -- making these complicated
11 recommendations for how that standard could be
12 developed. Because we do know that there's all
13 different kinds of agriculture, from greenhouses to
14 field work to tree nurseries, and the conditions are
15 different in those different places.

16 MR. SCHAYER: Okay. Thank you, Ms. Economos. And
17 one follow up question about acclimatization. We also
18 heard some testimony earlier in the week that OSHA
19 should consider allowing employee self-managed
20 acclimatization through health awareness training. So
21 just wondering if you had any thoughts on this approach
22 and its effectiveness for the agriculture industry?

1 MS. ECONOMOS: Well, I don't think -- I don't
2 think that's at all effective because just like with
3 pesticides and with heat, we find lots of
4 noncompliance. We find lots of times when employers
5 will find that that's too difficult for them. And
6 there might be a rule there, but they won't follow it.
7 And -- and a lot of times workers just need to make
8 money so they won't consider their own health. They
9 just think that they have to make money to feed their
10 families and so they won't, even if they have training.

11 First of all, a lot of times they're supposed to
12 get training and they don't. And we can tell you lots
13 of examples of that, both in pesticide training and in
14 heat training. We have lots of interviews of people
15 that never got heat training or pesticide training. So
16 I think that -- that -- that in itself says a lot. But
17 then a lot of times people are not incentivized to
18 actually self-protect. They're more incentivized to
19 work and make money because they have children at home
20 to feed. So I don't think that that's a good option.

21 MR. SCHAYER: Okay. Thank you very much.

22 MS. ECONOMOS: Can I say one more thing?

1 MR. SCHAYER: Sure, sure.

2 MS. ECONOMOS: The question about piece rate -
3 it's hard to know exactly what the percentage of piece
4 rate is. So for example, in Florida, we have a lot of
5 workers that work in greenhouses and nurseries. So -
6 and in ferneries in -- (break in audio) -- Florida in
7 the -- (break in audio) -- where they will work piece
8 work, piece rate and other times when they will be
9 working by the hour.

10 So for example, when the harvest is at full
11 throttle and they need to harvest right away, they'll
12 be generally piece rate. A lot of times they will be
13 doing weeding or other kinds of maintenance stuff where
14 they will be working by the hour instead. So it's
15 really hard to you know -- and that includes the fields
16 as well and in tree nurseries, mushroom plants, other
17 things like that. So it's hard to really get a handle
18 on the percentage of how much is piece rate and how
19 much is not. I could say a lot more. So please ask me
20 more questions because I have lots more I could say.

21 MR. SCHAYER: Thank you, I appreciate that, and we
22 do have some more questions. Again, Stephen Schayer, I

1 would like to turn now to Dalton Moore.

2 MR. MOORE: Hi, this is Dalton Moore from the
3 Department of Enforcement Programs. Just wanted to
4 talk a little bit about your written comments. When
5 you mentioned the need for PPE to protect workers from
6 heat and other environments and how additional clothing
7 can exacerbate heat stress. And just wanted you to
8 kind of elaborate a little bit on issues around vapor
9 impermeable PPE and PPE in general and -- that you can
10 think of that should be considered in the heat injury
11 and illness prevention plan.

12 MS. ECONOMOS: Thank you. I'm really glad you
13 asked that question, because it's a really big concern.
14 And as my title suggests, I also work on pesticide
15 issues. So in addition to protecting themselves from
16 heat, farmworkers protect themselves from pesticides.
17 And it's really important to understand those two
18 things together. So even in the hottest temperature,
19 farmworkers wear a hat on their face, both to protect
20 their face from the sun, but also to protect themselves
21 from, you know, the dirt and dust and -- and -- and
22 from pesticides. But from like, if it's windy, they'll

1 get, you know muck and dust in their -- in their faces,
2 so they'll wear bandanas.

3 They generally wear layers of clothing. We've had
4 workers tell us that sometimes they go through two or
5 three layers of clothing a day because they sweat so
6 much. But also to protect themselves from the sun and
7 from pesticides, they have to wear long pants -- (break
8 in audio) -- from biting -- (break in audio) -- they
9 have to wear shoes and socks. So it's a lot of
10 clothing. And we've had farmers -- sometimes during
11 COVID, they had to wear a mask to protect themselves.
12 At the same time, they had a hard time breathing.

13 So -- and -- and I work on pesticide issues and
14 it's a big concern to me because the EPA is talking
15 about some very bad pesticides, and instead of
16 eliminating them or banning them, they are just making
17 more recommendations for more PPE. And that would be
18 great to protect workers from maybe the pesticide, but
19 it does not protect them from increased heat stress.
20 So the more PPE you have, the higher your -- your core
21 body temperature becomes and the more stressed you are.
22 So it's really important to understand the

1 compounding effects of heat and pesticides, and the
2 importance of the clothing to workers in protecting
3 themselves from, not just the heat, but from the sun
4 and from sunburn. I hope that answers it, but I'm
5 happy to go on. So thank you.

6 MR. MOORE: (Indiscernible).

7 MR. SCHAYER: Okay. Thank you. This is Stephen
8 Schayer again. I'd like to turn now to Amy Wangdahl.

9 MS. WANGDAHL: Good morning, Amy Wangdahl, OSHA
10 Directorate of Standards and Guidance. Ms. Economos, I
11 have a few questions about drinking water. In your
12 comments, you mentioned water not being sufficiently
13 provided in the, you know, large enough quantity or
14 it's not being replenished frequently enough. Can you
15 tell us what are some of the logistical reasons that
16 employers are telling you that they're not able to
17 either provide enough water or that it's not being
18 replenished?

19 MS. ECONOMOS: Well, there are logistical reasons,
20 but I'll be really honest. Sometimes the -- the
21 growers just don't want to do it. We've had workers
22 tell us -- and we submitted this in one of our

1 interviews that we did with one worker. The worker
2 said that -- that she worked in an ornamental plant
3 nursery and they would have a water service where they
4 would bring in the gallon, you know, the -- the big --
5 not gallons, but the big jugs and they would provide
6 those weekly for water. But in high heat conditions,
7 that would run out before the end of the week. And
8 when they would ask the employer for more water, he
9 would say, I'm sorry, but the service doesn't come
10 until Monday, so you're going to just have to deal with
11 it.

12 So I think sometimes the growers, as I said
13 before, we've had people tell us that the growers care
14 more about their plants than their workers. That's not
15 all cases, but sometimes it's the economics, and the
16 grower just doesn't want to spend the money to provide
17 the water. So it's not just the logistics. You know,
18 and -- and I said again, you know, if they can get
19 their materials and their equipment out to the fields
20 in remote areas and they can certainly get enough
21 water.

22 And -- and in addition to that, I would like to

1 say that one solution to that also is the buddy system.
2 So one thing that we recommend in a heat stress
3 protection rule is that a buddy system be required.
4 And in a buddy system your buddy can say, oh, look, we
5 don't have enough water. And one person can be working
6 and the buddy can maybe go and help, go get some water
7 or tell the supervisor or the crew leader.

8 But the key thing is -- and I've been doing this
9 work for 25 years -- the key thing is there needs to be
10 incentives for the growers to comply with this. And
11 that means that OSHA needs to take a strong stand and
12 say it is incumbent upon the growers, the business
13 industry, to comply with these regulations and to
14 make - to show the industry the importance of this to
15 their own product line, to their own productivity, to
16 their own caring for their workers and the importance
17 of their workers to their business. So -- so there
18 needs to be an understanding of how important this is
19 to the growers themselves to protect their workers.

20 And I don't know if that helps, but -- and we've
21 had workers tell us that sometimes there's very small
22 nurseries. And workers there, they don't even have

1 water at the nursery. Sometimes they have to walk to a
2 nearby convenience store or -- or grocery store to get
3 their own water. So -- so it -- it's very complicated,
4 but it -- it -- it -- there needs to be a real effort
5 by OSHA to make the business industry to understand how
6 important this is to our entire country to comply with
7 these standards.

8 MS. WANGDAHL: Okay. Thank you. And then you can
9 either discuss it today or in your post-hearing
10 comments. But you advocate for a specific temperature
11 mandate for the water, for example, sixty degrees or
12 cooler. From your own experience or from what your
13 network has observed, how are employers able to do that
14 throughout the workday?

15 MS. ECONOMOS: Well, they generally don't do that,
16 unfortunately. And I know it's not easy, especially in
17 Florida, because it is hot here. But there can be
18 workarounds, just finding different kinds of thermoses
19 or equipment that can hold the, you know, a -- a -- a
20 big container of ice. To go out in the fields with the
21 water. And to have someone that can -- can go back and
22 forth to get -- if the water gets low, if the

1 temperature gets too low, to have a plan to have to
2 send someone back to go get ice to replenish that water
3 and have it cool enough.

4 On the other hand, I will say that it's really
5 important, that workers have told us -- and this is all
6 in the interviews that we sent as well -- that workers
7 tell us that if the water is too cold, I'm not saying
8 that it should be warm. There's a -- you know -- but
9 if it's too cold, they can't drink a lot. And
10 sometimes if they drink too much water all at once, it
11 makes them want to vomit. So that's why it's really
12 important for them to have opportunity to drink small
13 amounts throughout the time that they're working.
14 Because if they just get a break and they have to
15 guzzle down a bunch of water all at once, then we have
16 had multiple, multiple workers tell us that if they
17 drink a lot all at once, when they're really hot and
18 really tired, that it makes them nauseous.

19 So all these things need to be -- need to be
20 considered. And it's not an -- insurmountable problem,
21 but --

22 JUDGE HILLEREN-WILKINS: Ma'am, I missed the last

1 portion of the sentence you just said. Can you repeat
2 it, please?

3 MS. ECONOMOS: Sure. I said -- I said that it's
4 not an insurmountable problem. It's difficult, but
5 it's not an insurmountable problem. And we are a
6 nation of innovation and creativity, and we can use
7 innovation to find ways to do it. And we've done many
8 things before.

9 Many years ago, the Farmworker Association had a
10 project with the University of Florida where we made a
11 handwashing station that could go -- and since then
12 they have much better ones now, much better ones have
13 been developed. But if they can have a handwashing
14 station and get handwashing stations out to the field,
15 which is required and not -- doesn't often happen --
16 then they can find ways to get water out there. But
17 there can be multiple ways to do that, including having
18 a tag team system where somebody goes back to get ice,
19 to replenish ice to cool the water down.

20 And yeah, because you have -- most farm workers
21 work with crew leaders. So the crew leaders are the
22 ones that actually supervise the workers in the fields.

1 And it's really important to understand that crew
2 leader system because the -- the grower, the farmer,
3 employer, himself or herself generally is not out there
4 in the fields.

5 Tag team system, where one crew leader can go back
6 and get ice if necessary, or track -- they can bring
7 out -- bring out -- periodically in high heat
8 conditions. So you can have someone say it's midday
9 and workers are in the field and they can't go all the
10 way back to town. Then have -- have it planned for a
11 truck to come out and bring ice at noon, during lunch
12 break, and replenish the ice in the water to cool the
13 water off. There's -- there's -- there's ways to do
14 these things. We just have to have the will to do it.

15 MS. WANGDAHL: Thank you.

16 MR. SCHAYER: Thank you. This is Stephen Schayer
17 again. We had a few questions from Patti Downs.

18 MS. DOWNS: Patti Downs with the Directorate of
19 Standards and Guidance. You had briefly mentioned
20 workers in greenhouses and some of the controls and
21 some of the issues that they encounter. And I'm
22 wondering if you could expand on what controls have

1 been effectively implemented in those situations for
2 those workers?

3 MS. ECONOMOS: Well, we haven't seen much controls
4 happen in those -- in those greenhouses. I mean, it's
5 hot enough outside. It is brutal inside a greenhouse,
6 just brutal. And I -- I haven't seen any real measures
7 implemented in the greenhouse to help people. Now, you
8 do have some growers that are better than others who
9 will give their workers a chance to go outside the
10 greenhouse and get some air. It really depends.
11 There's a wide variety.

12 But what happens is -- what tends to happen is, in
13 the greenhouses and in the ferneries, which is
14 something -- a whole other issue just to talk about
15 what a fernery is -- but there's very little air
16 circulation. So as bad as it is being outside in the
17 field, under the sun, at least maybe you might get a
18 breeze. If you're in a greenhouse, you often don't get
19 a breeze.

20 So sometimes some of the better growers might let
21 their workers step outside for a little bit -- they're
22 just told -- you got to, you know, produce. They work

1 and produce and farm workers just feel dizzy.

2 And I will say again, I'm going to make the
3 connection with pesticide exposure. So a lot of
4 times -- (break in audio) -- stronger. So they get
5 headaches from the heat and they get headaches from the
6 pesticides and it causes nausea, vomiting, drooling,
7 other kinds of symptoms. So there needs to be
8 mitigations -- the greenhouses.

9 And like I said before, most have exhaust to pull
10 the hot air out, but they - and one work - one grower
11 even told the worker the fans are not there for you.
12 The fans are there for the plants. And the fans are
13 only to pull the heat out. They are exhausts, they are
14 not fans for the workers, to cool the workers down.
15 And it's not the best solution, but having some fans
16 where the workers are standing at least would create a
17 little bit of breeze. But there often is no breeze
18 inside and -- (break in audio) -- stifling -- (break in
19 audio) -- the worker -- (break in audio) -- because
20 this is June.

21 JUDGE HILLEREN-WILKINS: Ma'am, we're not able to
22 hear you at this point.

1 MS. ECONOMOS: Okay.

2 JUDGE HILLEREN-WILKINS: Excuse me, Ma'am. Okay.

3 Can you repeat the last sentence that you said?

4 MS. ECONOMOS: Yes. Yes. I said I'm extremely
5 worried because right now, this is mid-August, and we
6 are -- I mean, I'm sorry, it's mid-June and the hottest
7 time --

8 JUDGE HILLEREN-WILKINS: Unfortunately, Ms.
9 Economos --

10 MS. ECONOMOS: I was outside --

11 JUDGE HILLEREN-WILKINS: We aren't able to --
12 excuse me -- excuse me. We aren't able to understand
13 the last sentence. I'm going to suggest perhaps the
14 remainder of the questions could be read into the
15 record for the speaker to respond in post-hearing
16 comments in the interest of time, and so that we
17 maintain a clear record. So you can go ahead.

18 MS. DOWNS: Okay. Great, thank you. Then, for
19 your consideration in the post-hearing briefs, if you
20 could just comment on -- regarding the use of cooling
21 towels and cooling PPE. Under what circumstances, if
22 any, OSHA should require those and if OSHA should allow

1 those types of PPE in lieu of other required controls.
2 And that's it for me, Your Honor. Thank you.

3 JUDGE HILLEREN-WILKINS: Any further questions
4 from OSHA?

5 MR. SCHAYER: Yes, Your Honor. This is Stephen
6 Schayer. Would it be okay if we read a few other
7 questions into the record?

8 JUDGE HILLEREN-WILKINS: Absolutely. Why don't we
9 read the remainder of the questions that OSHA has into
10 the record, and the speaker can respond post-hearing.

11 MR. SCHAYER: Okay. Thank you very much. Tiffany
12 DeFoe, could you read your question next, please?

13 MS. DEFOE: Yes. This is in response to Ms.
14 Economos's comments about the difficulty of using
15 voluntary rest breaks. We've received some comments
16 from others that OSHA should provide guidance for both
17 workers and employers on the use and the importance of
18 as-needed rest breaks -- that is voluntary rest breaks
19 taken self-paced by workers. And I'm wondering if you
20 can please give your thoughts on whether guidance of
21 this kind could help normalize the use of voluntary
22 rest breaks in the agricultural industry and if there's

1 any specific information that you would recommend OSHA
2 include in such guidance. Thank you.

3 JUDGE HILLEREN-WILKINS: Okay. Thank you.

4 MR. SCHAYER: Okay. Thank you. And one last
5 question we have is from Bob Blinksilver.

6 MR. BLICKSILVER: Hi, Bob Blinksilver, OSHA
7 Standards and Guidance. Have you been able to
8 quantify -- and you can respond, of course, in post-
9 hearing comments -- quantify results from the
10 interviews that you discussed in your submitted
11 comments covering such areas as the number or the
12 percentage of workers that reported signs of heat
13 stress from work exposure, average distance to a
14 bathroom, the percentage of workers that are able to
15 take breaks as needed. If you're able to quantify the
16 interviews that you conducted, that would be really
17 helpful to -- to inform our final economic analysis.

18 And just one final. There's already been
19 questions and discussion on piecework rate. And OSHA
20 made certain assumptions about unionized and
21 nonunionized workers and - and rest breaks. So if
22 you're able to provide any - in post-hearing comments -

1 any information data on union piece rate workers and
2 rest breaks versus non-union piece rate workers and
3 rest breaks, that would be helpful to us as well.
4 Thank you very much.

5 JUDGE HILLEREN-WILKINS: Thank you. And are there
6 any questions to be read into the record on behalf of
7 the Solicitor's Office?

8 MS. LEVIN: Yes. Your Honor, this is Jennifer
9 Levin from the Office of the Solicitor. And I noted
10 during the discussion, Ms. Economos referred to some
11 papers -- some research papers, I believe she
12 mentioned, about mental health and also heat buttons
13 by -- used -- used by greenhouse workers. And if you
14 have not yet submitted those, if you could include
15 those with -- in your post-hearing comments, that would
16 be most appreciated. That's all I have. Thank you
17 very much for your testimony today.

18 JUDGE HILLEREN-WILKINS: Yes, I echo that. Thank
19 you very much, Ms. Economos, for your testimony today.
20 In the interest of time, we're going to forego any
21 questions from participants and move on to the next
22 speaker. So Mariam, if you would please announce that

1 speaker.

2 MS. CARLON: Yes. And Ms. Hilleren-Wilkins, we
3 actually did have one participant that wanted to read a
4 question for the previous speaker into the record? Is
5 there time to do that, or should we continue to move on
6 to the next speaker?

7 JUDGE HILLEREN-WILKINS: We can read the question
8 into the record, briefly. Can you identify that
9 participant?

10 MS. CARLON: Yes, it's Ms. Arberry.

11 JUDGE HILLEREN-WILKINS: Okay. Please proceed,
12 ma'am.

13 MS. ARBERRY: Hi there. My name is Chenay Arberry
14 with the AFL-CIO. My question was for Zenaida Huerta.
15 She had mentioned talking about existing OSHA heat
16 standards that have helped protect farmworkers. And I
17 was curious to see what elements in particular have
18 helped farmworkers. Again, that was for the record.
19 Thank you.

20 JUDGE HILLEREN-WILKINS: Thank you very much. And
21 Mariam, if you would please announce the next panel of
22 speakers.

1 MS. CARLON: Thank you, Your Honor. The next
2 speaker is Richard Stup. Unfortunately, we do not see
3 your name in the attendee list. If you have joined
4 under a different name, please use the raise hand
5 feature at the bottom of the Webex screen to alert us
6 of your presence. And if you have called in, please
7 use star three to raise your hand.

8 MS. JONES-BRIMMER: Unfortunately, I believe Dr.
9 Richard Stup was not able to join today for our panel.

10 MS. CARLON: Thank you, Allyson. Well, then the
11 next speaker will be Ms. Allyson Jones-Brimmer. Please
12 state your name and affiliation for the record.

13 MS. JONES-BRIMMER: Thank you. My name is Allyson
14 Jones-Brimmer, and I'm with the Northeast Dairy
15 Producers Association. We are an organization of dairy
16 producers and industry partners committed to an
17 economically viable, consumer conscious dairy industry
18 dedicated to the care and wellbeing of our communities,
19 our environment, our employees, and our cows.

20 Our panel today includes representatives from the
21 agricultural community across New York state. Thank
22 you for the opportunity to comment on the heat injury

1 and illness prevention proposed rule. New York's
2 farming community has a commitment to creating a
3 culture of safety on farms and at agricultural
4 businesses. In 2015, NEDPA, along with our dairy
5 cooperatives, New York State Vegetable Growers
6 Association, New York State Horticultural Society, and
7 Cornell's College of Agriculture and Life Sciences
8 founded the Ag Workforce Development Council. The
9 popularity of the first labor road show, which included
10 educational workshops held across the state,
11 demonstrated the need for more resources for employers,
12 which led to establishing and investing in the Cornell
13 Ag Workforce Development Program and hiring Dr. Richard
14 Stup in 2018.

15 We also rely on safety training and education
16 provided by the New York Center for Agricultural
17 Medicine and Health, who you will hear from later on in
18 this panel. New York family farms are fortunate to
19 have access to top notch safety and human resource
20 experts who can provide on-farm and virtual or
21 classroom training in both English and Spanish.

22 For dairy farms, specifically, the National Dairy

1 Farmers Assuring Responsible Management Program is
2 available to all dairy farms and required by most dairy
3 farmer cooperatives. The program's workforce
4 development module equips dairy owners and managers
5 with tools to enhance their safe and thriving work
6 environments. It includes on-farm second party
7 evaluation tools to help farmers learn about human
8 resources and safety best management practices,
9 identify which practices would be most useful to
10 implement on their farm, and track improvement over
11 time.

12 When OSHA introduced a local emphasis program for
13 dairy in 2013, New York's dairy industry responded with
14 action, forming a working group, organizing mock
15 inspections, and working closely with OSHA and safety
16 experts to make improvements. We collaborated with
17 NYCAMH, Cornell's pro-dairy program, and colleagues
18 from the state of Wisconsin to better understand what
19 we needed to do to reduce hazards and prepare for farm
20 inspections. We promoted the New York State Department
21 of Labor on site consultation service -- service, which
22 helps businesses identify and eliminate hazards at

1 their workplace.

2 Each year, industry partner Farm Credit East
3 hosted a dairy LEP update, where OSHA would share an
4 overview of the inspections and hazards that had been
5 identified throughout the previous year to build
6 awareness of issues and encourage farms to continue
7 making improvements. Even when the dairy LEP did not
8 get renewed for New York, a commitment to safety and
9 continuous improvement remained part of our on-farm
10 culture. We continue to work with OSHA on outreach and
11 education, and have invited staff to present on heat
12 illness and prevention at both our Ag Workforce
13 Development Council meetings and labor roadshows.

14 While the intent of the proposed rule to protect
15 workers from heat injury and illness is commendable,
16 the regulation imposes significant burdens without
17 enhancing safety. First, OSHA's existing general duty
18 clause already obligates employers to ensure workplace
19 safety, so added rules create redundancy and
20 unnecessary complexity. Additionally, we're concerned
21 that the proposed rule creates liability issues.
22 Farmers and coworkers are not medical professionals, so

1 asking them to identify heat illness or injury and
2 perform the task of medical professionals is not
3 feasible and puts everyone at greater risk.

4 The proposed rule also poses operational
5 challenges. The requirement for a designated heat
6 safety coordinator to consult nonmanagerial employees
7 is impractical, and shifts accountability to those not
8 responsible for compliance. Monitoring heat index
9 across multiple work areas is vague and can -- could be
10 difficult to implement consistency -- consistently.
11 How should heat index be determined in barns and
12 milking parlors? How often do the measurements need to
13 be taken? Most of our team members on dairy farms work
14 in barns which provide shade, airflow, fans, and
15 misters. Employee clothing choices are functionally
16 appropriate to their -- for their work and safety. So
17 recommendations rather than rigid requirements would be
18 a better fit to meet the diverse needs of unique
19 workplaces across the agriculture industry.

20 Overall, farm employers aim to develop a culture
21 of safety. Dairy farmers are diligent about protecting
22 their people as well as themselves, often working side

1 by side in the workplace. For these reasons, we urge
2 the withdrawal of this proposed regulation and instead
3 encourage supporting targeted training, continued
4 research, and science backed solutions that enhance
5 safety without imposing undue burden on family farms.
6 Thank you.

7 JUDGE HILLEREN-WILKINS: Thank you. And are there
8 any questions from OSHA for this particular speaker, or
9 would you prefer to wait until the others of the panel
10 have given their remarks?

11 MR. SCHAYER: Your Honor, Yes. I was going to
12 suggest that. If it'd be okay, we'd prefer to wait to
13 hear from the other representatives from New York and
14 then ask questions.

15 JUDGE HILLEREN-WILKINS: Yes, we can do that. So
16 Mariam, if you'd please announce the next speaker.

17 MS. CARLON: Speaker is Kim Skellie. Please state
18 your name and affiliation for the record.

19 MR. SKELLIE: Good morning. My name is Kim
20 Skellie. Can you hear me all okay?

21 JUDGE HILLEREN-WILKINS: Yes, we can.

22 MR. SKELLIE: All right. Thank you very much.

1 Thank you for the opportunity to share public testimony
2 today on the OSHA heat injury and illness prevention in
3 indoor and outdoor work settings rule. My name is Kim
4 Skellie. I'm a dairy farmer from Wayne County, New
5 York, along with being Vice President of New York Farm
6 Bureau and Chair of the Labor Committee for New York
7 Farm Bureau.

8 I co-own and operate a 2,600 cow dairy farm with
9 two other families. We employ about 40 team members on
10 our farm. And as the person who handles personnel
11 matters at our farm, my top priority is safety of farm
12 employees. We simply would not be in business without
13 the incredible work of our people. And we just don't
14 have turnover. When you treat people right, you don't
15 have turnover. And I think that's got to apply to most
16 farms. And I think sometimes the target gets on that
17 minority of farms who maybe don't do a very good job,
18 but a large majority of farms do a good job, in
19 indication from what Allyson said previously.

20 To protect safety of workers on our farm, we
21 supply cool water in multiple places, all within very
22 achievable, small distances. We provide breaks

1 multiple times a day. We wear high viz wear like I'm
2 wearing, as one example. We have air-conditioned break
3 rooms. We have tractors that are air-conditioned. All
4 their housing is air-conditioned. And then we have
5 fans throughout the whole farm. And I'm not sure how
6 fans play into some of these factors, but we try to
7 achieve like a six to seven mile an hour breeze
8 everywhere at all the barns that we are working in. So
9 how does indoor, outdoor, and fans factor into the heat
10 index that we're trying to determine there?

11 We also have several trainings a year. Some are
12 formal and some are informal. And of course that is
13 happening like this week in anticipation of the hot
14 weather that's coming next week. While I work closely
15 with the other panelists that I'm speaking with today,
16 I want to focus on a couple of the areas in the rule
17 that are of concern.

18 The heat injury and illness prevention plan and
19 proposed acclimatization rule. The proposed rules
20 require all employers to identify heat hazards, develop
21 heat illness and emergency response procedures,
22 creating training procedures for employees and

1 supervisors, and add layers of recordkeeping and
2 develop site specific heat injury and illness
3 prevention plans.

4 While we share a common goal to protect safety of
5 employees, we believe that adding new processes and
6 requirements for various work sites will not achieve
7 the goal intended to protect the health and safety of
8 employees. One large concern we have is in relation to
9 the site specific HIIPP plans, as farms would have
10 multiple work sites under the proposed definition. And
11 we kind of think of our farm is all one, not
12 necessarily multiple sites, but you know, how does that
13 definition play into that?

14 Additionally, farms will require training from
15 occupational health organizations like our very own
16 NYCAMH, which is New York Center for - for Agricultural
17 Medicine and Health, to assist us in identifying
18 hazards and creating training procedures. While we're
19 so lucky to work with NYCAMH, as they continue to be a
20 valued resource across farms in New York, their work is
21 being impacted by federal cuts to NIOSH. And I'll just
22 say I prefer the training resource providing

1 organizations encouraging and influencing farms to take
2 advantage of those, the resources are still thin to be
3 able to reach everyone. And I think we've had positive
4 momentum in New York to achieve this, but resources are
5 needed versus enforcement.

6 The acclimatization, I want to touch on. While we
7 understand the acclimatization plan would only be
8 effective upon reaching the initial heat or high heat
9 thresholds, there are concerns about implementation of
10 that plan. On farms that utilize H-2A temporary visa
11 program, employees are here for a short duration, most
12 often the duration of planting crops through harvest.

13 Additionally, employees arrive from other
14 locations that have a warmer climate than New York.
15 Those employees are probably already acclimated to the
16 same climate. We ask that those factors be considered
17 when creating a rule. Otherwise, the acclimatization
18 may take up to two weeks before employees would be
19 allowed to return to their full employment
20 responsibilities. As such, this would create
21 additional labor costs and challenges in finding a
22 workforce for our farms, as there would be -- have to

1 be more employees hired over to cover the gap of the
2 acclimatization period.

3 As indicated above, we already have many processes
4 and procedures in place to protect safety of our
5 employees on our farm and programs in New York to
6 promote and encourage and move farms forward. Farms
7 that do not need additional regulation in place for
8 practices they already do, rather we encourage to find
9 opportunities to support organizations like NYCAMH that
10 are incredible resource for farms in New York. Thank
11 you for your time.

12 JUDGE HILLEREN-WILKINS: Thank you, sir. And as
13 discussed, we'll move to the next speaker before
14 soliciting any questions. So Mariam, if you'd please
15 announce the final speaker in this panel.

16 MS. CARLON: The next speaker is Julie Sorensen.
17 Please state your name and affiliation for the record.

18 Ms. Sorensen, if you're speaking, you are still
19 muted.

20 MS. SORENSEN: I'm sorry. Let's try this again.
21 So my name is Julie Sorensen. I'm with the New York
22 Center for Agricultural Medicine and Health. I am

1 happy to be here today to talk about a very important
2 topic, something that we are obviously concerned about
3 since we serve farms and farmworkers and our mission is
4 to improve the health and safety of both groups.

5 So the New York Center for Agricultural Medicine
6 and Health is a unique entity which provides medical
7 care, training, technical assistance, and cost-sharing
8 opportunities to New York farms to ensure their health
9 and safety of both their farm -- of both farm families
10 and farmworkers. We've worked hand in hand with
11 farmers, industry stakeholders, advocates, and workers
12 since 1988 to provide a safe work environment and a
13 well-trained agricultural workforce in the state.

14 In 2025, we provided training in Spanish and
15 English for roughly 5,600 workers and have assisted New
16 York farms with creating a safe business culture,
17 something that is a priority for OSHA and for New York
18 farms.

19 While funds for training, medical care and
20 technical assistance are provided through our state,
21 our funding for research, a key component of the
22 support we provide to farms, comes from the National

1 Institute of Occupational Safety and Health, a federal
2 agency which was created by Congress to conduct
3 research and make recommendations for the prevention of
4 work-related injury and illness. This is the only
5 federal funding dedicated to developing solutions and
6 best practices for employers in all US industries.
7 Interestingly, NIOSH has experienced some of the most
8 drastic cuts to federal agencies, with now roughly 60
9 percent of their intramural staff receiving reduction
10 in force notices and the future of extramural centers
11 conducting research like ours is very uncertain in
12 2026.

13 Why is this relevant today to today's discussion?
14 These 12 NIOSH Ag centers, located throughout the US,
15 have been studying the impact of heat exposure on
16 farmworkers, looking at issues such as chronic -- the
17 impact of chronic exposure over time, and looking at
18 easily implementable solutions for reducing the risk of
19 heat illness and heat exposure, such as ways to monitor
20 physiological data in real time. With the potential
21 closure of these centers and threats to research
22 funding, farmers will be required to be compliant with

1 various heat reduction standards, but the tools and
2 information that they will need to do this will
3 potentially be gone.

4 For example, research is needed to help farmers
5 figure out how to efficiently document temperatures,
6 how to more accurately identify at-risk workers, how to
7 set up work sites in ag environments in ways that
8 maximize optimal shade, hydration, and work schedules.
9 Without research and the development of guidance and
10 solutions, how can employers hope to monitor workers
11 with different comorbidities, acclimatization levels,
12 fitness levels, and BMIs? Undoubtedly, truly
13 protecting workers will require experts who understand
14 a multitude of occupational health and safety factors
15 and medical conditions, and who understand the
16 importance of carefully planned prevention.

17 In addition to the loss of these NIOSH research
18 and ag centers, we've lost the OSHA partners that we
19 have worked with in the state as well, that have been
20 focused on education and technical support for
21 employers. With federal cuts, we have lost key
22 partners in efforts to ensure the healthiest and safest

1 environments for workers. We absolutely need to
2 protect the health and welfare of farmworkers, and I
3 encourage an approach that is comprehensive and
4 impactful, and which provides the necessary support for
5 achieving the aim of protecting farm workers from heat
6 illness. And that concludes my testimony.

7 JUDGE HILLEREN-WILKINS: Thank you very much.
8 We'll move to OSHA's questions now for the panel of
9 speakers. And I will take this opportunity to remind
10 the speakers to please restate your name before
11 answering each question, so that the record is clear as
12 to who is speaking. Any questions from the OSHA
13 representatives?

14 MR. SCHAYER: Yes, Your Honor, we do have some
15 questions. And thank you very much to the panel for
16 your testimony. Let's see. My question is for Mr.
17 Skellie. And so you mentioned issues in your testimony
18 with needing to acclimatize new workers, some of whom
19 may already be acclimatized. And I was just wondering
20 if you could speak to whether you found the exception
21 to acclimatization that we had in the proposal for
22 workers who had previously worked in the same or

1 similar conditions, if you think that would work, or
2 might need to be changed in some way to address your
3 concern.

4 MR. SKELLIE: Right. I think in our case, being a
5 northern state, workers --

6 JUDGE HILLEREN-WILKINS: Excuse me, sir, sorry for
7 interrupting. Could you please state your name before
8 you answer?

9 MR. SKELLIE: Sorry. Kim Skellie.

10 JUDGE HILLEREN-WILKINS: Thank you.

11 MR. SKELLIE: New York dairy farmer. So I think
12 in our case, being a northern state, a lot of the H-2A
13 workers are coming from the south, where it's a much
14 hotter climate, prior to where they get here. So
15 they're already acclimated when they arrive. So
16 we're -- we're really, you know, trying to say in many
17 cases we should have a pass on that just in the
18 direction that they're moving. Or what is the
19 record -- do they have a record of where they came from
20 and what that climate was?

21 MR. SCHAYER: Okay. Thank you very much,
22 appreciate that. Now I'd like to turn to Patti Downs.

1 MS. DOWNS: My questions are for Ms. Jones-
2 Brimmer. And this is Patti Downs with the Directorate
3 of Standards and Guidance. In your written comments,
4 you mentioned the use of fans, misters, and automated
5 climate control systems in dairy farms. And I was
6 wondering if you could tell us a little more about the
7 ventilation and climate control systems that are
8 currently being used in dairy operations?

9 MS. JONES-BRIMMER: This is Allyson Jones-Brimmer.
10 Yes, thank you for that question. I think dairy farms
11 are somewhat unique as an agricultural workforce
12 setting because they do have -- they do try to have
13 consistent airflow through the barns. And so some
14 farms have a setup where they have monitors and sensors
15 that determine what the conditions are and then
16 automatically turn those fans or misters on, also can
17 raise and lower the -- the curtains on the sidewalls of
18 barns. So the -- some farms do not have that automated
19 ability to do that, but do take those steps on a daily
20 basis to make sure the climate within the barn is
21 comfortable for both the people who work there and the
22 cows that are there.

1 MS. DOWNS: Okay. Thank you. Patti Downs again.
2 Just to expand on that question a little, then can you
3 tell us about any of the difficulties, if any, that
4 your members have had when using or implementing those
5 types of climate control systems?

6 MS. JONES-BRIMMER: This is Allyson Jones-Brimmer.
7 I'm not aware of some specific difficulties. I see --
8 Kim as a dairy farmer may have some -- some more
9 familiarity there, too. But we can gather some
10 information from our members and share that.

11 MS. DOWNS: Okay, great.

12 JUDGE HILLEREN-WILKINS: Mr. Skellie, would you
13 like to respond to that?

14 MR. SKELLIE: I would like to. Thank you, Kim
15 Skellie. So we have -- we always try to achieve, like
16 a six to seven mile an hour breeze throughout the whole
17 barn. And so the way it's set up, that breeze is,
18 like, thorough in every, you know, square foot of that
19 barn. And then misters come on at about 75 degrees.
20 So as Allyson stated, we have it all automated.

21 And even before we had it automated, it was really
22 important to get there and get those systems going when

1 the weather got to a certain point, because cows also
2 need to be productive and healthy. And that can go
3 downhill quickly with weather that, you know, gets
4 above 80 degrees really. So it's of high importance.
5 So dairy farmers are like really well set in that area
6 for those reasons. And I'll just throw out a number.
7 We probably have north of 400 fans on our farm.

8 MS. DOWNS: Oh, wow. Okay. Patti Downs again
9 with just my final question for -- from me. Then do
10 you think -- well, first, are these types of controls
11 used pretty much nationwide? And if not, do you think
12 they could be implemented nationwide?

13 MS. JONES-BRIMMER: This is Allyson Jones-Brimmer.
14 I will -- I don't want to speak for every single dairy
15 farm in the country. However, I will say that the
16 dairy farms that experience higher temperatures are
17 going to have things in place that keep the -- the
18 temperature and climate comfortable for both their --
19 their workers and their cows, because the health of
20 both of those are essential to be able to produce milk
21 and achieve the goals of that business and keep that
22 business viable.

1 MS. DOWNS: Okay, great. Thank you. I'll turn it
2 back over to you, Steve.

3 MR. SCHAYER: Thank you, Patti. This is Stephen
4 Schayer again. Now, I'd like to turn to Amy Wangdahl
5 on the panel.

6 MS. WANGDAHL: Good morning, Amy Wangdahl,
7 Directorate of Standards and Guidance. This is
8 directed to Ms. Jones-Brimmer, but certainly, Mr.
9 Skellie or Ms. Sorensen, you could also respond. But
10 the NEDPA comment stated that most farms already have a
11 comprehensive plan that also includes rest breaks.
12 What strategies are employers using that would
13 encourage employees to take breaks if they're needed to
14 prevent overheating that also employees do not have the
15 fear of retaliation or loss of pay?

16 MS. JONES-BRIMMER: This is Allyson Jones-Brimmer.
17 I -- dairy farms are often set up where an employee can
18 do a variety of different jobs. So they often take
19 breaks and -- and rotate positions so they change their
20 environment. If they do have work outside, that will
21 probably only be for a short period, and then they will
22 come do something inside. So it's really just part of

1 the daily workload on a dairy farm to have those
2 transitions and -- and have a variety of different jobs
3 that they're doing.

4 Also, because most of our team members stay near
5 the barns, they have access to the break room, which is
6 often air-conditioned, has a refrigerator full of -- of
7 drinks, and they -- they always have access to shade
8 and that that place to sit down. So really the -- the
9 environment created on a dairy farm creates those
10 natural abilities for breaks and shade and -- and rest.

11 MS. WANGDAHL: Thank you.

12 MR. SCHAYER: Okay. Thank you. This is Stephen.
13 Schayer again. I'd now like to turn to Bob
14 Blicksilver.

15 MR. BLICKSILVER: Hi. Bob Blicksilver, OSHA
16 Standards and Guidance. In your submitted comments,
17 you noted that most of the farms in your organizations
18 have plans for heat injury and illness preventions,
19 including the monitoring of heat conditions of -- for
20 workers. Ms. Jones-Brimmer, I wonder if, in your post-
21 hearing comments, you could provide some examples of
22 the -- of the existing plans, and particularly if you

1 could provide some unit time expended for the
2 components of those plans. So some examples of the
3 plans themselves and the various components that
4 comprise the plans and the typical unit time burden --
5 unit time expenditure for each of the components of the
6 plans. Thank you.

7 And one other question. The Northeast Dairy
8 Producers Association noted that compliance costs are
9 underestimated in OSHA's preliminary economic analysis.
10 And they raise concerns regarding economic feasibility.
11 Can you provide for the record specific details on
12 which compliance costs are underestimated and -- and
13 what adjustments you would recommend for those unit
14 cost estimates with -- with details on the provisions
15 that the unit cost estimates apply to, of course.
16 Thank you. That's all I have. Thank you very much.

17 JUDGE HILLEREN-WILKINS: Thank you. Any further
18 questions from OSHA?

19 MR. SCHAYER: Yes, Your Honor. If we could just
20 read one last question into the record, I'd like to
21 turn it over to Zoe Petropoulos for that.

22 MS. PETROPOULOS: Hi, this is Zoe Petropoulos from

1 the Directorate of Standards and Guidance. This is in
2 response to something Ms. Jones-Brimmer said, but we're
3 certainly open to input from the entire panel in post-
4 hearing comments. You mentioned towards the end of
5 your testimony a need for additional research. Could
6 you expand upon this in your post-hearing comments on
7 what specific areas of the literature you feel are
8 inadequate at the current time? Thank you.

9 JUDGE HILLEREN-WILKINS: Thank you.

10 MS. SORENSEN: Would you like me to tackle that,
11 panel members? Okay. This is Julie Sorensen. And so
12 I have a number of things that I think would be very
13 helpful. I think that, in particular, trialing
14 different solutions or methods on farms and then
15 looking at outcomes to see which are most effective,
16 and also researching what is the economic cost of
17 implementing those and how can those be offset.

18 I think in particular, while there's been research
19 done on the impact of heat and factors to consider in
20 heat illness, there hasn't been a great deal of
21 research on how to implement best practices or even to
22 outline what those best practices might be in various

1 environments and with various workers. So you know, as
2 always, the devil's in the details. And I think that's
3 what research is really -- is -- is, you know,
4 created -- that's what its mission is, is to -- to find
5 solutions, to test them, evaluate them, and then to --
6 to share them. And I think we have a lot more work to
7 do in that realm.

8 And I'll just give an example. One of the things
9 that we've done in New York State is we were concerned
10 about the most frequent cause of death on farms, which
11 was tractor overturns. And we implemented a program
12 that assisted farms with installing roll bars. That
13 program has been very effective. We've shown that it
14 saved lives. We've showed that it saved the state
15 money. And recently, in response to the issue of heat
16 illness, the state has expanded the program to allow
17 the installation of awnings on those tractor roll bars
18 to provide additional shade and protection from the
19 heat. Now, evaluating the impact of that program would
20 be a really helpful thing. And that's it.

21 JUDGE HILLEREN-WILKINS: Thank you. Are there any
22 further questions from the OSHA panel?

1 MR. SCHAYER: No, Your Honor. That concludes our
2 questions. And thank you again to the panel. We
3 appreciate your testimony.

4 JUDGE HILLEREN-WILKINS: Are there any questions
5 for the panel from the Solicitor's Office?

6 MS. LEVIN: This is Jennifer Levin from the
7 Solicitor's Office. I have no questions for the panel
8 and thank them very much for their time and testimony.

9 JUDGE HILLEREN-WILKINS: Thank you. And Mariam,
10 are there any participant questions?

11 MS. CARLON: Yes, Your Honor. We have one from
12 Jordan. Please state your name for the record.

13 MR. BARAB: My name is Jordan Barab, B-A-R-A-B. I
14 have a couple questions for Ms. Jones-Brimmer from the
15 Northeast Dairy Producers Association. You mentioned
16 in your oral testimony that OSHA should withdraw its
17 standard and instead focus on increased training,
18 research, and science backed solutions. Do you think
19 there aren't adequate training materials and programs
20 available right now?

21 MS. JONES-BRIMMER: I think there's -- this is
22 Allyson Jones-Brimmer. There are some excellent

1 training resources available now, however, they are
2 underfunded. So we need more availability to get those
3 resources deployed on farms. We -- I believe that on-
4 farm, in-person training and programs is irreplaceable.
5 And you need staff time and -- and people who are
6 skilled in multiple languages to be able to deliver
7 that programing. So we need -- we would like to see a
8 focus on ensuring that the training resources that are
9 available are actually being able to be deployed to as
10 many farms as possible.

11 MR. BARAB: So you don't believe right now that
12 those resources are being deployed?

13 MS. JONES-BRIMMER: Not to enough farms. Correct.

14 MR. BARAB: Okay. Which parts of the OSHA
15 proposal do you believe are not science based?

16 MS. JONES-BRIMMER: This is Allyson Jones-Brimmer.
17 Again, I - I think that's a very large question. I do
18 think there was a lot of good detail and thought put
19 into the OSHA rule. We'd just like to stress that
20 anything that does get implemented has science backing.
21 And as Julie Sorensen from the New York Center for Ag
22 Medicine and Health indicated, there are existing

1 questions that we have and continued research that is
2 needed to ensure that what gets implemented today and
3 going forward is continued to be backed by science.

4 MR. BARAB: Okay. One more. You mentioned in
5 your written testimony that most farms have a plan for
6 heat injury and illness prevention. I assume that
7 you -- that means that you don't think that all farms
8 or even all of your members have such programs. Is
9 that correct?

10 MS. JONES-BRIMMER: This is Allyson Jones-Brimmer,
11 I really can't speak to what happens on every single
12 farm. I would say that most -- most farms do have a
13 plan in place. They may not call it or have it as
14 detailed or have it fully written down what their plan
15 is going to be. But they do have -- they have been
16 mindful about this, especially in New York State with
17 the seasons that we -- we face. Team members work in a
18 variety of different conditions. So farms have thought
19 about how to work in these different conditions, what
20 special considerations are needed at different times of
21 the year. They maybe just haven't written that plan
22 fully down in every case.

1 MR. BARAB: Okay. So with farms that don't have a
2 plan or aren't complying with a plan, without a
3 mandatory OSHA standard, how do we force these farms to
4 protect their employees?

5 MS. JONES-BRIMMER: This is Allyson Jones-Brimmer,
6 again. I do believe that -- that farms are interested
7 in protecting their employees. The well-being of their
8 employees and themselves and their family members who
9 work on the farm is vitally important. And I think
10 those trainings to help them understand what -- what
11 practices are best implemented on their own farm, what
12 would be most successful on their farm, which research
13 most applies to their farm would be the best -- the
14 best course of action to get something in place that is
15 useful and effective on each individual unique
16 situation.

17 MR. BARAB: But there's no -- nothing to be done
18 if they -- if they do not do the training or implement,
19 then -- then what -- you know, what is the alternative?

20 MS. JONES-BRIMMER: I guess I -- this is Allyson
21 Jones-Brimmer. I -- I don't have an answer for that at
22 this point. But I think that getting farms to do --

1 incentivizing farms to do things that both fit their
2 operation and have improved outcomes for their
3 employees is the best course of action.

4 MR. BARAB: Okay. Thank you very much.

5 MR. SKELLIE: Can I just add to that one also?

6 JUDGE HILLEREN-WILKINS: Yes. And can you please
7 state your name, sir?

8 MR. SKELLIE: Kim Skellie. I think the word
9 incentivize was used incorrectly earlier, and
10 enforcement is easier said than done when there's not
11 enough resources and effort out there. And goodwill
12 effort goes faster and a longer ways than enforcement.
13 So I think if there isn't resources out there to help
14 with enforcement, then - then this isn't going to go as
15 well anyway. And I think we've seen such progress in
16 New York with resources like NYCAMH that I think that's
17 a good model to be considering in all of this. Thank
18 you.

19 JUDGE HILLEREN-WILKINS: Thank you. Are there any
20 further participant questions?

21 MS. CARLON: Yes. The next question is from
22 Juanita Constible. Please state your name for the

1 record.

2 MS. CONSTIBLE: Hi, my name is Juanita Constible,
3 and I'm with the Natural Resources Defense Council.
4 Before I ask my question, I just want to acknowledge
5 the comments of the speakers about the cuts to NIOSH.
6 NRDC is likely -- likewise deeply concerned about the
7 loss of that expertise and how it will negatively
8 affect the agriculture industry and even the standard
9 setting process itself.

10 Mr. Skellie, you -- you kind of addressed this in
11 your response to Jordan Barab, but I just wanted to dig
12 in a little bit deeper. I'm really glad to hear about
13 all the common sense measures you've been putting into
14 place to protect your workers from heat. It sounds
15 like you're already well on your way to compliance with
16 the draft standard. And I'm just wondering, do you
17 think it's fair that, as you put it, some of the
18 minority of the people out there, of your competitors,
19 might not be putting in the same level of effort? And
20 if you don't think it's fair, how do you think that
21 playing field should be leveled?

22 MR. SKELLIE: Kim Skellie. I don't want to say I

1 don't think it's fair. I think it's important to keep
2 spreading that effort and -- and encouraging others and
3 incentivizing others. I mean, the -- the rollover
4 protection plan that Julie Sorensen alluded to earlier,
5 that's like one idea of incentivizing. And -- and so I
6 think it just takes more resources and more effort to
7 kind of continue that goodwill effort versus
8 enforcement without resources. With cuts to OSHA, I'm
9 not sure how you're going to enforce it anyway.

10 MS. CONSTIBLE: Okay. Thank you.

11 JUDGE HILLEREN-WILKINS: Are there any further
12 participant questions? All right. That being the
13 case, I'd like to thank each member of the panel for
14 your remarks today, and we'll move on to the next
15 panel. Mariam, if you'd please announce the next
16 speaker.

17 MS. CARLON: The next speaker group is WeCount!,
18 represented by Dominique Burkhardt and Danielle
19 McManamon. Please state your names and affiliations
20 for the record as you both transition throughout your
21 testimony.

22 MS. BURKHARDT: Good morning. My name is

1 Dominique Burkhardt, attorney with Earth Justice. And
2 I, along with my colleague Danielle McManamon, will be
3 providing testimony this morning on behalf of WeCount!
4 WeCount! is a national -- WeCount! is a nonprofit
5 organization dedicated to improving the living and
6 working conditions of workers and families in South
7 Florida, including agricultural workers, construction
8 workers, day laborers, and domestic workers. This work
9 includes its nationally recognized Que Calor campaign,
10 a worker led campaign to bring lifesaving heat
11 protections to outdoor workers in Miami-Dade and
12 beyond.

13 We urge OSHA to adopt this proposed rule to
14 protect WeCount! members and Florida's nearly two
15 million outdoor workers from heat stress and death on
16 the job, subject to the recommendations in our written
17 comments, which include requiring increased rest breaks
18 as temperatures exceed even higher thresholds such as
19 95, 100, and 105 degrees; clarifying that this rule
20 applies to all workers, especially in the context of
21 joint or multi-employer work sites; ensuring language
22 access in heat safety education; and ensuring robust

1 enforcement, including strong protections against
2 retaliation.

3 This morning, we ask OSHA to heed the day-to-day
4 accounts of workers who have direct experience laboring
5 in the heat over the assurances of any employers or
6 industry associations opposed to this rule. WeCount!'s
7 members, time and again, provide the same accounts,
8 that they are routinely denied access to water, rest,
9 and shade, instead facing a culture of threats and
10 retaliation if they attempt to access these basic human
11 rights.

12 If we could go to the next slide, please. Take,
13 for instance, Jose Delgado, who has experienced heat
14 stroke at least twice on the job, both times requiring
15 hospitalization and resulting in severe damage to his
16 kidneys. He attests that workers are discouraged from
17 taking breaks, harassed, and asked -- you don't want to
18 work? Mr. Delgado experienced heat stroke after
19 decades of working outdoors in the Florida heat. Thus,
20 it is false to claim that workers in hotter regions are
21 somehow more immune to the effects of heat. As you can
22 see, Mr. Delgado is wearing PPE as a protective barrier

1 from the sap that is produced when harvesting sweet
2 potatoes. These layers only make the heat impacts
3 worse, warranting the 80 degree initial trigger
4 proposed in this rule.

5 We could go to the next slide, please. If water
6 is provided, a common account of WeCount!'s members is
7 that the water either looks or tastes dirty, is not
8 replenished, or is too far from the work site. Members
9 believe these are intentional tactics to discourage
10 breaks. While employers claim that they are already
11 providing protections from the heat, WeCount!'s members
12 would counter that the ability to take breaks are
13 highly dependent on the supervisor, and rest breaks are
14 routinely denied, especially in the peak season. And
15 there is often no shade made available for breaks.

16 Next slide please. This slide contains additional
17 accounts of workers who consistently document
18 inadequate heat protections and a culture of
19 retaliation. Furthermore, in Florida, on average, a
20 construction worker dies every four days because of
21 unsafe and dangerous conditions, and thousands get
22 injured in accidents. Heat is yet another hazard,

1 compounding an already potentially hazardous job. The
2 building construction industry should not be exempted
3 from this rule.

4 Next slide please. If protecting people from
5 becoming sick or dying while laboring in the heat is
6 not enough of a justification to justify this rule,
7 WeCount! would further add that workers are essential.
8 They are essential to our nation's food system, to the
9 building and rebuilding of our infrastructure, and to
10 all aspects of our economy and society.

11 Next slide please. Next, we'd like to unpack some
12 of the results of WeCount!'s planting justice survey.
13 Florida is a top producer of plants and tropical
14 foliage that millions of consumers throughout the US
15 purchase from big box stores and garden centers. Yet
16 WeCount!'s survey of its plant nursery workers members
17 found that one third do not have access to water on the
18 job, 62 percent reported that, if they did receive
19 water, it was unsanitary, and almost half were not
20 given rest or even lunch breaks.

21 Next slide, please. While heat is a top hazard
22 reported on the job, WeCount!'s members who are plant

1 nursery workers reported not receiving medical
2 attention or care at work, underscoring the need for a
3 HIIPP with clear protocols that would be mandated by
4 this rule.

5 Final slide please. Further underscoring the need
6 for this rule is the widespread lack of heat safety
7 training and fear of retaliation reported by plant
8 nursery workers. All of these firsthand accounts show
9 why this rule is urgently needed. I will now turn it
10 over to my colleague Danielle McManamon, who will
11 discuss issues of underreporting of injuries and death,
12 climate change as an aggravator, and preemption. Thank
13 you.

14 MS. MCMANAMON: My name is Danielle McManamon,
15 attorney with Earth Justice, and I'm also speaking
16 today on behalf of WeCount! The experiences that we
17 have just heard of WeCount! members are not in
18 isolation, but rather are part of a much larger trend
19 of heat-related injuries, illnesses, and death that
20 recent investigations suggest are grossly
21 underreported.

22 Heat-related fatalities are underreported because

1 the cause of death on a death certificate will not
2 always indicate that heat was a factor, and may just
3 record the event that the heat exposure triggered, such
4 as a heart attack. Additionally, the Bureau of Labor
5 Statistics changed its disclosure methodology in 2020,
6 which requires less detailed information surrounding
7 the nature of worker fatalities.

8 While estimates of heat-related deaths in the
9 United States are imprecise, various studies place the
10 number between 600 and 2,000 deaths per year. It is
11 therefore likely that OSHA's estimate of 6,700 deaths
12 over an 11 year period is also an underestimate. A
13 recent Tampa Bay Times investigative report uncovered
14 an additional 37 heat-related fatalities in Florida in
15 the last decade, which is double what federal
16 regulators reported. This does not include heat-
17 related illnesses, only fatalities. Some of these
18 deaths were not reported because employers only have to
19 report deaths that occur within 30 days of the employee
20 becoming sick or injured. This allows heat-related
21 deaths that occur outside of this window to go
22 unreported.

1 Heat-related illnesses are also underestimated
2 because of the difficulty in tracing exposure back to
3 the workplace. For example, in Texas, June of 2023, a
4 record 260 people were treated in emergency departments
5 in Dallas County in just a two week period. Because of
6 the patient's demographics, were mostly men between the
7 ages of 18 and 44, Dallas County's Health and Human
8 Services believed these incidents were likely work-
9 related. This example shows the difficulty in tracking
10 heat-related illnesses back to the workplace, since
11 medical attention is often sought outside of the
12 workplace.

13 The widespread nature of heat-related illnesses
14 and death warrant this standard to protect workers from
15 the heat. Looking at the threat of climate change here
16 in Florida, our subtropical climate gets hotter and
17 hotter every year, making the state a particularly
18 hazardous place for workers without any heat
19 protections. In fact, much of the United States is set
20 to experience a dangerous heat wave over the next
21 couple of days. The National Weather Service and
22 AccuWeather predicts that Florida will experience above

1 normal temperatures during the summer months in 2025,
2 which already frequently exceed 100 degrees with the
3 heat index. This follows the record-breaking
4 temperatures where - workers experienced in 2024, which
5 is the hottest year recorded to date globally.

6 As to preemption, Florida urgently needs this
7 federal standard as Florida has enacted a law
8 prohibiting local governments from creating their own
9 heat standards. In fact, this hearing is taking place
10 a little over a year after Florida enacted House Bill
11 433, its heat protection preemption bill. Florida has
12 also taken no action at the state level, failing to
13 pass proposed heat protection bills multiple times,
14 most recently being this year. With very slim chances
15 of a state level bill and no option for protection at
16 the local level, a national heat protection standard is
17 necessary for workers in Florida to receive protection
18 from the heat and to guarantee a pathway for holding
19 employers accountable.

20 Finally, we ask OSHA to reject knee jerk
21 assertions about increased costs that businesses will
22 face to implement this rule. The financial costs of

1 failing to mitigate heat stress are arguably higher,
2 whether from worker absenteeism, turnover, or reduced
3 worker capacity because of heat stress or other costs
4 such as paying for damaged equipment, increased
5 workers' compensation premiums, or responding to
6 lawsuits or enforcement actions.

7 In Florida, the cost of lost productivity due to
8 the heat are projected to increase from 11 billion
9 presently to 52 billion by 2050, based on economic
10 modeling that we report -- in a report we cite in our
11 written comments. We know that temperatures are
12 getting hotter and hotter every year, and we know that
13 workers' health and lives are at risk from exposure to
14 the heat while performing strenuous work. OSHA's
15 proposed standard offers common sense protections.

16 Life threatening impacts from the heat do not
17 differ if a worker happens to be on a scaffold working
18 in construction or out laboring in a field, nor is a
19 worker more immune to the heat because they are in a
20 hotter region. This is why we need a uniform standard.
21 OSHA should prioritize workers and adopt this heat
22 protection rule, with the recommendations for

1 strengthening the rule discussed in our letter. Thank
2 you for your time and the opportunity to speak today.
3 And that concludes our testimony.

4 JUDGE HILLEREN-WILKINS: Thank you. We'll move
5 into questions. And again, I'd remind each member of
6 the panel to first state your name when answering each
7 question. Are there any questions from the OSHA panel?

8 MR. SCHAYER: Yes, Your Honor. We do have some
9 questions. This is Stephen Schayer from Directorate of
10 Standards and Guidance. First, thank you, Ms.
11 Burkhardt and Ms. McManamon for your testimony. I had
12 a couple questions related to the hazard alert
13 provision in the proposed rule, which was at or above
14 the high heat trigger. So first is about language
15 translation. So if you have any thoughts on how
16 employers can ensure they are effectively communicating
17 the hazard alert to their employees who speak other
18 languages, and what methods or tools that you found to
19 be effective for language translation.

20 MS. BURKHARDT: Thank you. Yes. Dominique
21 Burkhardt, on behalf of WeCount! First, we would like
22 to mention that WeCount! put forth in our written

1 comments that often when we see translations, it's
2 often just in English and Spanish. However, many
3 workers in the agricultural sector, particularly from
4 Central America, speak indigenous Mayan dialects and do
5 not actually understand or speak Spanish. And so we
6 want to ensure that all languages are accounted for
7 when providing translation and interpretation.

8 We would also like to point out that we believe
9 that there's a couple of things that can be done to
10 ensure more widespread interpretation and translation.
11 I think the use of technology, for instance AI, is more
12 prevalent and widespread. It can cut down costs.
13 There's possibly the idea of prerecorded videos where
14 there could be something that can be shown across
15 various industries that could potentially also reduce
16 costs. And I think, also, the importance of just
17 ensuring that workers who actually speak these
18 languages are incorporated when these trainings and
19 alerts are being put forward, just to make sure that
20 they are being understood. Thank you.

21 MR. SCHAYER: Okay. Thank you. And my second
22 question was, in your written comments, you had

1 suggested that the hazard alert requirement should be
2 at or above the initial heat trigger, rather than the
3 high heat trigger. And so was just wondering if you
4 have any concerns about message fatigue or suggestions
5 for differentiating between hot conditions and
6 extremely hot conditions?

7 MS. BURKHARDT: Sorry if I could just have one
8 moment.

9 MR. SCHAYER: Sure, sure. You could also address
10 in post-hearing comments if that as well.

11 MS. BURKHARDT: Yeah, I think that we would like
12 to further -- sorry. Dominique Burkhardt, on behalf of
13 WeCount! I think we would like to further address that
14 in post-hearing comments. I think one of the reasons
15 we included it is because temperature -- temperatures
16 can fluctuate, the conditions can change quickly. And
17 so we do believe that there is the need for those
18 alerts instead of waiting for it to be much higher.

19 I think also, it's important to note that in
20 Florida it can be above 90 degrees and then it can
21 become extremely hot. And so we just want to ensure
22 that the information is out there as early as possible

1 so that workers can best protect themselves. We'd be
2 more than happy to elaborate on that and provide
3 further details in our post-hearing comment.

4 MR. SCHAYER: Okay. Thank you, Ms. Burkhardt.
5 Now I'd like to turn to Amy Wangdahl.

6 MS. WANGDAHL: Good morning, Amy Wangdahl with the
7 Directorate of Standards and Guidance. I just have a
8 few questions on the topic of multi-employer work
9 sites. Okay. So your comment supported a broad and
10 expansive application of the proposed heat standard to
11 all workers in a multi-employer work site, as well as a
12 wide definition for the term employer. And that was to
13 prevent employers from evading the responsibility for
14 heat protection for temporary or subcontracted workers.

15 And you can either respond now or this could be in
16 your post-hearing comments. But when you state that
17 the rule should apply to all workers at a work site,
18 can you describe some specific types of employment
19 relationships or arrangements that you believe are
20 currently falling through the cracks, or where
21 employers might evade the responsibilities of providing
22 these protective measures?

1 MS. BURKHARDT: Yes. Dominique Burkhardt, on
2 behalf of WeCount! Again, we're happy to follow up
3 further in our post-hearing comments. What I can share
4 today is that what we've seen -- particularly in the
5 agricultural sector, is that the work can sometimes be
6 informal in that there might be a crew leader who goes
7 out and there might be laborers for that particular
8 day. And it's not necessarily a formalized employer
9 employee relationship. I think this is also
10 particularly important in the construction industry,
11 where you can have many layers of contractors,
12 subcontractors.

13 And I think the concern could be, just as we laid
14 out in our comments, that if there isn't clarity that,
15 hey, this rule applies to every worker at this work
16 site. And employers you know, whether you're the
17 controlling employer, whether you are the creating
18 employer, just ensuring that there isn't really the
19 possibility for an out. That if you're at a work site,
20 this is what applies. And whoever is the contractor in
21 charge or the supervisor would have to be responsible
22 for that. And so I think those are the -- the main

1 industries where we're seeing this. And that's why we
2 wanted to include this additional recommendation in our
3 letter.

4 MS. WANGDAHL: Okay. This is Amy Wangdahl again.
5 Could you also, in your post-hearing comments or now
6 provide some examples of successful multi-employer work
7 site arrangements where the heat protocols have been
8 shared and enforced?

9 MS. BURKHARDT: I think we can certainly look into
10 that along with WeCount! to best inform that. And
11 Dominique Burkhardt. I think the concern that we're
12 seeing across -- really, by and large, with WeCount!
13 members is that there were not heat protocols that are
14 being enforced, that it's very supervisor specific.
15 There's not really -- what we're seeing -- where
16 there's an across the board here are all of these
17 success stories. It's actually the opposite. And so
18 we're certainly willing to look further into that. But
19 it is -- generally, WeCount! members are not
20 experiencing these protections when they're at work.

21 MS. WANGDAHL: Okay. Amy Wangdahl. Other
22 commenters, such as the Employers Heat Illness

1 Prevention Coalition, noted that many employers have
2 expressed concern about possible interference or
3 overlap when expanding responsibility beyond direct
4 employers to include controlling employers. How might
5 employers' policies be structured to minimize potential
6 conflicts over control and responsibility, while still
7 ensuring comprehensive heat protection for all workers?

8 MS. BURKHARDT: Thank you. Dominique Burkhardt,
9 on behalf of WeCount! I think that's a question that
10 we would like to reserve for our post-hearing comments.
11 Thank you.

12 MS. WANGDAHL: Thank you.

13 MR. SCHAYER: Okay. Thank you. This is Stephen
14 Schayer again. Finally, I'd like to turn to Bob
15 Blicksilver on the panel here.

16 MR. BLICKSILVER: Hi. Bob Blicksilver, OSHA
17 Standards and Guidance. It sounds like you have
18 observed a wide range of work sites and working
19 conditions of workers exposed to the hazards of heat
20 illness and injury across a range of industries and
21 different varieties of -- of work conditions. So in
22 your comments on page 28, you discuss the provision for

1 shade being as close as practicable to the work site
2 and uniformly provide sufficient blockage of sunlight.

3 So we wonder if you could provide recommendations
4 to the agency for practicable means of scheduling and
5 designing rest breaks for work sites where the workers
6 may have difficulty finding access and -- and such work
7 sites as communication towers, highways, or bridge
8 construction, where workers find themselves in remote
9 locations. If you have any examples and practicable
10 recommendations that you can provide for us then that
11 would be very helpful. Thank you.

12 MS. BURKHARDT: Thank you. I'd like to turn it
13 over to Danielle McManamon, who can potentially provide
14 some real world examples, particularly in the
15 agricultural sector.

16 MR. BLICKSILVER: Yes, please. Bob Blicksilver.
17 Thank you.

18 MS. MCMANAMON: Hi. Yes, thank you. Danielle
19 McManamon, on behalf of WeCount! I think one thing
20 that would be helpful, and that we have seen, would be
21 portable canopies and things that are stationed kind of
22 around the quadrants of the work site so that workers

1 are never too far away from a shade structure. And
2 these are things that can be on the back of a pickup
3 truck and can be moved around easily. I think we heard
4 earlier, you know, if equipment is able to be moved and
5 put in places where it is needed, these shade
6 structures also should be following that equipment
7 along the way. So I think that that's one
8 recommendation that we have to make sure that a worker
9 is never a too far distance away from a shade
10 structure. And I think other than that, we can
11 elaborate further in our post-hearing comments.

12 MR. BLICKSILVER: Thank you. That's all I have.

13 MR. SCHAYER: Thank you, Your Honor. That
14 concludes OSHA's questions. And thank you to the
15 panel.

16 JUDGE HILLEREN-WILKINS: Thank you. Are there any
17 questions for the panel on behalf of the Solicitor's
18 Office?

19 MS. LEVIN: Jennifer Levin of the Solicitor's
20 Office. No questions from me. Thank you very much,
21 the panelists.

22 JUDGE HILLEREN-WILKINS: Are there any participant

1 questions?

2 MS. CARLON: Yes, Your Honor, there is one from
3 Jordan. Please state your name for the record.

4 MR. BARAB: My name is Jordan Barab. That's B-A-
5 R-A-B. This is for either -- either of the witnesses.
6 Many employer groups have testified that no OSHA
7 standard is needed, all we need is more training. And
8 even the -- in Florida, the Associated Building
9 Contractors said, right now, we have federal -- clear
10 enough federal guidelines and recommendations. Do you
11 think that more training or better guidelines will
12 solve the problems that you've presented?

13 MS. BURKHARDT: Thank you. Dominique Burkhardt,
14 on behalf of WeCount! Absolutely not. More training
15 would not be sufficient. What we're seeing in Florida,
16 particularly with WeCount! Members but I think this is
17 also throughout the state and probably beyond, is that
18 one, workers are not receiving any training whatsoever,
19 that there's really just a drive -- we've heard from
20 WeCount! Members -- just to go, go, go and to produce
21 more, particularly in the peak season. We saw with the
22 planting justice survey results that many of the

1 workers reported not receiving any training. And I
2 think that really just shows that there is a need for
3 there to be something that is binding.

4 I would also just use the opportunity to say that
5 I think WeCount!'s direct accounts from their workers,
6 really shows, and just undercuts the idea that industry
7 is sort of taking care of their employees. I think it
8 would stand to reason that they should take care of
9 their employees, because without their employees and
10 workers, they don't have business. And I think that
11 there -- there should be that incentive. But what
12 we're seeing is that they're not. It is highly
13 dependent on a supervisor. It's a culture of
14 retaliation, a culture of fear. Workers do not feel
15 that they can take a break. We heard earlier about the
16 piece rate wage system where that incentivizes just
17 going and going and pushing yourself to -- to work more
18 and to earn more. And it's really just -- there's not
19 any kind of uniform or widespread practice that we're
20 seeing with WeCount!'s members where trainings are
21 being provided or where protections are being provided.

22 So to answer your question, Mr. Barab, absolutely

1 not. More guidance documents, more -- pushing for more
2 trainings would not, on its own, be enough. There does
3 need to be this uniform standard in place.

4 MR. BARAB: So do you think -- just following on
5 your answer, do you think that most workers that you
6 represent in Florida are able to take breaks anytime
7 they feel they need it, without fear of retaliation?
8 Do some -- are some able, are most able, are all of
9 them able to take breaks without fear of retaliation?

10 MS. BURKHARDT: Dominique Burkhardt, on behalf of
11 WeCount! I -- I don't know that I can specifically
12 quantify, but by and large I would say it's in the most
13 category do not feel that they can take breaks. We
14 interviewed workers for our comment letter. The
15 WeCount!'s Que Calor campaign has been campaigning at
16 Miami-Dade county and at the state level, and there are
17 numerous accounts of workers that speak out as well as
18 looking at the planting justice survey. And many of
19 the workers do not feel that they can do that. There's
20 definitely a power imbalance.

21 Again, we heard in our comments -- or in our
22 testimony today that oftentimes workers might be they

1 might be told, oh, you don't want to work? You should
2 just go home. You should just clock out and go home.
3 And they're not actually being empowered to take
4 breaks.

5 And that's also, I would add, a reason why we
6 believe that as-needed language in the rule around the
7 initial heat trigger should be replaced with something
8 that's more prescriptive, because if it's left to
9 employees to just take breaks as needed, they may not
10 feel empowered to speak up and take a break. Or it
11 might be subject to interpretation with a supervisor on
12 whether a break is actually needed.

13 MR. BARAB: Thank you. Jordan Barab, again. Last
14 question. From your experience do workers who come
15 from warm -- warmer climate countries automatically
16 come pre-acclimated?

17 MS. BURKHARDT: Dominique Burkhardt, on behalf of
18 WeCount! No. And so we did cite, in our comment
19 letter, to specific examples of workers who -- not
20 specifically WeCount! members, but these were OSHA
21 investigations -- of workers who died within the
22 first -- it was, I think, the first day on the job.

1 There were three instances of them. And I believe that
2 most -- I think two, if not all three of them, involved
3 workers who had just arrived from another country in
4 Central America, and they were not properly acclimated.
5 And they did die on their first day on the job. And
6 that is something that I think we've heard in other
7 comments as well, that there is the need for
8 acclimatization, even if a worker is coming from a
9 warmer climate.

10 MR. BARAB: Thank you.

11 JUDGE HILLEREN-WILKINS: Thank you. Are there any
12 other participant questions?

13 MS. CARLON: Yes, Your Honor, there's one from Ms.
14 Arberry. Please state your name for the record.

15 MS. ARBERRY: Hi, my name is Chenay Arberry. This
16 is for either panelist. Could you tell us more about
17 what happens when farm workers and WeCount! members
18 have spoken up about hot working conditions and lack
19 thereof of control measures to properly cool them
20 down - just experiences you've heard? Thank you.

21 MS. BURKHARDT: I think -- Dominique Burkhardt --
22 I will pass it to Danielle McManamon and then provide

1 any follow up if needed.

2 MS. MCMANAMON: Yes. Danielle McManamon, on
3 behalf of WeCount! I think we have heard a lot of
4 similar stories that when workers do speak up, they
5 feel retaliated against. Their employers kind of round
6 everybody up to try to figure out who -- you know, who
7 complained about the work environment. They encourage
8 workers not to cooperate with the OSHA investigations.
9 They encourage workers not to communicate with WeCount!
10 or worker advocacy groups. I think there's a fear with
11 retaliation, not just of being fired, but also of
12 being -- having the employer give them even more
13 strenuous work as a result of speaking up due to the
14 conditions.

15 So you know, the jobs are already very strenuous.
16 And if workers are already experiencing heat stress and
17 now, they're worried that, if they speak up, they might
18 get even harder work that they might not be able to
19 handle. And they're not free to speak up against these
20 conditions. So I think that -- that is something that
21 we have heard kind of across the board with WeCount!
22 members, that there is a strong fear of retaliation.

1 They don't feel free to speak up. And they are, you
2 know, that is a huge disincentive to speak up in these
3 situations. Thank you.

4 MS. BURKHARDT: If -- Dominique Burkhardt -- if I
5 could just add to what Ms. McManamon stated, I think
6 one of the concerns that WeCount! members have cited is
7 a fear of being blacklisted in the industry. So for
8 instance, if you're a plant nursery worker and you're
9 known as someone who might have advocated for maybe
10 your rights or another worker's rights, the word might
11 get out and you might not get hired in other jobs. And
12 so there's a fear of, not only losing your own job, but
13 the ability to get a new job in the same area that you
14 work.

15 And then I think with the point about being
16 assigned more difficult work, I think that the fear is
17 also that maybe -- what WeCount! members have stated
18 and what they've experienced is that you get assigned
19 higher quotas for productivity. So now you have to do
20 more than maybe you were doing before. And it might
21 also be more physically demanding, strenuous work. And
22 so those are the types of instances of retaliation that

1 WeCount! members have seen or experienced.

2 JUDGE HILLEREN-WILKINS: Thank you very much to
3 each of the panelists. Excuse me. In the interest of
4 time, we're going to go ahead and move on to the next
5 speaker. Mariam, if you'd please announce.

6 MS. CARLON: The next speaker is Elizabeth Rojo.
7 Please state your name and affiliation for the record.

8 MS. ROJO: Good morning. My name is Elizabeth
9 Rojo. I'm a public health researcher and I will be
10 providing these remarks as a private citizen. I
11 commend OSHA for taking this vital step towards
12 protecting workers from the dangers of extreme heat.
13 Nevertheless, it is imperative that the final rule
14 adequately addresses the unique vulnerabilities and
15 circumstances of farmworkers.

16 The agricultural workforce is mostly imported
17 labor. People are recruited from outside of the United
18 States on an H-2A visa to ensure that crops in this
19 country are harvested. While the H-2A program is not
20 overseen by OSHA, OSHA plays a crucial role in ensuring
21 the safety of all agricultural workers. Keeping a
22 healthy farm labor workforce is not only ethical, but

1 it is essential given the critical role farmworkers
2 play in our food system.

3 Arturo Gonzalez Mendoza was the 29 year old
4 migrant farmworker from Mexico, who in 2023 was working
5 on a sweet potato farm in North Carolina and died from
6 cardiac arrest only two weeks after arriving from
7 Mexico. Temperatures were in the 90s that day, and the
8 only shade they had was a bus with no AC, parked in the
9 middle of the field. He was an H-2A visa holder.
10 According to reports, the farm had -- he worked at had
11 no process for how to manage this emergency, which
12 resulted in his death. His death was preventable.

13 This is a tragic consequence of inadequate heat
14 protection and a glaring reminder that these are not
15 just abstract regulations, but for this essential
16 workforce, is a matter of life and death. Jose
17 Arturo's story is, unfortunately, one of many, and it
18 highlights the urgent need for robust, enforceable
19 standards. Three areas that can be immediately
20 incorporated are requiring a two week acclimatization
21 program, issuing warning alerts through text messages
22 in appropriate languages, and clarifying the definition

1 of proper shade to include cooled vehicles only,
2 something that could have saved Mr. Arturo's life.

3 First, the principle of proper acclimatization is
4 fundamental and must be robustly enforced. Farmworkers
5 often migrate or are exposed to sudden changes in
6 temperature and humidity. For some, this is the first
7 time they are performing such a physically labor
8 intense job. The combination of lack of proper
9 acclimatization, extraneous physical activity,
10 extensive heat exposure, and the incentive to forsake
11 breaks due to the piece rate pay system is a deadly
12 combination. Therefore, a phased approach to heat
13 exposure, allowing workers body to adapt over time is
14 not merely a best practice, it is a lifesaving
15 necessity. The rule should clearly define and mandate
16 specific acclimatization protocols considering the
17 physiological demands of agricultural work.

18 Second, effective warning alerts are paramount. I
19 urge OSHA to mandate communication channels that are
20 proven to reach this population. Text messaging, for
21 instance, is a widely accessible and immediate form of
22 communication that could deliver warnings about

1 dangerous heat levels, encouraging workers to take
2 necessary precautions. These alerts should be
3 available in multiple languages to ensure comprehension
4 across diverse linguistic backgrounds within the farm
5 worker community.

6 Third, the definition of proper shade must be
7 clear and stringent. It is not enough to simply state
8 that shade must be available. I strongly advocate for
9 language that explicitly states that proper shade shall
10 not include a vehicle that has not been cooled.
11 Relying on unconditioned vehicles for rest and
12 recovery, and extreme heat is insufficient and can, in
13 fact, exacerbate heat stress, turning a supposed refuge
14 into a hazard. Shade must offer genuine relief from
15 solar radiation and allow for core body temperature
16 reduction.

17 Finally, I wish to draw your attention to an
18 alarming long term health crisis that is inextricably
19 linked to extreme heat, chronic kidney disease of
20 uncertain etiology, or CKDu in short. We have
21 witnessed epidemic rates of CKDu in agricultural
22 communities in Central America and Southeast Asia,

1 where workers are consistently exposed to high
2 temperatures and heavy physical labor without adequate
3 hydration and rest. The scientific evidence
4 increasingly points to recurrent acute kidney injury
5 from heat stress and dehydration as a primary driver of
6 this devastating disease. The United States is not
7 immune. Without strong, enforceable heat protection
8 standards, we risk this devastating epidemic in our own
9 agricultural labor force. The long term health
10 consequences of farmworkers, coupled with the potential
11 for a significant reduction in the labor pool due to
12 widespread chronic illness, would have catastrophic
13 impacts on our food system and the broader economy.

14 Protecting farmworkers from heat is not just a
15 matter of occupational safety. It is a matter of
16 public health, economic stability, and national food
17 security. I urge OSHA to strengthen this proposed rule
18 to ensure that farmworkers who feed our nation are
19 truly protected from the profound dangers of
20 occupational heat exposure. I would like to thank OSHA
21 for the opportunity to provide this testimony.

22 JUDGE HILLEREN-WILKINS: Thank you. Are there any

1 questions for the speaker from the OSHA panel?

2 MR. SCHAYER: Yes, Your Honor, there are. This is
3 Steven Schayer again. I'd like to turn to Bob
4 Blicksilver.

5 MR. BLICKSILVER: Hi. Bob Blicksilver, OSHA
6 Standards and Guidance. Ms. Rojo, you spoke to the
7 variety of impacts from heat hazard that can affect an
8 economy, can affect the workers, society. And I wonder
9 if you could speak to, either now or in post-hearing
10 comments, areas such as absenteeism, worker turnover,
11 costs associated with workers' compensation claims as a
12 result of heat injury, and if you have any data and
13 studies that you can direct our attention to that would
14 be very beneficial to us. So we welcome your comments
15 on those areas -- in those areas, please.

16 MS. ROJO: Yes. And thank you for that
17 opportunity. I do know of some studies that do touch
18 on those topics that you just mentioned. I would --
19 and I would be happy to provide those in the post-
20 hearing comments.

21 MR. BLICKSILVER: Thank you.

22 MR. SCHAYER: I believe that concludes our

1 questions, Your Honor. Thank you, Ms. Rojo, for your
2 testimony.

3 JUDGE HILLEREN-WILKINS: Are there any questions
4 for the speaker on behalf of the Solicitor's Office.

5 MS. LEVIN: Jennifer Levin for the Solicitor's
6 Office? No - no questions from me. Thank you very
7 much.

8 JUDGE HILLEREN-WILKINS: And are there any
9 participant questions for the speaker?

10 MS. CARLON: There are not, Your Honor.

11 JUDGE HILLEREN-WILKINS: All right. Thank you
12 very much, Ms. Rojo.

13 MS. ROJO: Thank you.

14 JUDGE HILLEREN-WILKINS: All right. And we'll
15 move to our final speaker for the morning session,
16 Mariam.

17 MS. CARLON: The next speaker is Nancy Rudner.
18 Please state your name and affiliation for the record.

19 MS. RUDNER: My name is Nancy Rudner. Thank you
20 very much for this opportunity. I'm a nurse
21 researcher, and I want to share with you some findings
22 from a study that I did with the data from Emory

1 University and the Farmworker Association of Florida on
2 heat exposure, rest breaks, dehydration, and health
3 related illness among agricultural workers in the
4 Florida summer heat.

5 We think of farmworkers -- really, they're the
6 climate canaries. The exposure that agricultural
7 workers are having, we're going to see in more of our
8 workforce as temperatures continue to rise.

9 Next slide please. The data was collected over
10 five days between 2020 and 2022. Of course, '24 was
11 the hottest summer that we have on record. So this was
12 before it started getting as hot as it is. It was
13 interviews with 115 farmworkers over two winters and
14 three summer data collection days. Workers were asked
15 questions before they went to work, and we also -- the
16 data was also collected on their urine and by their
17 biometrics before work and after work. We also asked
18 several questions about the hours that they worked and
19 the breaks. We used the NOAA heat index measure, using
20 the - that looks at temperature and humidity.

21 Next slide please. So this just shows you the --
22 the participants average age was 38. And these were,

1 for the most part, experienced workers with an average
2 of 10 years working in southern agricultural weather.

3 Next slide please. The workdays are long and this
4 is an important part of it. 47 percent of the workers
5 worked more than -- worked nine hours or more. So
6 these are the -- and this is in the summer -- in the
7 summer heat.

8 Next slide please. We looked at the individual
9 heat index, in other words, what was experienced by
10 each individual worker. The average highest
11 temperature was 114 heat index, but it went up to 131.
12 So we're talking about extreme heat that most people
13 would want to get out of as quickly as possible. And
14 on average, the average heat index was 95 and the
15 highest individual average was 103.

16 Next slide please. Then we look -- I also -- we
17 also looked at extreme heat and exposure to extreme
18 heat. So the workers, on average, are exposed to 5.5
19 hours in a heat index over -- equal to or above 90.
20 This is what OSHA and NIOSH call extreme caution
21 temperatures. And the highest was 10 hours -- 10.5
22 hours that were spent over 90 degrees. Then you look

1 at the danger index, which is over -- equal to or above
2 100. On average, the workers spent an hour and a half
3 in the danger heat index. But we also had workers that
4 spent 6.5 hours in the danger heat index, so the
5 exposure is significant.

6 Next slide please. Thank you. This is the same
7 data just presented in a different way.

8 Next slide please. The key part is that that
9 voluntary guidance on breaks doesn't work. For the
10 most part, nobody had the breaks recommended by NIOSH.
11 And there was no significant difference between summer
12 and winter. It was 1.9 breaks in a workday, which is
13 far less than the average -- the recommended one break
14 every two hours. 44 percent of the workers took only
15 one break or no breaks. And the breaks -- the total
16 number of breaks, including lunch, over the course of a
17 workday, on average, was 45 minutes. So they're not
18 getting enough breaks.

19 Next slide please. This is visual presentation
20 that shows the little difference in breaks between
21 winter and summer. The black dotted line is summer.
22 The blue is winter. And as you can see, they're almost

1 the same, 1.9 breaks. But if you look at how -- the
2 duration of hours and the number of breaks, nothing is
3 coming close to what is recommended, what is in the
4 voluntary guidance.

5 Next slide please. In the highest heat, in the
6 caution and danger heat, breaks weren't that much
7 better and still did not approximate what has been
8 recommended in the voluntary guidelines.

9 Next slide please. Thanks. And not surprising,
10 workers are dehydrated. The average intake for fluid
11 was 68 ounces in a workday. NIOSH recommends 24 ounces
12 an hour, which would have been 192 ounces. And very
13 few people even approached that.

14 So as a consequence, 45 percent of the workers
15 started the day dehydrated because they hadn't
16 rehydrated from the previous day. They spent the whole
17 summer hydrated and then after work, 64 percent were
18 dehydrated. It's probably higher because some people
19 went home and had something to drink before they came
20 to have their urine and blood tested. Significantly,
21 on the three data collection days in the summer, 12
22 percent of the workers experienced one or more serious

1 heat-related illness of confusion, fainting, dizziness,
2 cramping, nausea and vomiting. 12 percent on just
3 three days, over three summers. So there's
4 definitely -- they are experiencing heat problems. And
5 what we have seen in other studies, that over the
6 course of three years, we see kidney degradation. The
7 measures of kidney function are declining, which is the
8 whole pathway to kidney failure in the future.

9 Next slide please. Thank you. So basically, I
10 want to communicate to you that the data has shown that
11 this voluntary heat protections is not working. When
12 workers were asked why they didn't take breaks and they
13 said the employer didn't give me a break. That was the
14 most common reason. So I -- I'm very grateful for the
15 opportunity to present to you. I encourage that we
16 have required paid breaks that are enough to give
17 workers a chance to rehydrate, to cool down. Thank
18 you.

19 JUDGE HILLEREN-WILKINS: Thank you, ma'am. Are
20 there any questions for the speaker from the OSHA
21 panel?

22 MR. SCHAYER: Yes, Your Honor. We do have some

1 questions. I'd like to turn to Zoe Petropoulos.

2 MS. PETROPOULOS: Hi. Yes, I have a couple
3 questions. You mentioned high rates of urine specific
4 gravity defined dehydration. What are the main
5 barriers to adequate hydration among these workers that
6 you've observed?

7 MS. RUDNER: Well, we did ask about water being
8 available. And 85 percent said the water was
9 available, but -- but they said it was nasty -- various
10 forms of nasty, dirty, uncertain, didn't trust it. Or
11 they never knew if it was going to be there or not.
12 But they didn't have enough breaks to be able to drink.
13 And then when they went home, they were too tired, as
14 we heard from previous testimony, too tired to -- to do
15 much. They were so exhausted. So they weren't able to
16 rehydrate. Plus, there's been other studies that
17 showed that the -- they're living in housing that
18 doesn't -- is not a chance to cool down to rehab and
19 help them rehydrate either.

20 MS. PETROPOULOS: Thank -- thank you. My second
21 question. You mentioned symptoms like fainting,
22 dizziness, nausea, and vomiting. Are you aware of

1 instances of workers not reporting these symptoms or
2 any other, you know, heat-related injuries and
3 illnesses to their employer?

4 MS. RUDNER: I don't think any of these were
5 reported in our data. That workers -- this was part of
6 the history that we took from the workers. Did you
7 experience any of these? But workers are very hesitant
8 to report it for all the reasons explained in previous
9 presentations.

10 MS. PETROPOULOS: Thank you so much. That
11 concludes my questions.

12 MS. ROJO: Thank you.

13 MR. SCHAYER: And this is Stephen Schayer again.
14 I would like to turn to Bob Blicksilver.

15 MR. BLICKSILVER: Hi, Bob Blicksilver, OSHA
16 Standards and Guidance. In OSHA's preliminary economic
17 analysis, there was an assumption made that in states
18 without current heat rules, nonunion piece rate workers
19 are currently not provided with any rest breaks, and
20 that unionized piece rate workers are currently
21 provided with some rest -- rest breaks. And -- and
22 that assumes that collective bargaining agreements

1 provide some, but not all, of the high heat trigger
2 rest breaks as outlined in the proposal.

3 So our questions are, are these assumptions
4 consistent with the experience of farmworkers that you
5 are aware of? I'll pause there, please.

6 MS. RUDNER: We have seen that piece - piece rate
7 workers don't take the -- are less likely to take the
8 breaks because they're unpaid breaks basically. I
9 don't think I can speak to collective bargaining.
10 Yeah. That's not an area that I can really speak to.

11 MR. BLICKSILVER: Okay. Well if you could provide
12 in post-hearing comments, any data that you're aware of
13 on current breaks to piece rate workers, that would be
14 very helpful to us. So thank you.

15 MS. RUDNER: Okay. But if I could add to my
16 comment, though. When you think about piece rate
17 workers, it's really, you know, there's some sort --
18 sometimes there's this assumption that it's up to them
19 to take a break, which kind of goes back to the as-
20 needed break. But when you're trying to feed your
21 family and a break is going to cost money, you keep
22 pushing yourself, as any one of us would push ourselves

1 to be able to help our families survive. So that --
2 that -- that's a false dichotomy. To think that piece
3 rate workers could take breaks if they want to.
4 They're unpaid breaks.

5 MR. BLICKSILVER: Thank you. That's all the
6 questions I have.

7 MR. SCHAYER: This is Stephen Schayer again.
8 Thank you, Dr. Rudner, for your testimony. And Your
9 Honor, that concludes OSHA's questions.

10 JUDGE HILLEREN-WILKINS: Thank you. Are there any
11 questions on behalf of the Solicitor's Office?

12 MS. LEVIN: Your Honor, Jennifer Levin for the
13 Solicitor's Office. No questions for Dr. Rudner.

14 JUDGE HILLEREN-WILKINS: Thank you. And are there
15 any participant questions for this speaker?

16 MS. CARLON: Yes, Your Honor, we have one from Ms.
17 Reindel. Please state your name for the record.

18 MS. REINDEL: Hi there. This is Rebecca Reindel.
19 I'm at the AFL-CIO. I just had a couple clarifying
20 questions for Ms. Rudner. The first is, did you say
21 that the number of breaks was the same in the winter as
22 in the summer?

1 MS. RUDNER: Yes, 1.9 breaks in the workday, far
2 less than the recommended breaks.

3 MS. REINDEL: Got you. Thank you. And then did
4 any of the workers in the danger heat zone have the
5 OSHA recommended breaks?

6 MS. RUDNER: No. Unfortunately, none of the
7 workers working in the heat zone had the recommended
8 breaks. Which, I believe in that heat zone, which over
9 100 degrees equal to 100 degrees should be 30 minute
10 breaks every 30 minutes. They did not have enough
11 breaks.

12 MS. REINDEL: Okay. Okay, thank you. And then
13 you -- you mentioned that -- I thought you mentioned in
14 passing something about where water was available, it
15 wasn't clean. I was wondering if you could just expand
16 upon that.

17 MS. RUDNER: Yes, the worker said that -- workers,
18 they never knew when the water would be there or not.
19 So they brought their own, but they couldn't --
20 sometimes they couldn't bring it to the field. The
21 water was dirty. That was the main -- or the water was
22 like, not at a reasonable distance.

1 MS. REINDEL: Got you. Okay. And then my last
2 quick question is about training. We also heard that
3 training would be sufficient to -- to prevent heat
4 illness and the risk to it. What is your opinion on
5 that? And I know that you are -- you're mentioning
6 breaks and a couple other measures. But if you are
7 training -- increasing training about the breaks and
8 about other situations, will that be enough?

9 MS. RUDNER: Well, you know, training, just to add
10 to -- 31 percent said they had some training, typically
11 by the employer and typically combined with pesticide
12 training. So and was it presented in a way that was
13 easy for the workers to understand? Most farmworkers
14 are not -- not a high literacy level. How is it
15 presented and when that -- that's why I think there was
16 a recommendation of some standard videos in multiple
17 languages.

18 But when you combine heat training with
19 pesticides, that's an awful lot in a short period of
20 time to have somebody standing out there in the heat
21 listening. So we do need to address -- we do need to
22 address training, but we need to make it easier for

1 people to do what they need to do. And that's why I
2 really encourage that we have required breaks and
3 required clean, cool water available.

4 MS. REINDEL: Okay. Thank you. Thank you very
5 much.

6 MS. RUDNER: Thank you.

7 JUDGE HILLEREN-WILKINS: Are there any further
8 participant questions?

9 MS. CARLON: There are not, Your Honor.

10 JUDGE HILLEREN-WILKINS: All right. That being
11 the case, that concludes the testimony for our morning
12 hearing session.

13 MS. LEVIN: Your Honor, excuse me. Yes, this is
14 Jennifer Levin of the Solicitor's Office. And before
15 we close the morning session, I'd like to enter --
16 request that materials that were presented by witnesses
17 be entered into the record, if you'd entertain that,
18 please?

19 JUDGE HILLEREN-WILKINS: So admitted, as
20 requested.

21 MS. LEVIN: Okay. Let me just inform you that
22 I've marked as Exhibit 6, the PowerPoint presentation

1 from the -- from WeCount! and I've marked as Exhibit 7,
2 the PowerPoint presentation from Dr. Nancy Rudner.

3 JUDGE HILLEREN-WILKINS: Admitted as described.

4 MS. LEVIN: Thank you.

5 JUDGE HILLEREN-WILKINS: Thank you. All right.

6 That concludes the testimony for our morning hearing
7 session. We will recess at this time and reconvene at
8 1 o'clock p.m. Eastern Time. Let's go off the record.

9 (Lunch break.)

10 MS. CARLON: This is Mariam Carlon with ABT
11 Global, OSHA's contractor. It is 1 o'clock Eastern
12 Time, and we are now rejoining OSHA's informal
13 rulemaking hearing for heat injury and illness
14 prevention in outdoor and indoor work settings. Before
15 we begin, we'd like to go over some logistics for
16 today's public hearing.

17 As a reminder, all attendees are muted
18 automatically. All Webex attendees can access closed
19 captioning and translated captioning by clicking on the
20 CC icon in the lower left-hand corner of the
21 application. You can individually select your caption
22 language if translation is required. We will pause

1 shortly as I share this same slide in Spanish.

2 All YouTube viewers will have access to auto-
3 translation the day after the hearing. All Webex
4 attendees can access Spanish interpretation during a
5 given testimony by clicking on the interpretation globe
6 icon on the left-hand corner of the application. From
7 the drop-down menu, you will choose Spanish, then swipe
8 all the way to the right to hear the Spanish
9 interpretation.

10 All Webex attendees delivering testimony will have
11 access to a countdown timer to ensure allotted time is
12 adhered to. We will launch the timer for you, and it
13 should be seen on the right-hand side of your screen.
14 If you do not see this app launched in your Webex
15 window at the given time, please follow the
16 instructions on the screen to manually launch this app.

17 If you are speaking today, you will receive a
18 notification on your screen that you are being promoted
19 to the panelist group a few minutes before it is your
20 time to provide testimony. Once promoted to the
21 panelist role, you will be able to unmute and turn on
22 your camera. We ask that you do not unmute or turn on

1 your camera until your name has been called, and you
2 have been asked to start your testimony. Speakers
3 connected by telephone should unmute their phones when
4 called to testify.

5 If you submitted a presentation in advance, we
6 will share the file and advance the slides. Please cue
7 us verbally by saying next slide when you need us to
8 advance. Depending on timing, there may be opportunity
9 to ask questions of other speakers giving testimony.
10 You may press the raise hand button at the bottom of
11 the Webex application to indicate you have a question.
12 If there is time, you will be called on by name and
13 promoted to the panelist group to unmute and ask your
14 question. If you are having technical difficulties,
15 please send an email with your name and phone number to
16 public_hearing@abtassoc.com.

17 Now, we will continue with our public testimony.
18 The expected speaking order is currently displayed on
19 the screen. I will be introducing each speaker in
20 turn. Please speak slowly and clearly so our court
21 reporter can record these proceedings accurately. The
22 first speaker will be Larry Black. Please state your

1 name and affiliation for the record.

2 MR. BLACK: Hi. My name is Larry Black, and I'm a
3 manager at Central Rolling Plains Co-op Gin in Roscoe.
4 And I appreciate the opportunity to present this
5 information.

6 I serve as the manager of Central Rolling Plains
7 Cotton Gin in Roscoe, Texas, and I'm the President of
8 the National Cotton Ginners Association. As president
9 of the National Association, I'm speaking on behalf of
10 all cotton ginneries but will specifically confine my
11 comments to the State of Texas and my experiences with
12 my ginning operation. I manage and operate a cotton
13 gin, which processes seed cotton from local growers and
14 produces finished lint cotton bales for the textile
15 industry. The facility is a cooperative owned by our
16 own local growers.

17 Cotton ginning season starts at cotton harvest.
18 Harvest season in Texas usually starts in July in the
19 lower Rio Grande Valley and continues north, where it
20 starts in October in West Texas. Generally, most
21 facilities complete each season in three to four
22 months. During the off season, we employ four people

1 to repair the processing equipment. During a normal
2 ginning season, we employ an additional 15 to 30 people
3 for the operation of the facility. There are about 160
4 cotton ginning facilities in the State of Texas,
5 ginning about six million bales of a typical national
6 crop of sixteen million bales. In the 23 years I've
7 managed Central Rolling Plains Co-op, we have had no
8 heat-related illness or injuries.

9 The cotton ginning process includes mechanically
10 drying excess moisture and cleaning of plant material
11 from the seed cotton. Seed is then removed from the
12 lint, and the lint is cleaned again before being
13 packaged into a cotton bale. This is all done with
14 mechanical processing equipment, burners, and fans.

15 In the off season, temperatures are different,
16 depending on the location in the state, but it can and
17 does get hot. We work with our crews to perform more
18 physical tasks that may expose them to heat in the
19 cooler morning hours and other less hot tasks in the
20 afternoon. We also allow our workers to vary shift
21 times to accommodate working during cooler portions of
22 the day. The off season is for repairs to equipment,

1 so changing tasks and taking breaks as a result of
2 temperature changes is recognized as part of the job.

3 Operating season usually lasts three to four
4 months. During this time, we typically operate 24
5 hours a day, 7 days a week. While the facility is
6 operating, most employees have a rather repetitive job.
7 The work basically occurs as each bale is produced.
8 For example, the employee closing and tagging cotton
9 bales will do this task and then wait for the next
10 bale. This basically results in short activities with
11 breaks in between tasks throughout the day. If an
12 equipment breakdown occurs and help is needed to
13 correct the issue, the shift supervisor will task some
14 employees to assist. The breakdowns can be short or
15 long and depend on the situation. During breakdowns,
16 the tasks can be significantly more difficult.
17 Employees may need breaks more often during this type
18 of work or take a break before we restart the facility.
19 This is all very dependent upon the situation and the
20 weather.

21 Appropriate breaks are critically important for
22 worker safety and health, but developing an overly

1 prescriptive break schedule will be counterproductive
2 due to extremely varying conditions and temperatures.
3 Heat illness prevention is very important to us. We do
4 have a written heat illness prevention program, and the
5 principles of heat illness prevention are embodied in
6 all of our work practices. We provide engineering
7 controls, such as shade, fans, and a Portacool.

8 During the season, the building is very well-
9 ventilated because of the large air volumes used to
10 move products throughout the facility. We supervise
11 our employees and constantly monitor ambient heat
12 conditions. We continually provide hydration with
13 water. And to keep our employees healthy, we encourage
14 our water -- our workers to drink water as opposed to
15 sugary drinks, like soft drinks.

16 Our supervisors are very mindful of the hotter
17 work environments and monitor employees carefully.
18 Having a nationwide prescriptive acclimatization plan
19 does not make sense because areas of the country are
20 very different in terms of normal high temperatures and
21 humidity levels. Most of our folks think it's a cool
22 day if temperatures drop below 80 degrees. Most of our

1 seasonal employees are doing jobs at higher heat
2 exposure prior to working for us during the operating
3 season.

4 The proposed heat triggers are very low,
5 especially for Southern climates. The references to
6 existing standards all seem to be from California,
7 Washington, Oregon, and Montana. These states
8 generally have much cooler temperatures throughout the
9 year than Texas, where temperatures are normally about
10 80 degrees much of the year. Guidance needs to
11 recognize the regional acclimatization that exists
12 across the U.S. and provide the necessary flexibility.
13 Any fixed temperature trigger will have a disparate
14 effect on areas with naturally warmer climate and is
15 not supported by specific health data for different
16 industries.

17 In addition to managing Central Rolling Plains Co-
18 op, I'm the president of the Board of Texas Cotton
19 Ginners Trust, which is our statewide worker's
20 compensation company for our industry. As a Board
21 member, I get to see the claims filed with the Trust.
22 In the past 30 years, we have had a total of 13 total

1 claims related to heat illness out of about 6,800.
2 That's two-tenths of one percent of the claims paid in
3 the history of our organization. These were mostly
4 minor claims, resulting in a doctor's visit to make
5 sure everything was all right. If we had ever detected
6 a heat illness injury or injury trend, we would have
7 addressed it at that time.

8 Prevention of heat-related illness is very
9 important to us because of where we live and work.
10 However, instead of a prescriptive nationwide standard
11 that attempts to detail specific temperatures and
12 situations for everyone, I believe maximum flexibility
13 on how we handle our programs result in a much more
14 sensible regulation that is safer for the actual
15 employees involved in the areas.

16 We believe it is inappropriate to have a single
17 fixed heat trigger of any type, or prescriptive
18 requirements for breaks that are dependent on a heat
19 trigger. This sentiment was expressed by many small
20 businesses during the SBREFA process, with many
21 examples of why this type of prescriptive program would
22 have many detrimental effects on all types of small

1 businesses, which we believe are overwhelmingly doing a
2 good job of managing this risk with their own policies.
3 Thank you.

4 JUDGE HILLEREN-WILKINS: Thank you, sir. Are
5 there any questions for this speaker from the OSHA
6 panel?

7 MR. SCHAYER: Yes, Your Honor. We do have some
8 questions. This is Stephen Schayer from Directorate of
9 Standards and Guidance. I'd like to turn to Eduardo
10 Hernandez on the panel.

11 MR. HERNANDEZ: Hi. Thank you, Mr. Black, for
12 your testimony. My name is Eduardo Hernandez with the
13 Directorate of Standards and Guidance. And my first
14 question is on the Heat Injury and Illness Prevention
15 Program -- or Plan. And in your comments, you
16 mentioned that the requirement to seek input from non-
17 managerial employees on the HIIPP and the training
18 requirements for supervisors were not feasible, nor
19 practical for ginning operations. Could you help us
20 understand what makes your industry different?

21 MR. BLACK: Yeah. This is Larry Black. Yes.
22 We -- our industry is different because our employees

1 are like our family. I mean, I have some guys that --
2 seasonal workers that have come back to me for over 20
3 years that I've been here. And we take good care of
4 them. We take good care of them because it is so hard
5 to find labor. We have a very difficult time finding
6 enough hands to fulfill all the job positions in our
7 industry. And we certainly don't want to have anyone
8 have problems. So we take care of our employees, in
9 short, is what I'm trying to say.

10 MR. HERNANDEZ: Thank you. And again, Eduardo
11 Hernandez. You mentioned that you have a heat safety
12 program. If you could -- if you're willing to share
13 that in your post-hearing comments with us, a copy of
14 it, or just any information on the resources it would
15 take to do some of the things that are in the proposal
16 for OSHA at the moment, that would be appreciated.

17 My second question is on training. And in your
18 comment, you noted that the HIIPP training requirements
19 should be flexible and also allow the inclusion of
20 other training options as a component of a broader
21 safety program. So we were curious if there were ways
22 that you see the training requirements for this rule if

1 they're in conflict, or if they could be better
2 incorporated with other, more general safety training
3 requirements.

4 MR. BLACK: Well, just the fact of having a set
5 prescriptive break is detrimental to our ginning
6 process because we're much like a factory where we're
7 producing a product. Just, you know, in our case,
8 about every minute we have a bale of cotton come out of
9 our gin. So that person that's putting the tag on and
10 closing the bale, they will stand or sit, their choice,
11 for approximately 40 to 45 seconds. It takes them 15
12 to 20 seconds to do their job, then they return to
13 their seat. And that's just the way it is all day
14 long. So to interrupt that with a break - which we do
15 sometimes. I have a couple of people that roam in and
16 out of the different positions in the gin to give that
17 person a break, especially on hotter days.

18 Our season runs more from October through January.
19 So we're in the cooler temperatures while we're
20 ginning. And -- but it is hot in September, October,
21 November in Texas. So we provide -- our employees can
22 take a break if they need one. It's totally up to

1 them. But we do monitor the employees also. We keep
2 an eye on them. And like I said, we take care of them
3 because, quite honestly, I don't want to have to fill
4 their position if they're not there, so.

5 MR. HERNANDEZ: Thank you.

6 MR. SCHAYER: Thank you. This is Stephen Schayer
7 again. I'd now like to turn to Patti Downs.

8 MS. DOWNS: Hi. Patti Downs with the Directorate
9 of Standards and Guidance. Mr. Black, in your written
10 comments, you had mentioned some difficulty with
11 implementing AC, or air-conditioning, due to the high
12 air exchange rates. Could you just please elaborate a
13 little bit on the conditions that make using air-
14 conditioning difficult?

15 MR. BLACK: Yes. It's Larry Black. Our -- the
16 gin building itself is 80 feet wide, 250 -- 225 feet
17 long, and 25-foot sidewalls. So if you take those
18 measurements alone right there on that, that's about
19 450,000 square feet. Now, we -- most of our product is
20 moved throughout the plant pneumatically. So we have
21 fans, big fans, moving. We move a total of 365,000
22 cubic feet per minute. So we're turning the air over

1 in that gin about every 1.3 minutes. So it would
2 just -- there's just no way that you could air
3 condition that.

4 MS. DOWNS: Okay. Now, you say you have fans in
5 those areas, but they're used partially for the
6 pneumatic system. Do those provide cooling?

7 MR. BLACK: No, ma'am. I didn't mean to say it
8 that way. We -- the fans we have are to generate the
9 air to move the seed cotton throughout the plant.
10 They're not fans for personnel fans.

11 MS. DOWNS: Okay.

12 MR. BLACK: We do have -- like I said, we have
13 Portacool and some other things that we can move some
14 air around. But as you can imagine, with the total air
15 volume turning every 1.3 seconds in there, it's pretty
16 fresh.

17 MS. DOWNS: Okay. Thank you. Patti Downs again.
18 Does the air in these work areas ever reach ambient
19 temperatures above 105 degrees Fahrenheit? And if so,
20 how do you protect employees in those situations from
21 heat stress?

22 MR. BLACK: This is Larry Black again. I honestly

1 do not believe they reach above 105. Now, I will say
2 they get close, but I don't think they go over that.
3 And if they do, again, we bring out the Portacools and
4 all those kind of things to help try to cool off the
5 employees or to keep, you know -- just to keep a good
6 workplace. If I don't have a good workplace, I can't
7 have good employees.

8 MS. DOWNS: Okay. I think that's all the
9 questions for me. Thank you so much, Mr. Black. Back
10 to you, Steve.

11 MR. SCHAYER: Thank you. We did have a few
12 questions also from Tiffany DeFoe.

13 MS. DEFOE: Hi. This is Tiffany DeFoe with the
14 Directorate of Standards and Guidance, OSHA, for the
15 record. In your testimony today, you noted that rest
16 breaks are well incorporated into the day-to-day
17 operations of your members. And as you've probably
18 heard throughout this day, OSHA has received comments
19 that agricultural workers are, however, commonly
20 discouraged from, or penalized, for taking breaks or
21 requesting breaks. Can you please talk a little
22 further about strategies that members of your

1 association use to ensure that your workers are
2 encouraged and feel safe to take breaks as they need?
3 Perhaps, strategies that could be usefully applied in
4 agriculture more broadly?

5 MR. BLACK: Yes. Larry Black again. Yes, ma'am.
6 Our industry is different. I mean, I think that's one
7 of the problems that we see with the rule is that you
8 can't apply a one-size-fits-all deal. The work that we
9 do is inside of a large building. We're not out in the
10 sun. We're not bending over all the time harvesting
11 vegetables or whatever, you know, other crops. So
12 we're -- I mean, we're just naturally airy, for lack of
13 a better word. But that's why I say that -- that our
14 industry is -- our industry takes care of its
15 employees. I'll put it that way. And I think that's
16 evidenced by the small amount of heat illness injuries
17 we've had on the worker's comp side in the 30 years
18 that I've been involved.

19 MS. DEFOE: Thank you. Is there anything in your
20 plans, in terms of sort of keeping supervisors -- just
21 helping to ensure that that culture is maintained, the
22 culture of taking care of your workers with guidance or

1 training, for example?

2 MR. BLACK: Yes, ma'am. We take pride in taking
3 care of our employees. They have -- well, as a matter
4 of fact, I have a bottle of water right here. I don't
5 know if you can see that or not, but that is the water
6 that we provide to our employees with our logo on it.
7 So we have our own bottled water that is either in the
8 refrigerator or sitting beside the refrigerator if you
9 don't like to drink cold water. We have popsicles out
10 in the gin, you know?

11 I mean, so it's -- there's things that we put out
12 there that are extra, I feel like, are above and beyond
13 just having a faucet full of water. And those are the
14 things I like to think make us different, that make my
15 employees continue to want to return to work for me on
16 a seasonal basis. And so those type things, plus, like
17 I say, just intermittent breaks. There are no
18 scheduled breaks, but the intermittent breaks that we
19 have, it all lends to a good atmosphere for the
20 employees.

21 MS. DEFOE: Thank you. And my last question is
22 whether there's any information that your membership

1 can provide to the record just pertaining to the
2 typical length and frequency of the intermittent breaks
3 that are common for your members.

4 MR. BLACK: They vary by situation.

5 MS. DEFOE: That's all I have. Thank you.

6 MR. SCHAYER: Thank you. Would it be possible to
7 read a few more questions into the record, Your Honor,
8 to address in post-hearing comments?

9 JUDGE HILLEREN-WILKINS: Yes. Please proceed.

10 MR. SCHAYER: Okay. Thank you. Bob Blicksilver.

11 MR. BLICKSILVER: Hi. Bob Blicksilver, OSHA
12 Standards and Guidance. Mr. Black the NCGA presented
13 an estimate of record keeping costs of \$1,200 annually
14 to comply with the proposed rule. So in post-hearing
15 comments, I wonder if you could provide details on that
16 estimate. And also, if you could clarify whether that
17 represents incremental costs beyond what you're
18 currently doing for other OSHA standards, such as
19 cotton dust and other standards that you comply with.
20 So what is represented by that estimate for record
21 keeping costs? That would be helpful to us, please.
22 A few other questions, reading into the record.

1 There are some temperature monitoring systems that
2 automatically store temperature readings. And in our
3 preliminary economic analysis, OSHA assumed that
4 employers without such systems, temperature monitoring
5 systems would utilize these devices and would not incur
6 additional recordkeeping costs. So would there be
7 additional costs that OSHA should consider by - that we
8 would include in our estimate of recordkeeping costs
9 associated with the temperature monitoring systems?

10 And let me ask further, if in post-hearing
11 comments, you could share with us how you currently
12 monitor temperature readings in your establishments.

13 And then finally, just a couple more questions.
14 NCGA noted that they have a low number of heat-related
15 injuries and illnesses that they attribute to existing
16 efforts, and therefore, you should not be included
17 within the scope of the proposed standard. What
18 requirements of the OSHA proposed standard go beyond
19 what your members are currently doing? And what member
20 practices do you find most effective against HRI,
21 against heat-related injuries and illnesses? If you
22 could share with us what your members' current

1 practices are and what you find to be most effective
2 against HRI. Thank you.

3 MR. BLACK: Yes, sir. Larry Black again. I
4 would -- I don't want to get any of this wrong, so I
5 would prefer to address those questions in post-hearing
6 comments.

7 MR. BLICKSILVER: Please. Bob Blicksilver. Yes.
8 Thank you.

9 MR. BLACK: Thank you.

10 MR. SCHAYER: And we have one final question for
11 post-hearing comments from Zoe Petropoulos.

12 MS. PETROPOULOS: Hi. Zoe Petropoulos,
13 Directorate of Standards and Guidance. Also, in the
14 interest of time, you can just consider this one in
15 your post-hearing comment. How do your members
16 currently determine whether an injury on a job site was
17 heat-related? And for example, is a physician or other
18 medical professional making an onsite determination or
19 some other process? Thank you so much.

20 MR. BLACK: Yes, ma'am. We'd be more than happy
21 to include that in the post-hearing comments.

22 MR. SCHAYER: Thank you very much, Mr. Black, for

1 your testimony. And Your Honor, that completes OSHA's
2 questions.

3 JUDGE HILLEREN-WILKINS: Thank you. Are there any
4 questions on behalf of the Solicitor's Office?

5 MS. WILES: Thank you, Your Honor. Linda Wiles
6 from the Solicitor's Office. I do not have any
7 questions. Thank you, Mr. Black.

8 MR. BLACK: Thank you.

9 JUDGE HILLEREN-WILKINS: Are there any questions
10 from participants?

11 MS. CARLON: Yes, Your Honor, we have one from Mr.
12 Barab. Please state your name for the record.

13 MR. BARAB: Yeah, my name is Jordan Barab. Thank
14 you for your testimony. I appreciate your efforts and
15 certainly treating your employees well in these
16 conditions. I had a question, one sentence in your
17 written testimony said that many of our seasonal
18 employees live in areas with high temperatures and
19 humidity. They are accustomed to the work and are
20 naturally acclimatized to these temperatures. Do you
21 have any evidence showing that people are naturally
22 acclimatized just because they live in warm climates?

1 MR. BLACK: Well, like I said, a lot of my
2 employees -- I'm sorry. Larry Black. A lot of my
3 employees will -- well, they come back year after year.
4 So I know them. I mean, I know them very well, and I
5 know where they live when they're not here, you know,
6 out of season. And a lot of them are from Texas. So
7 there are -- you know, they're living in this area
8 anyway. So that's how I know that they're, you know,
9 they're as acclimatized as I am, I feel.

10 MR. BARAB: So even if they're not working and
11 maybe spending their days in air-conditioned homes or
12 buildings, they're going to be naturally acclimatized
13 when they start working in a hot area?

14 MR. BLACK: Most of my employees are labor. Okay?
15 And they are working outside. They're working on
16 farms. They're working building fence. They're doing
17 outside jobs. And as I stated, our job is more of an
18 inside job at the gin because you're in the shade, and
19 it is a lot cooler. It's not in the direct sunshine.

20 MR. BARAB: Okay. That makes sense. You're aware
21 of the exception to the acclimatization requirements
22 that states, if an employee can demonstrate that

1 they've been working under similar conditions and they
2 are exempted from the acclimatization requirements?

3 MR. BLACK: Yes, sir.

4 MR. BARAB: Okay. You don't think that's adequate
5 to cover your issues?

6 MR. BLACK: Yes, I do. But in a, you know -- in a
7 lot of -- a lot of times, things get out of context.
8 And I mean, I would just agree with our National Cotton
9 Ginners Association recommendation that --

10 MR. BARAB: Okay. You state that overwhelmingly,
11 the members of your association are doing a good job
12 managing those risks. Do you have any -- have you done
13 any surveys? Do you have any evidence of that, or is
14 that your impression just from talking to people?

15 MR. BLACK: No, sir. I mean, what I know is that,
16 as I stated, I've -- I'm currently the president of the
17 Texas Cotton Ginners Trust, which are our worker's
18 comp. So I've seen the very low numbers of heat
19 illness or heat injury claims that we've had. And I
20 mean, with the number of people that we're working, if
21 it's two-tenths of a percent, that's about as good as
22 it's going to get, I think.

1 MR. BARAB: Do you think there are any members
2 of -- any cotton ginnerers that are not doing a good job,
3 that may be neglecting some of these precautions?

4 MR. BLACK: No, sir. I do not --

5 MR. BARAB: Not at all?

6 MR. BLACK: -- because of the labor shortage. And
7 everyone needs all the help that they can get.

8 MR. BARAB: Okay. Thank you.

9 MR. BLACK: It's just working for my employees.

10 MR. BARAB: Thanks.

11 JUDGE HILLEREN-WILKINS: All right. We're going
12 to move on to the next speaker. Thank you very much,
13 Mr. Black. Mariam, if you please announce.

14 MS. CARLON: The next speaker is Trace Justiss.
15 Please state your name and affiliation for the record.

16 MR. JUSTISS: Trace Justiss on behalf of Oklahoma
17 Farm Bureau.

18 JUDGE HILLEREN-WILKINS: You may proceed, sir.

19 MR. JUSTISS: Oklahoma Farm Bureau appreciates the
20 opportunity to participate in today's hearing on the
21 Occupational Safety and Health Administration's
22 proposed rulemaking to issue a new standard heat injury

1 and illness prevention and outdoor and indoor work
2 settings. Oklahoma Farm Bureau is the largest farming
3 and ranching member-based organization in Oklahoma,
4 representing over 80,000 farming and ranching families.
5 Our members raise and grow a diverse number of species
6 of livestock and crop commodities, along with
7 processing and value-added agricultural products. To
8 achieve these, they require a healthy and sustainable
9 workforce that often includes themselves, their
10 employees, and their families.

11 Our members recognize the importance of their
12 greatest asset, the individuals who work alongside
13 them. In addition to concurring with All American Farm
14 Bureau Federation comments on this rule, Oklahoma Farm
15 Bureau wants to highlight its concerns with the
16 following parts of the proposed rule.

17 First, the current draft version of the rule fails
18 to adequately take into consideration the varying
19 temperatures across the United States, and instead
20 issues a blanket rule with low-heat triggers that
21 create unnecessary regulatory burdens on Oklahoma's
22 farmers and ranchers. Second, a blanket rule is not

1 the most effective way to solve heat-related illnesses
2 in the workplace.

3 As a grassroots organization, our members set the
4 State and Federal policies to guide our approach to
5 regulation at both the State and Federal levels in
6 conjunction with American Farm Bureau Federation. Our
7 national policy specifically states that any heat-
8 related labor regulations account for the diverse labor
9 requirements of agriculture, and not to be so
10 restrictive as to create unnecessary difficulty in
11 completing tasks essential to farming.

12 With this policy in mind, Oklahoma Farm Bureau
13 believes any regulation related to a heat -- related to
14 a blanket heat rule must account for the diverse and
15 different needs of agricultural operations, not only in
16 Oklahoma but across the nation. The current proposed
17 rule fails to account for the diversity of America's
18 farming and ranching operations, and places producers
19 at a greater disadvantage of being able to supply a
20 safe and affordable food supply to the United States.

21 Increased cost of food production harm America's
22 most vulnerable and disadvantaged populations, and can

1 impact national security by increasing U.S. reliance on
2 other nations for its food supply. The draft rule
3 establishes a heat index trigger of 80 degrees, which
4 then require the employee to implement a heat illness
5 prevention plan. The draft proposed rule also requires
6 additional accommodations once the heat index reaches
7 90 degrees.

8 These requirements and proposed regulations create
9 more issues than the ones they seek to remedy. On
10 average, in Oklahoma, 40 percent of the year is spent
11 over 80 degrees Fahrenheit, with an additional 16
12 percent of the year being over 90 degrees Fahrenheit.
13 By setting the initial heat trigger at 80 degrees and
14 the high heat trigger at 90 degrees, this proposed rule
15 would be in effect for approximately on average 200
16 days a year, thus creating a normal working regulation
17 rather than an exception.

18 This will lead to an increase in cost
19 inefficiencies when it's not needed to ensure farm
20 worker safety. Because of this issue, the proposal --
21 the proposed rule is not the least restrictive option
22 to achieve OSHA's goal of reducing heat-related

1 illnesses. The proposed rule also presents unworkable
2 and ambiguous standards that producers must abide by to
3 remain in compliance with OSHA standards.

4 For example, the proposed rule requires areas
5 utilized for 15-minute breaks to be air-conditioned or
6 in a shaded area. Equipment with shade or air-
7 conditioning built in is included within the two-hour
8 limit, requiring an employee to take a mandatory break,
9 even though the employee has been in a shaded area for
10 the duration of the previous two-hour period.

11 Ambiguity such as this one will cost Oklahoma farmers
12 and ranchers time, productivity, and additional money.

13 Another concern with the proposed rule is the
14 different guidance requirements required for indoor and
15 outdoor work settings. When it comes to agricultural
16 operations, there is no clear standard for farmers and
17 ranchers and those in the agricultural processing and
18 production to decide what areas are considered an
19 indoor or outdoor setting. Many producers utilize
20 equipment sheds to store equipment and provide a shaded
21 area to work.

22 Under the discussion contained within the proposed

1 rule, an equipment shed with walls on three sides could
2 be determined to be either an outdoor facility or an
3 indoor facility. Discrepancies like these create
4 uncertain standards employers are expected to follow.
5 Oklahoma farmers and ranchers value their labor force
6 and work hard to ensure compliance with state and
7 federal regulations designed to aid in employee safety.

8 However, the proposed rule, as written, makes
9 compliance nearly impossible. Second, while we agree
10 employers should understand the effects of heat-related
11 illness and the hazards they present, we do not agree a
12 blanket rule is the most effective way to solve heat-
13 related illnesses in the workplace. In 2021, OSHA
14 expanded its ongoing heat-related illness campaign
15 dedicated to education and outreach on potential heat-
16 related illnesses in the workplace.

17 Oklahoma Farm Bureau applauded this educational
18 campaign, but was disappointed when OSHA failed to give
19 employers an opportunity to implement the aspects of
20 the education and outreach campaign. Because of this,
21 OSHA couldn't evaluate its effectiveness and determine
22 if it had a lasting impact on worker safety. Instead,

1 OSHA chose to prematurely issue a proposed rule to
2 address heat-related illnesses.

3 Oklahoma's farmers and ranchers understand the
4 issues that come with hot and humid days, since they
5 are often working alongside their employees. These
6 farmers and ranchers are best positioned to determine
7 what is feasible and what will work for their specific
8 operations, free from government regulation established
9 by individuals that may not understand.

10 OSHA's core mission has been established to assure
11 America's workers have a safe and healthful working
12 conditions by setting and enforcing standards,
13 providing and supporting training, outreach, education,
14 and assistance. While heat-related illnesses are a
15 serious matter in the workplace, we believe that OSHA
16 can continue to fulfill its core mission by providing
17 farmers and ranchers with adequate information and
18 guidance on how to prevent workplace induced heat --
19 heat illnesses without holding all states, industries,
20 and producers to the same standard.

21 We appreciate the agency's willingness to continue
22 to work with the agricultural community to address the

1 concerns the agency has believed it has identified, and
2 we respectfully ask the agency to consider -- to
3 consider the aforementioned comments before the
4 issuance of a final rule in this docket. Again, we
5 appreciate OSHA's willingness to accept testimony on
6 this rule, and I yield for questions.

7 JUDGE HILLEREN-WILKINS: Thank you. Are there any
8 questions from the OSHA panel?

9 MR. SCHAYER: Yes, Your Honor, we do have some
10 questions. I'd like to begin with Zoe Petropoulos.

11 MS. PETROPOULOS: Hi. This is Zoe Petropoulos
12 with the Directorate of Standards and Guidance. You
13 mentioned that the triggers in the proposal don't
14 account for geography. We heard from other witnesses
15 this week that they'd like to see geography based
16 triggers. Do you agree with this approach?

17 MR. JUSTISS: Trace Justiss for Oklahoma Farm
18 Bureau. I believe that approach takes into the
19 discrepancies you see across the United States in terms
20 of climate, and I think it applies the rule more
21 equally across the United States.

22 MS. PETROPOULOS: Thanks. My follow up question

1 on that would be which geographic areas or kind of
2 boundaries would you propose OSHA consider for
3 establishing such triggers, for example, at the county,
4 state or regional level? And if there are any data you
5 think OSHA should rely on to establish those, we would
6 appreciate that input.

7 MR. JUSTISS: Trace Justiss for Oklahoma Farm
8 Bureau. I think at a minimum, in order to equally
9 apply the rule across the United States, you have to be
10 able to at least consider it by state, and possibly not
11 necessarily counties within those states, but for our
12 larger states, regions within those states.

13 MS. PETROPOULOS: Thank you. That's it for me.

14 MR. SCHAYER: Thank you. This is Stephen Schayer
15 again. I'd now like to turn to Bob Blicksilver on the
16 panel in the room.

17 MR. BLICKSILVER: Hi, Bob Blicksilver, OSHA
18 standards and guidance. Just one or two questions
19 about who would be affected within the Oklahoma Farm
20 Bureau or the membership of the Oklahoma Farm Bureau.
21 I think you shared with us that you have 80,000 farming
22 and ranching employers. Did I hear that figure

1 correctly? So 80,000?

2 MR. JUSTISS: Yes.

3 MR. BLICKSILVER: Okay. Approximately how many
4 small farm establishments do you have in the State of
5 Oklahoma? However you wish to define small, the Small
6 Business Administration defines it in terms of revenue
7 by certain size, NAICS code, North American Industry
8 Classification System code in terms of millions of
9 dollars in revenue or however you define it, in terms
10 of number of employees. But you know, in post-hearing
11 comments, if you could share with us your best estimate
12 of the number of small farm establishments in Oklahoma.
13 And then, just as a follow up, how many of those have
14 fewer than ten employees, please?

15 MR. JUSTISS: Yes, I will. I will include --
16 Trace Justiss for Oklahoma Farm Bureau. I will include
17 those in my post testimony comments, just so that I do
18 not provide you with an inaccurate number on that.

19 MR. BLICKSILVER: Okay. Thank you. Bob
20 Blicksilver. Thank you. That's it.

21 MR. SCHAYER: Thank you. This is Stephen Schayer
22 again. Our final question from the OSHA panel will

1 come from Patti Downs.

2 MS. DOWNS: Hi. Patti Downs with the Directorate
3 of Standards and Guidance. We've heard from several
4 commenters that the proposal is unrealistic for the
5 farming and the agricultural industry, including the
6 requirements to monitor heat conditions using heat
7 index sensors and for providing fans and shade. And
8 I'm just wondering if you can tell me, has this been
9 your experience?

10 MR. JUSTISS: So on that -- oh, Trace Justiss,
11 Oklahoma Farm Bureau. I don't have any direct
12 knowledge of that impact to our producers and our
13 members. Most of our members are very diligent about
14 the heat. They'll use heat advisories and heat
15 warnings issued by National Weather Service, and then
16 also providing their employees breaks as needed
17 throughout the workday.

18 MS. DOWNS: Okay. Thank you. Do you know if any
19 of your members are currently using fans at all to cool
20 work areas?

21 MR. JUSTISS: Trace Justiss, Oklahoma Farm Bureau.
22 I would -- I would assume that a large number of our

1 members are using fans, and those I don't have an exact
2 member that comes to mind, but it's also a fairly
3 regular practice to walk into someone's operation,
4 shed, shop, whatever you would like to call it, and
5 there'd be a fan there.

6 MS. DOWNS: Okay. Great. OSHA is interested in
7 learning more about fan use in these sorts of
8 workplaces. So in your post-hearing comments, if you
9 could submit any extra information you have on the use
10 of fans and maybe any of the difficulties that were
11 overcome with their implementation, that would be very
12 helpful. Thank you.

13 MR. SCHAYER: Stephen Schayer again. Thank you,
14 Mr. Justiss for your testimony.

15 Your Honor, that concludes OSHA's questions.

16 JUDGE HILLEREN-WILKINS: Are there any questions
17 on behalf of the Solicitor's Office?

18 MS. WILES: Thank you, Your Honor. Linda Wiles
19 from the Solicitor's Office. I do not have any
20 questions. Thank you, Mr. Justiss, for your time and
21 testimony today.

22 JUDGE HILLEREN-WILKINS: Are there any questions

1 from participants?

2 MS. CARLON: Yes, Your Honor, we have one from Mr.
3 Schneider. Please state your name for the record.

4 MR. SCHNEIDER: Hi, Mr. Justiss. My name is Scott
5 Schneider. I had a question. What exactly do your
6 members do? What do they use to determine whether a
7 hazard exists? Do they take temperature measurements?
8 Do they use the heat index? Do they use WBGT
9 measurements? What are they using?

10 MR. JUSTISS: Trace Justiss, Oklahoma Farm Bureau.
11 So as stated earlier in my testimony, our members are
12 very diligent about the weather. That's what comes
13 with working in agriculture, is you have to know the
14 weather. So the majority of our members are using heat
15 advisories, heat warnings issued through National
16 Weather Service, local weather stations to -- to be
17 aware of those hazards.

18 MR. SCHNEIDER: Okay. So they're not taking
19 measurements themselves or comparing them with -- with
20 any other standards?

21 MR. JUSTISS: I cannot -- Trace Justiss, Oklahoma
22 Farm Bureau. I cannot speak directly to that.

1 Southern states also have Mesonet systems that may give
2 you a better heat measurement wherever you are, because
3 those sensors are located all across the State. But I
4 cannot explicitly answer that.

5 MR. SCHNEIDER: And could you provide evidence to
6 the record after when you post your comments about
7 these -- these heat sensors that are used in the South?

8 MR. JUSTISS: Yes. I will consider putting that
9 in my post comment testimony.

10 MR. SCHNEIDER: Okay. Thanks very much.

11 JUDGE HILLEREN-WILKINS: Are there any further
12 participant questions?

13 MS. CARLON: There are not, Your Honor.

14 JUDGE HILLEREN-WILKINS: That being the case,
15 we'll move on to the next speaker. Thank you very
16 much, sir.

17 MS. CARLON: The next speaker is David Cremins.
18 Please state your name and affiliation for the record.

19 MR. CREMINS: Good afternoon. David Cremins with
20 California Rural Legal Assistance in Fresno,
21 California.

22 JUDGE HILLEREN-WILKINS: You may proceed, sir.

1 MR. CREMINS: Thank you. Submitted written
2 comments jointly with California Rural Legal Assistance
3 Foundation in support of this proposed rule being
4 promulgated as quickly as possible. We stand on those
5 comments and are also in support of many other
6 farmworker and labor advocates who have testified at
7 this week's hearing.

8 I'll focus my comments today on three points,
9 seeking to expand on and supplement some of the
10 information we provided earlier. And I'll reference a
11 few documents which I've not yet been able to submit to
12 the record, but I'm happy to do so after today's
13 hearing.

14 Beginning with shade and water, we believe that in
15 place of the language currently, that shade and water
16 should be readily accessible. That's found in the
17 proposed rule at (e)(3) for shade and (e)(2)(i) for
18 water, that OSHA should adopt the as close as
19 practicable language which is found in the California
20 Regulations and which has also been followed by
21 Colorado, Maryland, and Oregon.

22 We've heard a lot throughout these hearings so far

1 about performance-based standards. We believe as close
2 as practicable is a flexible yet firm performance-based
3 standard, which we have seen play out beneficially in
4 the fields of California, especially here in the
5 Central Valley. A Cal OSHA Appeals Board decision from
6 2018 was able to, for example, evaluate tripping
7 hazards, the length of crop rows, and other factors in
8 determining that water was not placed as close as
9 practicable to workers while shade was in supporting a
10 Cal OSHA citation.

11 We believe requiring employers to move shade and
12 water as practicable throughout the workday and make
13 sure that it's in close proximity to workers is a
14 powerful signal that these rights do not just exist on
15 paper, but are communicated actively to employees that
16 they have the ability to access these life-saving
17 measures.

18 Moving second to the initial heat trigger, the
19 requirement for cool-down breaks. We've heard from
20 several commenters about the difficulty of both
21 enforcing and incentivizing employees to take
22 preventative cool-down breaks at or above 80 degrees.

1 We don't believe any state has quite gotten this
2 exactly right yet, but we do encourage OSHA to look to
3 the examples set by California and Washington and
4 Colorado in particular in providing specific time
5 limits. For example, saying that such breaks should be
6 at least five minutes or at least ten minutes in
7 Colorado, or that workers should be relieved of all
8 duty in Washington while they're recovering from early
9 signs and symptoms of heat-related illness and injury.

10 We also believe that moving the requirement for
11 hazard alert in (f)(4)(ii), which refers to employees'
12 right to take rest breaks at their election to the
13 initial heat trigger section will better accomplish the
14 remedial purpose of this provision and make it more
15 clear what employer's requirement is to allow and
16 encourage preventative heat break rests.

17 Again, a Cal OSHA Standards Board decision from
18 2018 was able to cite effectively when an employee, for
19 example, did not understand that he was permitted to
20 take a cool-down break at any time beyond the required
21 high-heat breaks. And indeed believed that he would be
22 retaliated against and possibly fired for taking breaks

1 beyond those that were mandated for the entire crew.

2 Finally, speaking of the high heat trigger, we
3 strongly support the implementation of graduated rest
4 schedules. These are the gold standard provided by the
5 NIOSH recommended criteria, and they have been
6 recommended as an option in the alternative by
7 Maryland, Oregon, and Washington. The simple thing we
8 must recognize is that work at 90 degrees is not the
9 same as work at a 100 degrees is not the same at work
10 at 110 degrees. That, unfortunately, is increasingly
11 common.

12 Recent research from the Coachella and Imperial
13 Valleys here in California backs the consensus of the
14 scientific evidence that as temperatures increase, as
15 other climatic conditions vary throughout the day and
16 throughout the year, workers need at times up to 30
17 minutes of rest per hour worked during heavy work
18 conditions. We don't expect OSHA to get there with
19 this version of the rule, but support at least
20 following the trend of the states in providing for at
21 least 15 minutes of rest every hour worked once the
22 temperature reaches 100 degrees.

1 Thank you for your consideration, and I welcome
2 any questions.

3 JUDGE HILLEREN-WILKINS: Thank you. Are there any
4 questions from the OSHA panel?

5 MR. SCHAYER: Yes, Your Honor, we do have some
6 questions. I wanted to just follow up on Mr. Cremins
7 on something you mentioned about moving the hazard
8 alert to the initial key trigger from the high-heat
9 trigger. And just curious if you think that may cause,
10 you know, folks to sort of become immune to the
11 warning. You know, if it were happening very -- or to
12 the hazard alert, if it were happening very frequently,
13 or if you had any other suggestions on how we might
14 address that issue if we were to make such a change?

15 MR. CREMINS: I appreciate that question. Yeah.
16 We don't recommend moving the entire hazard alert to
17 the initial heat trigger for the reason you suggested,
18 but at least the section that speaks of a right that is
19 guaranteed at the initial heat trigger to take
20 preventative cool-down breaks as needed, we believe
21 should be incorporated into pre-shift meetings at the
22 initial heat trigger. That would especially be

1 important for workers who often work above 80 degrees,
2 but not often above 90 degrees to have that constant
3 reminder of their right under that section.

4 MR. SCHAYER: Okay. Thank you very much. I
5 appreciate that. I would now like to turn to Tiffany
6 Defoe.

7 MS. DEFOE: Hi. For the record, this is Tiffany
8 DeFoe with the Director of Standards and Guidance,
9 OSHA. You stated that your staff consistently --
10 sorry, referring back to your written comments here,
11 that your staff consistently find that California's
12 rest break provisions are often not followed in
13 agricultural settings.

14 And you've provided some specific suggestions,
15 both in your written comments and today for the text of
16 OSHA proposed regulatory text, which we do appreciate.
17 I'd like to ask if there are any further strategies,
18 either within the text of the rule or in supplementary
19 guidance, that you would suggest could help support
20 compliance with requirements for as-needed breaks if
21 OSHA moves forward with finalizing that part of the
22 rule?

1 MR. CREMINS: Thank you for the question and for
2 the audience in preparing those written comments. I
3 did speak with community workers and attorneys that
4 have been on the ground looking at or observing
5 agricultural work sites for -- for 20 years for
6 compliance, and enforcement does remain a big issue,
7 although we think, on balance, we've seen huge
8 improvements in the fields here in California, both in
9 cosmetic compliance and in workers' experience under
10 the rules.

11 I'll consider further if we have anything to
12 supplement beyond what we said on our written comments
13 there. Except that, you know, as is well known in far
14 flung and rural areas, enforcement is both a huge
15 challenge and key to protecting workers.

16 MS. DEFOE: Thank you. And I would add that to
17 the extent that you've observed improvements, like
18 anything you can provide about the reasons for those
19 improvements that we could benefit from would be really
20 appreciated.

21 MR. CREMINS: I'll say, just for now, that
22 partnering with community-based organizations and

1 nonprofit legal firms such as ourselves has led to
2 marked improvements in areas where the state does not
3 have resources to be out in the fields, but trusts the
4 reports coming in from partners to investigate when
5 necessary.

6 MS. DEFOE: And my last question, so the
7 information that your written comments mentioned about
8 your staff observing that worker requested rest breaks
9 are discouraged or disallowed in some cases; is any of
10 this information documented in a form that could be
11 submitted to the record and post-hearing comments?

12 MR. CREMINS: I was considering that. I mean, we
13 have gone through our records extensively. We don't
14 yet have it compiled in a form that I think we would be
15 able to share outside of our organization. But I'll
16 follow up on that because we certainly have seen, and
17 in some cases, litigated cases where folks were
18 discouraged from exercising their rights under the
19 California heat standards.

20 MS. DEFOE: Thank you very much. That's all I
21 have.

22 MR. SCHAYER: Thank you. This is Stephen Schayer

1 again. I'd like to turn to Bob Blicksilver.

2 MR. BLICKSILVER: Hi, Bob Blicksilver, OSHA
3 Standards and Guidance. In your written comments this
4 is -- this is a quote that you've "witnessed firsthand
5 how the California heat rules have benefited millions
6 of workers across the state, especially those in the
7 world's most productive agricultural region,
8 California's Central Valley".

9 And continuing the quote, "All is not perfect out
10 West, however, violations of workers' heat protection
11 rights are still commonplace and workers continue to
12 get injured, fall ill, and die as a result", end of
13 quote. So my question, based on your knowledge or
14 experience, what percentage of employers are not
15 complying with the California State standard? And you
16 can supplement your comments now with post comments and
17 I'll pause there.

18 MR. CREMINS: Thank you for the question. To
19 clarify, I have not personally myself witnessed all of
20 that, but I am relying on the accumulative experiences
21 of our organizations. I don't know if we'll be able to
22 get a firm answer there. We can point to the Cal-OSHA

1 citation statistics, which are rather high level, that
2 show that 3395 of our Title 8 Code of Regulations
3 remains one of the most consistently cited standards.
4 That's the outdoor standard. And we'll see what
5 happens with our indoor heat standard, 3396, which went
6 into effect just this last summer.

7 MR. BLICKSILVER: Thank you. Bob Blicksilver,
8 OSHA, just continue on with -- with that question, that
9 theme of compliance with the California State standard,
10 what types of compliance challenges are you finding
11 with the implementation of the California State
12 standard? And as I mentioned earlier, you can add --
13 add on to your present comments with post comments,
14 please.

15 MR. CREMINS: As a general matter, the threat of
16 retaliation, I think, overlays everything, especially
17 during times of increased immigration enforcement.
18 From our perspective, some of the more difficult
19 aspects of the rule to ensure compliance with are the
20 training requirements and basically anything that
21 happens that's not directly observable out in the
22 fields.

1 MR. BLICKSILVER: Thank you. That's all I have.

2 MR. SCHAYER: Okay. Your Honor, that concludes
3 the questions from OSHA. Thank you to Mr. Cremins for
4 your testimony.

5 MR. CREMINS: Thank you.

6 JUDGE HILLEREN-WILKINS: Are there any questions
7 on behalf of the Solicitor's Office?

8 MS. WILES: Thank you, Your Honor. Linda Wiles
9 for the Solicitor's Office. I do not have any
10 questions. Thank you, Mr. Cremins, for your kind
11 testimony.

12 MR. CREMINS: Thank you.

13 JUDGE HILLEREN-WILKINS: And are there any
14 questions from participants?

15 MR. SCHAYER: They're not, Your Honor.

16 JUDGE HILLEREN-WILKINS: All right. Thank you
17 very much, sir, for your testimony today. We'll move
18 on to the next speaker.

19 Mariam, if you could please announce?

20 MS. CARLON: The next speaker group is Farmworker
21 Justice and Migrant Clinicians Network, represented by
22 both Alexis Guild and Amy Liebman. Please state your

1 name and affiliation as you transition throughout your
2 testimonies.

3 JUDGE HILLEREN-WILKINS: Ma'am, you may be on
4 mute. We're unable to hear you.

5 MS. GUILD: Can you hear me now?

6 JUDGE HILLEREN-WILKINS: We can --

7 MS. GUILD: Perfect. My name is Alexis Guild, and
8 I am the Vice President of Strategy and Programs at
9 Farmworker Justice. And I am joined by my colleague
10 Amy Liebman at Migrant Clinicians Network. And thank
11 you for providing us the opportunity to speak today.
12 Farmworker Justice is a national organization that aims
13 to empower farmworkers and their families to improve
14 their living and working conditions, including their
15 occupational safety and health.

16 We work with organizations across the country,
17 including community-based organizations and legal
18 services organizations. Farmworker Justice and Migrant
19 Clinicians Network jointly submitted comments on the
20 proposed heat regulation promulgated by OSHA in 2024.
21 Our comments, which were cosigned by 20 organizations,
22 detailed the urgent need for a federal heat standard to

1 ensure farmworkers are able to work safely as extreme
2 heat days become more frequent. It is estimated that
3 agriculture has 35 times the risk of heat-related death
4 compared to other industries. Yet heat illness is
5 highly preventable, and there are many reasons why
6 agriculture is so vulnerable to heat illness and
7 injury. But most notably, farmworkers lack control
8 over their working conditions, and it is this lack of
9 control that makes it so important for regulation to be
10 put in place.

11 Now, currently, OSHA's primary option to remedy
12 heat illness and injury in the workplace is the general
13 duty clause. The general duty clause requires that
14 employers provide a workplace free from recognized
15 hazards that are causing, or likely to cause, death or
16 serious physical harm to employees. However, the
17 general duty clause is reactive rather than proactive.
18 The Occupational Safety and Health Review Commission
19 interpreted the general duty clause to require OSHA to
20 meet a high evidentiary burden to prove a violation.

21 Due to the high burden of proof, as well as the
22 legal ambiguity of the definition of a hazard, general

1 duty clause violations are among the citations most
2 commonly challenged in court. The general duty clause
3 alone is insufficient to preemptively protect workers
4 from heat-related injury, and the high standard of
5 proof often means no remedy even after a disaster.
6 Therefore, a proactive approach is crucial to ensure
7 that farmworkers and others have the protections in
8 place to prevent heat-related illness. And the
9 comments we submitted in January detail our
10 recommendations for a strong enforceable standard, but
11 we just wanted to take this time to highlight some
12 important considerations as OSHA moves forward. Though
13 not covered in the proposed rule, it is important,
14 especially for migratory workers, that the regulation
15 covers employer-provided housing.

16 H-2A employers are required to provide housing to
17 H-2A workers and U.S. migratory workers in
18 corresponding employment. The H-2A program has more
19 than doubled in the last decade and continues to grow
20 year after year. H-2A workers have little control over
21 their housing, which often lack access to air-
22 conditioning or other filtered air.

1 Oregon recognizes hazard and extended heat
2 protections, agricultural labor, housing. Employers
3 who are responsible to protect workers from heat on the
4 job should also be responsible for protecting workers
5 in housing that they provide and maintain. I also want
6 to note the importance of strong retaliation
7 protections, which are crucial to ensure effective
8 enforcement.

9 OSHA cannot rely solely on its inspectors to
10 compliance with regulations. Workers must be empowered
11 to assert their rights. As discussed by other
12 speakers, retaliation in agriculture is pervasive and
13 well-documented.

14 Our partners regularly share incidents of workers
15 who were fired or blacklisted or threatened for
16 asserting their rights. Strong and enforceable
17 protections is an effective means to protecting
18 affected workers when they seek their rights over and
19 above other protections that may be otherwise available
20 to them. And I will now turn it over to Amy Liebman.

21 MS. LIEBMAN: Thank you, Alexis. Can you hear me
22 okay?

1 JUDGE HILLEREN-WILKINS: Yes, we can.

2 MS. LIEBMAN: Great. Thank you for the
3 opportunity to speak today. My name is Amy Liebman,
4 and I'm the Chief Program Officer at Migrant Clinicians
5 Network. We're a national organization working with
6 clinicians serving farmworkers, farmworker families, as
7 well as other underserved populations.

8 Since our inception in 1984, we have been calling
9 for worker protections to prevent heat-related illness.
10 I want to begin by highlighting a topic that's been
11 repeated throughout the day, the importance of
12 acclimatization and the significant risk of heat
13 illness for new workers. OSHA has told us that nearly
14 half of all heat-related deaths happen on a worker's
15 first day on the job or the worker's first day back
16 after an extended absence, and that more than 70
17 percent occur within the first week.

18 These are our unacclimatized workers. They're
19 workers whose bodies haven't had a chance to gradually
20 adjust to the heat or the workload, and they are the
21 most vulnerable. That is why acclimatization is
22 essential to any type of heat protections, and without

1 a gradual ramp-up period, we're putting workers at
2 risk.

3 So, what should that look like? At a minimum, it
4 needs to include full compliance with the high heat
5 trigger requirements outlined in the proposed rule and
6 a schedule that gradually increases the workload over
7 time so the body can safely adjust. It is important to
8 note that workload intensifies heat risk. Physical
9 effort generates metabolic heat and compounding
10 environmental heat stress.

11 We want to echo the recommendations from the
12 American College of Occupational and Environmental
13 Medicine, and that is all returning workers should
14 follow the same acclimatization schedule as new
15 workers. Employers need to make acclimatization a
16 priority for both new workers as well as those that are
17 returning.

18 Another point I'd like to make is that we can't
19 ignore the human dynamics at play. New or returning
20 workers, especially those with uncertain immigration
21 status, may feel pressure to prove themselves. They
22 may push too hard, too fast, or out of fear of simply

1 losing their job.

2 There are also particular risks for temporary
3 workers, especially those here in the U.S. on H-2A
4 visas. These workers are concentrated in some of the
5 hottest regions of the country, states like Arizona,
6 Georgia, New Mexico, and Texas. Then it is in those
7 states that over a quarter of H-2A workers are required
8 to work during the months when temperatures regularly
9 exceed 90 degrees Fahrenheit. And because a worker
10 might be coming from a southern country as part of
11 those visas, it doesn't mean that they're acclimatized.
12 Some of those areas are actually cooler than the places
13 where they're going.

14 And another point that's really important when
15 we're thinking about our farm workers in particular is
16 that many of these workers are hired through labor
17 contractors. OSHA must clarify that it is the
18 employer, not the labor contractor, who is ultimately
19 responsible for the heat regulation.

20 Employers must ensure that workers are properly
21 trained and that acclimatization protocols are
22 followed. The proposed rule points out the importance

1 of a buddy system at the suggested high heat trigger.
2 We recommend expanding when a buddy system should be
3 required. A buddy system should be mandatory for
4 unacclimatized workers and workers laboring in high
5 heat, which should include the initial heat trigger of
6 80 degrees. Workers laboring alone in high heat
7 environments do not have other workers to observe for
8 signs and symptoms, or they may not be able to call for
9 help as they may be experiencing confusion or
10 disorientation as a result of the heat.

11 I would be remiss if I did not underscore the
12 importance of the need for enhanced protections for
13 children, elderly, and pregnant workers who have
14 enhanced vulnerabilities to heat-related illness and
15 injury.

16 In 2008, Maria Isabel Vasquez Jimenez, she was
17 just 17 years old and pregnant, died of heat stroke
18 while working in the vineyards of California.

19 Agriculture includes both young and elderly workers as
20 well. In some cases, children as young as 12 can work
21 in agriculture.

22 The proposed regulation does not provide any

1 enhanced protections for these workers, and we
2 encourage OSHA to specify protections that include a
3 lower heat trigger and additional mandatory rest
4 breaks.

5 The comments that Migrant Clinicians Network and
6 Farmworker Justice submitted in January detail our
7 recommendations for a strong, enforceable standard.
8 Both of our organizations have been advocating for
9 these important protections for over four decades. And
10 I want to -- before I conclude, I also want to echo
11 some of the comments that we heard about OSHA and the
12 local emphasis program in dairies that was carried out
13 in the 2010s in Wisconsin and New York.

14 The LEP was an important, enforceable effort that
15 brought producers, workers, OSHA personnel, and health
16 and safety professionals together to make farms safer.
17 Workers were provided stronger protections as a result,
18 and like the LEP, we believe an enforceable heat
19 standard will help protect workers in agriculture and
20 other industries.

21 No worker, including the workers that put food on
22 our tables, should have to die as a result of the heat.

1 Bottom line, heat illness is preventable, and most
2 importantly, deaths caused by heat are preventable.
3 That concludes our testimony.

4 JUDGE HILLEREN-WILKINS: Thank you. And we'll
5 move into questions now. I do want to remind both of
6 you that since there are two individuals in the
7 speaking group that may be potentially answering
8 questions, to please state your name before you answer
9 each question. Thank you. Are there any questions
10 from the OSHA panel?

11 MR. SCHAYER: Yes, Your Honor, we do have some
12 questions. This is Stephen Schayer from Director of
13 Standards and Guidance. Thank you for your written
14 comments. I wanted to follow up on some things that
15 you said about rest breaks. So in the written
16 comments, you said that OSHA should require mandatory
17 rest breaks at the initial heat trigger in addition to
18 the high heat trigger. Conversely, as you may have
19 heard, we've heard testimony that OSHA should remove
20 the requirement for mandated rest breaks and only
21 require employers to provide rest breaks if needed. So
22 could you talk a bit about why you think mandatory rest

1 breaks are necessary and why you think rest breaks, if
2 needed, are not sufficient?

3 MS. LIEBMAN: You can answer that, Alexis.

4 MS. GUILD: Yes, Alexis Guild from Worker Justice.
5 So the reason why mandatory rest breaks are important
6 is because workers -- as has been detailed by other
7 speakers, workers won't take a rest break if they're
8 not required to take a rest break, and that is because
9 of retaliation, because workers lack control over their
10 working conditions. So in order to ensure that workers
11 are actually taking the rest breaks needed in order to
12 be able to prevent heat injury and illness, a mandatory
13 rest break is necessary.

14 MR. SCHAYER: Okay, thank you. Now I'd like to
15 turn to Zoe Petropoulos.

16 MS. PETROPOULOS: Hi, Zoe Petropoulos with the
17 Director of Standards and Guidance. I have a couple
18 questions. The first, OSHA has received comments
19 suggesting that certain employees, such as seasonal and
20 temporary workers, may not report heat-related injuries
21 and illnesses that they experience to their employers.
22 Do you agree that there are instances of workers not

1 reporting these injuries and illnesses to their
2 employer?

3 MS. GUILD: Alexis Guild from Farmworker Justice.
4 Yes, I do agree that workers are not reporting their
5 injuries and illnesses, and I think there are many
6 reasons for that. Of course, fear of retaliation is a
7 huge issue, but also they may not be aware of where to
8 go to in order to access medical care. They may not
9 know about the local health center. They may not know
10 about local resources available to them. They may not
11 have access to transportation. Farmworkers lack sick
12 leave, so they're not able to take time off when they
13 are sick. So, workers are disincentivized from
14 reporting, from seeking medical care, unless it's an
15 injury or illness that is near fatal or at a serious
16 condition.

17 MS. PETROPOULOS: Thank you. And just following
18 up, if you have any data or documentation of this kind
19 of phenomenon of a non-reporting or not knowing where
20 to go, if you could share that in the docket, we would
21 appreciate that.

22 My second question, your written comment mentioned

1 the recently developed AIHA app for determining wet
2 bulb globe temperature at worksites. My question is,
3 are you aware of any research or data validating the
4 values derived from that app, particularly the inputs
5 that need to be provided by the user? And if you are
6 aware of such data, could you share those in your post-
7 hearing comments?

8 MS. LIEBMAN: Yeah, we'll take a look at that and
9 respond in the post-hearing comments. Thank you so
10 much.

11 JUDGE HILLEREN-WILKINS: Please state your name,
12 ma'am.

13 MS. LIEBMAN: Sorry, Amy Liebman.

14 MS. PETROPOULOS: That's it for me. Thank you.

15 MR. SCHAYER: Okay, thank you. This is Stephen
16 Schayer again. We'd now like to turn to Jason Hammer.

17 MR. HAMMER: Hi, Jason Hammer with the Director of
18 Standards and Guidance. Thank you both for your
19 testimony. I have two questions related to our
20 proposed scope exemptions. So, in your written
21 comment, you referred to the various types of work
22 areas for farmworkers and how they may not be easily

1 classifiable as indoor or outdoor. So, can you talk
2 more about these different indoor settings and the
3 types of ventilation, airflow, and other cooling
4 properties that may be in those work areas?

5 MS. GUILD: Absolutely. Alexis Guild, Farmworker
6 Justice, and we can respond more thoroughly in our
7 post-hearing comment, but as you mentioned in our
8 comments, one example is fernery workers and nursery
9 workers, and this was discussed earlier when WeCount!
10 spoke.

11 Fernery workers and nursery workers sometimes work
12 in sheds or in localities that have covering but may
13 not necessarily be considered indoor, nor may it
14 necessarily be considered outdoor. But we can provide
15 more information on that in our post-hearing comments.

16 MR. HAMMER: Thank you. And just another question
17 on that topic. Are you aware of any instances of
18 farmworkers who perform sedentary work indoors
19 experiencing heat-related illnesses or injuries? And
20 if so, it would be very helpful if you can share any of
21 that data in your post-hearing comments.

22 MS. GUILD: This is Alexis Guild. I am not aware.

1 We would have to look into that.

2 MR. HAMMER: Thank you. That's it for me, Steve.

3 MR. SCHAYER: Okay, Stephen Schayer, again. Our
4 final question will come from Lisa Long in the room
5 here.

6 MS. LONG: Hi. I'm Lisa Long with OSHA's
7 Directorate of Standards and Guidance, and my question
8 has to do with whistleblower and anti-retaliation
9 protections. So, you've mentioned in your comments
10 that OSHA should develop an enforceable provision that
11 prohibits employers from retaliating against workers
12 who assert their rights under this rule.

13 Section 11(c) of the Occupational Safety and
14 Health Act makes it illegal to, "discharge or in any
15 manner discriminate against any employee because such
16 employee has filed any complaint or instituted or
17 caused to be instituted any proceeding under or related
18 to this Act." What type of anti-retaliation provision
19 beyond this would you suggest for this specific rule?

20 MS. GUILD: Alexis Guild, Farmworker Justice. I
21 do think it's important. Well, yes, you know, that
22 does exist. But, you know, workers may not be aware as

1 it pertains to this particular standard.

2 So, I think reinforcing the fact that there are
3 whistleblower protections within the standard, that
4 workers have rights specifically related to heat, I
5 think is very important because, again, as has been
6 discussed multiple times today, retaliation is
7 pervasive and real in agriculture. Workers are often
8 unlikely to assert their rights, even knowing there are
9 whistleblower protections. There are so many things
10 that they can lose, so many ways that workers can be
11 retaliated against, and that includes blacklisting. It
12 includes, you know, more hazardous work for those with
13 H-2A or who perhaps may not have legal status. That can
14 even turn to potentially going to ICE. And so, there
15 are a lot of different ways. And so, I think having
16 strong whistleblower protections in all regulations is
17 extremely important.

18 MS. LIEBMAN: And this is Amy Liebman. I just
19 want to add to that that it will be important to make
20 sure that this component will be included in any
21 training surrounding this rule so that I think having
22 it in the rule and reiterated in the rule and also

1 required to be in the training will be very important.

2 MS. LONG: Thank you.

3 MR. SCHAYER: Okay. This is Stephen Schayer
4 again. Thank you, Ms. Liebman and Ms. Gill, for your
5 testimony. And to your honor, that concludes the
6 questions from OSHA. Thank you.

7 JUDGE HILLEREN-WILKINS: Are there any questions
8 on behalf of the Solicitor's Office?

9 MS. WILES: Thank you, your honor. Linda Wiles,
10 the Solicitor's Office. I don't have any questions.
11 Thank you so much for your testimony and your time
12 today.

13 JUDGE HILLEREN-WILKINS: Are there any questions
14 from participants?

15 MS. CARLON: Yes, Your Honor. The first is from
16 Mr. Barab. Please state your name for the record.

17 MR. BARAB: Yeah, my name is Jordan Barab, B-A-R-
18 A-B. Thanks for your testimony. It was very
19 interesting. I think very helpful. A couple of
20 questions here. From your experience, have you found
21 that workers who come from countries with hotter
22 climates are naturally more resistant to the effects of

1 heat or that they're pre-acclimatized?

2 MS. LIEBMAN: I'll take that one. This is Amy
3 Liebman. That's a great question, and I think it's
4 really important to think about this in a much bigger
5 way. First of all, workers that are coming from
6 another country are not necessarily acclimatized, and
7 we don't know specifically what country or what part of
8 what country a worker is coming from, and so that needs
9 to be part of an understanding of what's happening.

10 But regardless, let's say coming from a hotter
11 place. We don't know how much time it takes for them
12 to travel to their new place of work. They may not be
13 acclimatized. It's very similar to sports, for
14 instance. Like my kids can be at home all summer long
15 in a high heat and the sports start up in the fall and
16 they have to acclimatize regardless of the fact that
17 they've been in this high heat setting.

18 So workers, I want to underscore that we do not --
19 we can't assume that because they're coming from a
20 country south of the border that they're coming from a
21 hotter climate or maybe used to the climate or maybe
22 used to the workload. That's the other piece. As a

1 worker works in heat, that's a very different process.
2 So getting used to the workload -- getting used to the
3 workload in a heat setting is really important.

4 MR. BARAB: Thanks. And I would assume that would
5 be the same answer about, you know, workers who may be
6 in hotter states than cooler states; is that correct?

7 JUDGE HILLEREN-WILKINS: You can answer verbally,
8 thank you, Ma'am.

9 MS. LIEBMAN: Yes.

10 MR. BARAB: Jordan Barab again. Several employer
11 groups have testified that labor shortages are forcing
12 employers to better protect their employees from the
13 effects of heat. Do you find this observation to be
14 accurate?

15 MS. GUILD: Alexis Guild, Farmworker Justice.
16 There are employers who do, you know, want to do well
17 by their workers. And that's been evidenced today and,
18 you know, across the country, even employers who are
19 not in states who have regulations. However, yes,
20 there is a labor shortage.

21 Yes, you know, there are employers who do well by
22 their workers, but unfortunately, there are many

1 employers who don't, and there's still this power
2 dynamic, and so workers may not necessarily assert
3 their rights. They may not feel empowered to speak up
4 about the need for a rest break for all the reasons
5 that have been discussed today throughout the various
6 speakers.

7 So I think that, you know, there are many ways to
8 enhance your workforce, and I think ensuring that there
9 are strong protections because farmworkers lack control
10 over their working conditions.

11 MR. BARAB: Thank you. One more question. Jordan
12 Barab again. Do you think that workers' compensation
13 claims or reports are an accurate measure of the rate
14 of heat-related illness?

15 MS. LIEBMAN: I'll take that one, and we'll
16 respond in more depth in our post-hearing comments. But
17 workers' compensation, particularly for agricultural
18 workers, is, you know, haphazardly applied across
19 different states. So some workers may not even qualify
20 for workers' compensation. There's a long history of
21 exceptionalism, particularly for agricultural workers,
22 and not all of them have access to workers'

1 compensation insurance. So we're missing a big chunk
2 of workers simply by how workers are excluded in many
3 states from workers' compensation. And then that said,
4 all of the comments that have mentioned some of the
5 challenges about reporting.

6 So to get into the workers' compensation, you're
7 going to need to report to your employer. You're going
8 to need to probably have a visit with a medical care
9 provider. You're going to have to have a certain level
10 of illness. And you know, workers are going to be
11 reluctant to try to access workers' compensation when
12 really what they're trying to do is to work, get money,
13 to put food on their table, and support their families.

14 MR. BARAB: Thank you.

15 JUDGE HILLEREN-WILKINS: Please state your name
16 for the record, ma'am.

17 MS. LIEBMAN: Sorry. I keep forgetting. This is
18 Amy Liebman.

19 MR. BARAB: All right, thank you.

20 JUDGE HILLEREN-WILKINS: All right. Are there any
21 further participant questions?

22 MS. CARLON: Yes, Your Honor. We have two more.

1 The next one is Ms. Shrestha. Please state your name
2 for the record.

3 MS. SHRESTHA: Hello. This is Ayusha Shrestha
4 from the AFL-CIO. This is a question more directed
5 towards Amy, but obviously I welcome answers from both
6 participants.

7 You mentioned that the dairy farm industry -- you
8 mentioned the dairy farm industry local emphasis
9 programs. We heard this morning from the dairy
10 industry that complying with OSHA enforcements and
11 standards is too much of a burden, but that all of that
12 is -- all that is needed is more training. But OSHA's
13 local emphasis programs are targeted inspection
14 programs. So can you speak to how the industry adapted
15 and complied with this emphasis program and the
16 differences you saw before the LEP and after the LEP?

17 MS. LIEBMAN: Yeah. This is Amy Liebman, and
18 absolutely. I mean, the local emphasis program was a
19 really important effort by OSHA to protect dairy
20 workers. And what I observed, and I had the
21 opportunity, I was on the ground with producers, with
22 workers, with OSHA. And really what we saw was that

1 the dairy producers in Wisconsin, when the LEP came
2 out, was that they really wanted to understand what was
3 required to make their farms safer. And they were very
4 willing to have their workers trained. They were
5 really very willing to have consultants come in and
6 look at their farms.

7 And so just like the gentleman earlier talked
8 about, when the LEP came to New York, it brought
9 together producers, health and safety experts, and they
10 began to think about what are the hazards that are
11 facing workers. So it was a very powerful and
12 important tool. And one of the challenges in
13 agriculture in particular, and I mentioned this briefly
14 when I was responding to Mr. Barab, is that there's
15 been a long history of exclusion of agricultural
16 workers from protections that are afforded to other
17 workers. So the agricultural industry is not as
18 accustomed as other industries to addressing some of
19 these basic standards.

20 So the fact that the LEP I think was very
21 successful -- I will submit a peer reviewed journal
22 article as part of our post-hearing comments that

1 outlines some of the benefits of the LEP program, shows
2 you the power of this program in agriculture. And I
3 think this -- I'm very confident that something very
4 similar can happen in agriculture with the
5 implementation of a rule that is being proposed to
6 protect workers from heat.

7 MS. SHRESTHA: Thank you so much. This is Ayusha
8 Shrestha, AFL-CIO again. We've also heard how workers
9 who already live in hot climates don't need
10 acclimatization to hot (indiscernible) environments a
11 lot today. So are there any differences you see
12 between living in a hot area and working in a hot
13 industry? You mentioned this a bit earlier. I wanted
14 to know if you could further comment.

15 MS. LIEBMAN: Yeah, this is Amy Liebman. Yeah, so
16 I think that we really need to think about what it
17 means to work, right? And so if you are in a hot
18 climate and you aren't working, and you go to a new
19 climate that's hot and you are working, you are going
20 to need to acclimatize. So it doesn't really matter
21 where you're coming from, quite frankly.

22 However, if -- and also we don't know what's --

1 like, people are saying, oh, they came from Texas and
2 they went to New York. What was the travel time? How
3 long were they not working? Do they need to readjust
4 to the heat? So no assumptions can be made. And I
5 think it would be naive to make those assumptions to
6 say that because a worker comes from a hot climate,
7 they're a-okay to work in a hot climate. A lot depends
8 particularly about how the worker is responding to the
9 workload.

10 So there's lots of things going on. It's not just
11 hanging out in heat. It's working in heat and getting
12 acclimatized to that work.

13 MS. SHRESTHA: Thank you very much.

14 JUDGE HILLEREN-WILKINS: And the final question
15 from a participant?

16 MS. CARLON: Mr. Schneider.

17 MR. SCHNEIDER: Hi, my name is Scott Schneider.
18 And my question is, farmworkers are working outdoors in
19 direct sunlight, and they have really hard jobs. And
20 I'm wondering the OSHA standard, the proposal doesn't
21 really deal explicitly with the added risk from direct
22 sunlight, from radiant heat, or the workload that adds

1 to your risk. And I'm wondering if you could comment
2 on that and how OSHA should assess the risk of heat if
3 they're going to really address the hazard
4 comprehensively.

5 MS. LIEBMAN: So this is Amy Liebman. I think
6 we're going to respond to that more deeply in our post-
7 comment hearing, but I think that's some of the
8 difference between the heat triggers and the wet-bulb-
9 globe temperature. And so there are a number of
10 environmental conditions that need to be addressed, in
11 particular, you're right, with farmworkers. And so I
12 think those are really important comments to consider,
13 and we'll respond to them a bit more deeply in our
14 post-hearing comments.

15 MR. SCHNEIDER: Okay, thank you very much.

16 JUDGE HILLEREN-WILKINS: Thank you to our speaker
17 group. We appreciate your testimony. And we'll move
18 on to the next speaker group.

19 MS. CARLON: Thank you, Your Honor. Before we
20 move on to the next speaker group, we'll just pause to
21 go over a logistical statement for using
22 interpretation.

1 If you need interpretation during any of our
2 future testimonies, please click the lower-left globe
3 that you see at the bottom left-hand of your Webex
4 window. Once you click on that, you should see a drop-
5 down, and you can select the language channel that you
6 need to hear the interpretation in. So if you need
7 that accessibility at any time throughout the remaining
8 testimonies, please use that selection. You can also
9 use the captioning to the left-hand side of that globe.

10 Moving forward, our next group is Lideres
11 Campesinas, represented by Yuridiana Alvarado, Lizbeth
12 Mastache, and Maria Jazmin Villacana. Please state
13 your name and affiliation for the record as you move
14 throughout your testimony.

15 MS. ALVARADO: Hello, good morning. My name is
16 Lidara Alvarado with Lideres Campesinas, Campesinas
17 Farming.

18 JUDGE HILLEREN-WILKINS: Excuse me one moment,
19 ma'am. First, Mariam, a clarification. Will we be
20 hearing the English translation of the testimony?

21 MS. CARLON: You'll have to -- each person has to
22 enable that on their own end. So by clicking that

1 globe, Judge, you'll be able to switch to the English
2 floor, and then you'll hear those. The interpreters
3 speak in English for you.

4 Okay. Yes, you'll want to -- you can move the
5 dial if you want to have it fully on English on one
6 end, or if you want to hear it with Spanish, you can
7 move the dial depending on how you want to hear the
8 audio levels. So if you want fully English, you can
9 move it all the way to the right. If you want to still
10 hear Spanish, you can keep it in the middle. I'll go
11 ahead and restart the timer.

12 MS. ALVARADO: Thank you. As I was mentioning, we
13 are going to be presenting how the agricultural workers
14 are facing the climate crisis. Next slide, please.
15 Okay. All right. Our mission of Lideres Campesinas, I
16 would like to share it is to strengthen the leadership
17 of farmworkers. So together, we can be the bridge that
18 creates the social changes, economic and political,
19 that ensure our human rights for farmworkers.

20 Next slide, please.

21 Lideres Campesinas is a statewide movement. It
22 was incorporated as a nonprofit in 1997. The first

1 committee of volunteers was organized in the Coachella
2 Valley. Our organization has more than 360 women
3 farmworkers and youth, and 19 organized communities,
4 and we continue to grow with the recent incorporation
5 of the San Benito County.

6 Next slide, please.

7 Following, my colleagues and I will be sharing
8 some of our experience and why it's important to
9 advocate for the farmworkers of California. I began to
10 work in the farm industry at 13-years-old when I was
11 either picking or harvesting chili. It was normal to
12 work in extreme heat. Sometimes we had no water and
13 sometimes we only got it after noon.

14 One time, the temperature went above 105 degree.
15 I started to feel sick, my body shake, and I was dizzy,
16 and I was seeing blurry. I was dehydrated but I was
17 unaware. Suddenly, I saw my colleague faint to the
18 ground. He had fainted because it was so hot. They
19 called the ambulance. He had not drank water at all
20 morning.

21 That day, we lasted six hours with no access to
22 drinking water. This is the first time that I was a

1 witness to somebody fainting, and I was scared. And it
2 was also the first time that I understood how serious
3 it was to be exposed to the heat for our health and
4 life. I understood how fragile our life on the farm
5 is. At that time, I was 17 years old.

6 Now, I work as a outreach worker in the Ventura
7 County. I still hear a lot of stories like mine.
8 There's workers that have no access to water or shade,
9 and they're even reprimanded if they complain or decide
10 to rest because of the extreme heat. The health, the
11 safety, and the life of farmworkers are directly
12 affected due to the disasters of the climate change
13 that we are currently facing.

14 According to some analysis of this -- the BLS
15 injury and illness data statistics, farmworkers are 35
16 more likely to die due to heat exposure, more than any
17 other industry and organization. Lideres Campesinas
18 have supported the diverse and intersectional issues
19 that the farmworkers face, such as unemployment
20 benefits for excluded workers. In 2024, we helped
21 State Senator Steve Padilla advocate for SB 1105, a law
22 that was in place on 1st of January, giving farmworkers

1 the rights to use their sick days during the climate
2 emergencies declared locally or statewide.

3 This allows for payment for sickness, allowing for
4 farmworkers to use their sickness pay to avoid
5 conditions of extreme heat or flooding. The
6 farmworkers deserve protection, respect, and dignity.
7 We need strict vigilance, more serious citations for
8 employers who put us at risk, and laws that are
9 actually complied with, so that they don't leave any of
10 us vulnerable. Nobody should get sick, faint, or die,
11 because they want to go to work. Nobody should be
12 scared to be able to drink water or look for shade to
13 survive through the day.

14 Now, I'm going to pass the word. Thank you so
15 much. Now, I'm going to pass the word to my colleague,
16 Lizbeth Mastache.

17 MS. CARLON: Elizabeth, if you're speaking, you're
18 muted.

19 MS. MASTACHE: Oh. Oh, I'm so sorry.

20 MS. CARLON: There you go.

21 MS. MASTACHE: I'm so sorry. Yeah. My name is
22 Lizbeth Mastache and I have 15 years working in

1 agriculture. I have worked during harvest seasons of
2 peaches, oranges, grapes, mandarins, and lemons. As a
3 farmworker, I have experienced many instances of
4 injustices and situations that have put my health at
5 risk, especially because of the extreme heat. Last
6 year, I ended up in urgent care twice right after
7 leaving work. And I was having headaches, excessive
8 sweating, and muscle cramps.

9 These symptoms were due to extreme heat. I didn't
10 have the opportunity to drink water, and this happens
11 to a lot of workers. They push through so that they
12 can fill up their boxes, to fulfill the hourly
13 contract, and they ignore the symptoms until it is too
14 late. For the necessity that they know that everything
15 is expensive in California, one foregoes drinking
16 water. This means that we would have less boxes filled
17 and less pay and less money for the costs for food and
18 family needs.

19 I have been the crew leader, and I have taken the
20 responsibility very seriously. I make sure to take
21 care of my coworkers, train them, be ready and aware of
22 our surroundings, and if someone feels bad -- but not

1 all crew leaders do this. Many of them, they are not
2 trained -- and more when one is a worker and mentions
3 something and they get mad. We are told that if we
4 don't like what we are seeing, there is the door and we
5 can go.

6 Another problem that we have observed is related
7 to communication barriers. Many of our fellow
8 farmworkers, they don't speak Spanish, they just speak
9 different dialects and most of the trainings are in
10 Spanish, so they don't understand it or - or they are
11 not well-informed. So being well informed can help
12 save lives to our colleagues. And so as a community
13 health worker, we are interested in the safety and
14 health of our work colleagues, and they are afraid to
15 lose their jobs or suffer problems because when the
16 silence is - is imposed because of the need and because
17 they are afraid to report. I firmly believe that there
18 needs to be stricter regulations. So the regulations
19 that are currently valid are not enough and the
20 punishments are not enough either. It's urgent. All
21 of the agricultural workers should have clear and
22 accessible training, in their language that they can

1 understand. With surprise and routine inspections, do
2 all farmworkers receive clear and accessible training?
3 No, they don't, and they - they don't understand their
4 rights, and they -- they cannot take water, and they
5 don't have access to shade and rest without fear of
6 losing their job. The inspections should be surprise,
7 routine, and not announced. This includes severe
8 punishment for those who do -- for the employers who do
9 not comply with the rules.

10 The symbolic fines are not enough. In many cases,
11 they know. They have information of when OSHA is
12 coming, when inspections are happening. On those days,
13 we do have shade, cool water, and rest breaks, and most
14 of all, clean bathrooms. Just to show in the moment
15 that everything is fine. Sometimes the supervisors
16 just press us so we can (unintelligible). We are not
17 able to lose our work. We are human beings, we are
18 essential workers, and we help maintain the economy of
19 California and the rest of the country, and we deserve
20 respect and protections always. Thank you very much.

21 And now, I will pass the word to my colleague,
22 Maria Jazmin.

1 MS. VILLICANA: Good afternoon. My name is Maria
2 Jazmin Villicana. I am of the committee of those
3 working with the agriculture area and I've been working
4 in the field for four years specifically in garden
5 hoeing and harvesting sweet potato. While I have not
6 personally witnessed a heat stroke, I have seen how
7 these high temperatures affect different people in the
8 field. Sometimes we work eight hours under extreme
9 heat without shade or a place where we can rest, and
10 without enough rest. Sometimes when the rest is given
11 when we are in the middle of the field, we just sit
12 down in the soil without any shade or protection
13 against the sun.

14 We receive training every eight days about
15 our rights like our access to -- to water, shade, and
16 rest, but after that, many of the employers, they do
17 not apply what is being taught. The rules are there,
18 but they are not being complied with. In one location,
19 one of my colleagues wasn't feeling well because of the
20 heat. Her coworkers took her to the shade and when she
21 recovered, she decided to go to her house. After that
22 case, the crew lead was let go because she did not take

1 the proper precautions to prevent this type of
2 situation.

3 I believe that that's an example when the rules
4 are taken seriously, it -- it really shows that the --
5 the employers are really taking care of their employees
6 and they can have consequences if they don't take care
7 of them. When they just report the non-compliances
8 like the one that my colleague Liz commented on, most
9 of the cases, the agricultural workers like me, we feel
10 that we are required to continue working without rest
11 because we are afraid to lose our job.

12 We feel constant pressure where if we take many
13 breaks, to rest or drink water or rest, they can
14 dismiss you as a consequence. Many people push through
15 the heat and don't listen to their body for fear of
16 being let go. The temperatures are very high and we
17 need to work in order to be able to -- to provide for
18 our families. One of the biggest precautions that we
19 have with these high temperatures is that we put our
20 life at risk for such a low salary which is not even
21 enough to -- to pay for urgent medical care
22 consultation.

1 Rules that I believe that if - the employer should
2 be required to -- the plans to evaluate and control the
3 risk for the heat in their workplace. And the first,
4 it would be to have more frequent visits to the fields
5 to make sure that the supervisors are doing their job
6 and complying with the regulations. Number two, to be
7 given first aid classes to all employers and
8 supervisors as well so they know how to react in case
9 of an emergency.

10 Number three, it should be required for every
11 employer or supervisor to have an action plan ready in
12 case that somebody is not feeling well because of the
13 heat. Thank you very much for the time.

14 And I passed the word to my colleague, Yuridiana.

15 MS. ALVARADO: Thank you.

16 Would you please go and move to the next slide?

17 So as a wrap up, as California continues
18 experimenting climate phenomena, the agriculture
19 workers should be informed and take proactive measures
20 to guarantee their safety, and preparation during times
21 of extreme heat. So the work of Lideres Campesinas is
22 key and essential as they are messengers of trust with

1 the community as collaborators with clinics and
2 agencies to help navigate resources and to respond to
3 the different needs of the agricultural workers to - as
4 summer approaches and extreme heat threatens the health
5 of farmworkers, our committees work to create
6 conscience and awareness and inform the agricultural
7 community about their rights and refer them to
8 different agencies that can help them when their rights
9 have been violated.

10 Next slide, please.

11 Well, so this is our contact information and -- if
12 you would like to contact us. Thank you very much.

13 JUDGE HILLEREN-WILKINS: Thank you. I will now
14 ask whether anyone has a question? If there are
15 questions, please state your name every time you answer
16 a question so that it is clear for the record who is
17 speaking.

18 Are there any questions from the OSHA panel?

19 MR. SCHAYER: Yes, Your Honor. This is Stephen
20 Schayer. We do have some questions.

21 I'd like to turn to Eduardo Hernandez.

22 MR. HERNANDEZ: Hi, Eduardo Hernandez, Directorate

1 of Standards and Guidance. And as a reminder, if
2 you -- you're more than welcome to answer these --
3 the -- your responses in post-hearing comments if you
4 need more time. So my first question is, we were
5 curious if you have any experience with the buddy
6 system at work, and how often are you checking in with
7 each other if you do? And how far away are you from
8 each other, and, you know, what's working and what
9 could be improved?

10 MS. ALVARADO: Sorry, I -- I -- I wasn't able -- I
11 wasn't able to listen to the question. The
12 interpretation was being cut off.

13 MR. HERNANDEZ: Okay. I'll ask it again. Do you
14 have any experience with a buddy system at work? How
15 often are you checking in with each other? How far
16 away are you from each other, and just, what's working
17 or what could be improved?

18 MS. ALVARADO: So in the past, this is the buddy
19 system. When it is very hot, well, the buddies, like I
20 was mentioned, their experiences -- they are scared to
21 go out to drink water, or take a break, or report
22 symptoms for fear of retaliation, because we depend on

1 that work and sometimes the bosses make us feel like we
2 are just going out to drink water too much. But it's
3 because we need to hydrate. They make us feel like we
4 are doing this repetitively when it is hot. There is a
5 lot of fear in the community in feeling like you can
6 exercise your rights to leave and go drink water.

7 JUDGE HILLEREN-WILKINS: Ma'am --

8 MR. HERNANDEZ: And then, I have --

9 JUDGE HILLEREN-WILKINS: -- please state your name
10 for the record so it's clear.

11 MR. HERNANDEZ: -- Hernandez, Directorate of
12 Standards and Guidance, and I have two additional
13 questions.

14 JUDGE HILLEREN-WILKINS: Hang on one moment, sir.
15 I'm going to have her state her name for the record
16 again so it's clear when she was giving the answer.

17 Madam Interpreter, can you please translate?

18 THE INTERPRETER: Yes.

19 MS. ALVARADO: Yuridiana Alvarado.

20 JUDGE HILLEREN-WILKINS: Thank you.

21 You can go ahead, sir.

22 MR. HERNANDEZ: Okay. Thank you.

1 Again, Eduardo Hernandez, Directorate of Standards
2 and Guidance. I have an additional question on -- on
3 training. Do you have any concerns or issues with
4 online training as an option to comply with any
5 training requirements?

6 MS. ALVARADO: No, I have no problems at all.

7 MR. HERNANDEZ: And that concludes OSHA's
8 questions.

9 JUDGE HILLEREN-WILKINS: Thank you very much.

10 Are there any questions on behalf of the
11 Solicitor's Office?

12 MS. WILES: Yes, Your Honor. Linda Wiles from the
13 Solicitor's Office. Two things. First, I'd like to
14 mark as Exhibit 8, the PowerPoint presentation
15 presented by Lideres Campesinas, and ask that that be
16 entered into the record.

17 JUDGE HILLEREN-WILKINS: Admitted as requested.

18 MS. WILES: Thank you, Your Honor.

19 And the one question that I have for the witnesses
20 is, given your vast experience working on farms, could
21 you help clarify for us the size of the farms that you
22 work on? Were they more than ten employees or were

1 they small farms?

2 MS. ALVARADO: No, so they were -- they were big
3 employers. My experience was with big employers.

4 MS. WILES: Linda Wiles for the Solicitor's
5 Office. Thank you so much.

6 That's it for me.

7 JUDGE HILLEREN-WILKINS: Thank you, Ms. Alvarado.
8 Are there any questions from participants?

9 MS. CARLON: No, Your Honor.

10 JUDGE HILLEREN-WILKINS: That being the case,
11 we'll move on to the next panel of speakers.

12 Thank you very much to this panel.

13 MS. CARLON: The next speaker group is Alianza
14 Nacional de Campesinas and - excuse me - and Grupo
15 Amor, represented by Mily Trevino-Sauceda, Maria
16 Guadalupe Gamino, and Enriqueta Martinez.

17 Please state your name and affiliation for the
18 record.

19 MS. TREVINO-SAUCEDA: Good afternoon. My name is
20 Mily Trevino-Sauceda with -- the Executive Director
21 with Alianza Nacional de Campesinas. Can you hear me?
22 I just --

1 JUDGE HILLEREN-WILKINS: Yes, we can.

2 MS. TREVINO-SAUCEDA: -- want to make sure. Okay.

3 JUDGE HILLEREN-WILKINS: Yes, we can.

4 MS. TREVINO-SAUCEDA: Thank you. Thank you. I --
5 I have two different equipment here to make sure I'm --
6 I'm -- I'm doing my -- my job.

7 As -- what I'd like to say at the beginning is
8 that I'm -- I'm going to give my testimony, but
9 after -- after Enriqueta Martinez and Maria Guadalupe
10 give their testimony, which they are from Grupo Amor.

11 Alianza, the organization -- the national
12 organization, which is called Alianza Nacional de
13 Campesinas. It's -- it's the national organization,
14 the National Alliance of Farmworker Women. We
15 represent 18 member organizations and are present --
16 and we are present in over -- now, over 30 states.
17 We're advocating for farmworker women and girls on the
18 issues of pesticides, work and labor rights, ending
19 violence against women, and immigration reform.

20 Today, we will be sharing -- our testimonies are
21 going to be based on us in support of OSHA finalizing
22 the proposed Heat Injury and Illness Prevention in

1 Outdoor and Indoor Work Settings rulemaking. And I'm
2 going to give my -- right now, the opportunity for
3 Maria Guadalupe to give her first testimony, and after
4 that, it will be Enrriqueta.

5 Thank you.

6 Maria?

7 MS. GAMINO: Okay. Good afternoon. My name is
8 Maria. I am a farmworker in the fields in Florida
9 since 1985. I have worked in the (inaudible),
10 planting and harvesting tomatoes. We worked in
11 nurseries with different plants like Bromelia and
12 different varieties, and vegetables, and tomatoes. My
13 specific job is weeding, planting, and fertilizing.

14 I'm exposed to extreme temperatures and extreme
15 heat regularly. My time while working is from 7 a.m.
16 and no time to exit. It could be 7 a.m. or 7 p.m. It
17 could be at 4 p.m., the time to leave. Sometimes work
18 these hours when there are temperatures up to 102
19 degree with high humidity. At work, they give us a 30-
20 minute lunch break, and two 15-minute breaks. Even
21 when the heat is extreme, they don't give us extra time
22 for rest, to refresh ourselves, or to recover

1 ourselves.

2 Sometimes, of the symptoms relate -- mentioned --
3 injuries that I've experimented due to the high
4 temperature are headache and heart palpitations that
5 are so strong that I feel like throwing up due to the
6 high temperatures. When I drink water -- I get stomach
7 pain due to drinking too much water when it's hot. We
8 wanted -- and OSHA to please require longer rests
9 and -- and additionally, times of rest in days that
10 have extreme temperatures.

11 For example, the days that we have long hours, we
12 should have another additional 15-minute break. And
13 we're also scared of being -- experiencing retaliation
14 at the space -- workspace. I work with a group of
15 around 40 people. People don't say anything because --
16 because of the heat because they feel intimidated or
17 stressed that there are going to be consequences.

18 They also can't just stop working. Not even for a
19 minute because the bosses are moving around next to us
20 in a golf cart. If anybody says anything, they tell
21 us, the doors open. We feel that we are unable to
22 breathe and suggest OSHA to consider how high

1 temperatures, without enough rest, affect the pregnant
2 workers.

3 I suffered from heat stress during my two
4 pregnancies, and I worked up to seven months in the
5 first pregnancy, and up to eight months in my second
6 pregnancy. Some of the symptoms that I experienced
7 when I got sick from the heat during my pregnancy
8 included, shaking in my body and hands, my head, and
9 double vision, weakness, and swollen eyes. In
10 addition, to the high temperatures and the humidity,
11 it's important to consider these factors that
12 contribute to the injuries and sickness caused by heat
13 for our own people who work in nurseries.

14 In our cases, there's houses that have plastic up
15 top -- and plastic on the sides. Right now when it's
16 hot, we go into an area where there is a plant called
17 fasciata -- it has to be hot. They've raised the
18 plastic on one side, but when go in there, it's very
19 stressful. Nobody wants to go in there, and sometimes
20 we have to take up to 2,000 plants. They give us one
21 bottle of water, we drink water. But that water, we
22 threw up because we're rushing because they say the

1 trailer is there and the plants have to be -- there's a
2 lot of weakness that is felt, and sometimes you will
3 get sleepy because I think we are getting dehydrated.

4 I ask OSHA to ask our bosses to give us a rest
5 area that is covered with plastic up top. To put wood
6 or something that would allow us to rest and refresh
7 when we are having a break.

8 In the garden area where we do flower
9 arrangements, there is fans but those fans -- because
10 there's plastic on the top, they blow hot air. We've
11 been there from 7 in the morning until 7, 7:30 at night
12 with this heat. We look at one another very red in the
13 face from the heat and we have no more desire to work.
14 Sometimes they give us a break, a 15-minute break at 5
15 o'clock, and sometimes, they don't give us break on --
16 or a definite 3 o'clock lunch break, and we don't get
17 any more rest until we have to leave. Not too long
18 ago, in the company that I work with, a gentleman
19 fainted. They called the ambulance and they said that
20 his blood pressure went down because it was too hot.
21 And they -- they brought a bottle of water.

22 And yeah, they give us water, but they rush us.

1 If it is 102 degrees and we're rushing to take the
2 plants. Our body -- it's, like, 150 degrees in the
3 heat, and sometimes they give us papers to keep in our
4 garden, telling us, you -- every minute count, telling
5 us to rush.

6 It doesn't matter if it's very hot. We try to
7 take a brief break to drink water, and our boss is
8 already on one side and another boss is on the other
9 side, and they're always watching us. During the rainy
10 season, it doesn't matter if it's lightning, thunder or
11 rain, they make us work. And we've had strong
12 lightning.

13 One time, we -- we were trimming the plants with
14 scissors and we were working in an iron trailer, a
15 lightning drop. But when the lady put the plant in the
16 trailer, she touched it -- she screamed. And then, one
17 of the supervisors said we need to stop, it's too
18 dangerous to continue with lightning. And the other
19 one said, no, we need to continue because the trailer
20 is there.

21 Then they make us round up for a meeting, and the
22 head boss says, you all know that it rains and rains

1 and we get lightning. If you don't like it, you're not
2 obligated to be here. The doors are open. They always
3 tell us that the doors are open. They don't care about
4 the safety of the working so they want to set --
5 take -- get ready -- the plants out of the trailer
6 because they just want to make a sale.

7 I've seen pregnant women working in the heat.
8 Coworkers will say, oh, poor person that is pregnant.
9 They say, oh, why is she coming to work when she knows
10 she's pregnant? She might as well stay home. I saw it
11 with a young pregnant woman. And then, we can't stop
12 working. We need our job to pay our bills and food,
13 but the bosses don't care about that. As workers, we
14 need respect and to be valued. We have needs -- we
15 don't have the need to be rushing plants when the heat
16 is killing us. We feel like throwing up, we feel
17 really sick, but we can't stop, not one minute, to
18 rest.

19 As workers, they never ask us how you feel, if you
20 feel good. Only that you have to take the plant and
21 the work continues. My statement is my reality. Thank
22 you.

1 MS. MARTINEZ: My name is Enriqueta Del Martin. I
2 work in bamboo in Florida. I work in various nurseries
3 since 25 years. I work with various fruits,
4 vegetables, and plants, like lychee, guava, bean,
5 tomato. I worked with plants like (audio malfunction).
6 My specifical job, it was to plant, fertilize, and weed
7 plant, among other things. I'm exposed to high
8 temperatures and extreme heat in my job. Regularly, in
9 the past, I've experienced symptoms and injuries due to
10 the heat working outside and as well as indoors.

11 Some of the symptoms that I had are including,
12 like, fainting, nausea, we wanted to throw up, inflamed
13 skin, and heart palpitations. One time, I felt really
14 sick and I poured water over me but the water was warm,
15 and I still felt sick. And it made me feel like my
16 body was shaking, and my heart palpitated, and again,
17 the heat -- even the air felt heat, and because it was
18 so hot, it didn't feel, like, refreshing.

19 In past, I worked indoor and covered spaces, which
20 is also horrible. One time, I was working with plants
21 that needed heat to grow, and I needed to be in that
22 greenhouse all day to comply with the quota when it's

1 hot. It is much harder to comply the quote per hour.
2 I suggest OSHA to consider how the high temperature
3 affect different ways, different workers, especially
4 the pregnant women.

5 For many years, I've seen how farmworker women
6 that are pregnant, get sick and have difficulties in
7 complying with the physical demands of work because
8 they're unable to bend over easily. They run the risk
9 of overhydrating -- or dehydrating because they don't
10 drink enough water because they're not allowed to go to
11 the bathroom unless that is during the already
12 established break time.

13 As many people know, people that are pregnant need
14 to go to the bathroom more frequently, but they get
15 punished and yelled at if they do it. In addition, the
16 risk of extreme heat varies. Many of my coworkers had
17 babies that were born with skin issues or body
18 deformation due to the pesticide exposure. For this
19 reasons, I didn't feel secure working as -- working as
20 a farmworker during my pregnancies and I sought other
21 work while I was pregnant.

22 We need extra rest to refresh ourself when

1 temperatures are high. Like I mentioned, the heat
2 affects us greatly. I've worked for various companies
3 and they all work differently. Some only give 30-
4 minutes lunch break. They don't even give five-minute
5 breaks to rest during the day.

6 Other companies obligate workers to work
7 additional hours after working in the greenhouse, and
8 they also work in packaging houses, and they pressure
9 them, intimidating them that if they don't do it, they
10 can leave and they don't have to come back tomorrow.
11 I've lived this and none of it's changed.

12 When it's hot, we don't have additional rest and
13 they're not compassionate, even with the heat. A lot
14 of women need more than one break to be able to go to
15 the bathroom because they are menstruating, but they
16 are not allowed. I would also ask OSHA to prioritize
17 the need of rest because there are also other risks
18 that exist which, combined with the heat, are
19 dangerous. Some people think the shade help, but in
20 reality, it could trap the heat and it could be more
21 dangerous.

22 In my case, there's areas that are shady, but it

1 feels like a sauna and there's no heat circulation --
2 air circulation. They protect the -- decide to protect
3 the plants, and sometimes they have double plastic that
4 retain heat. If we require structures that are with
5 shade, OSHA should require shady areas that are
6 breathable, that don't retain the heat with material
7 that are not plastic, like wood.

8 I've also had to work during hurricane -- the
9 disasters such as hurricane, using ponchos, capes, and
10 rain boots. The ponchos retain the heat and the rain
11 boots filled with water and we had to work like this
12 for many hours. Sometimes, we are exposed to the
13 pesticides that are applied to the plant, which made me
14 this sick -- gives me nausea and body pain.

15 This conditions aggravate when the temperatures
16 are in -- worse and we have no rest. A lot of
17 employers follow around the employees to ensure that
18 the employees don't stop working. For these reasons,
19 it's necessary to have mandatory rest breaks because
20 without rest, our bodies can't cool off. We are unable
21 to sit down and rest and drink cold water. Then, as I
22 said, this is my reality, and I thank you for

1 listening. Thank you so much.

2 JUDGE HILLEREN-WILKINS: Thank you.

3 Does OSHA have any questions for the panel?

4 MR. SCHAYER: Yes, Your Honor. We do have some
5 questions. The -- my name is Stephen Schayer. I'm
6 from the Directorate of Standards and Guidance.

7 First, thank you very much to the panel for your
8 testimony. We appreciate you sharing your stories with
9 us. My question was just about the rest breaks. In
10 the written comments, you had suggested having a
11 graduated framework for the length and frequency of
12 rest breaks. So if you have any recommendations on how
13 OSHA might structure rest breaks in the standard, if
14 you could include those in your post-hearing comments,
15 that would be very helpful for us.

16 MS. TREVINO-SAUCEDA: Yes, this is Mily Trevino-
17 Saucedo. Yes, with Alianza, and yes, we will send you
18 information. Thank you.

19 MR. SCHAYER: Okay.

20 MS. TREVINO-SAUCEDA: Can I -- yeah.

21 MR. SCHAYER: Oh, go ahead, please.

22 MS. TREVINO-SAUCEDA: No. I just - I just wanted

1 to share that I didn't have the opportunity - and I
2 prefer that -- the -- Enriqueta and Maria's testimony
3 be first because it -- it's very important. They're
4 still working in the fields. I do have my own
5 testimony, but nonetheless, we -- we -- this is why we
6 did a written - written comments because we felt that
7 based on us, being in 30 some states, and - and knowing
8 all this -- all this is happening - this is not just
9 happening in Florida.

10 This is just Florida -- Florida workers are
11 willing to come and -- and testify. As we heard from
12 Lideres Campesinas in California, and we -- we have
13 gotten many other testimonies which we have in audio,
14 from workers from Indiana, from -- from upstate New
15 York, from Oregon, and not only in south Florida, but
16 around Florida, and North and South Carolina, and other
17 places where workers -- you know, this -- this -- these
18 two women that gave their testimonies, they actually
19 were representing many other women and many other
20 workers in the other different states.

21 And southern states, as we all know, are states
22 that the -- the -- the climate is -- it's -- and during

1 the months of -- starting March, all the way through
2 October are -- are -- are pretty dangerous working
3 outside or inside because companies are actually not
4 necessarily so worried about providing the necessary
5 environment -- safe environment that workers need.

6 So at least, I wanted to share that part. And I
7 don't know if you have more questions? This is Mily
8 Trevino. Sorry, if I didn't say my name first.

9 MR. SCHAYER: Oh. Thank you very much. I
10 appreciate that. I would like to turn to Eduardo
11 Hernandez, who also has some questions for you.

12 MS. TREVINO-SAUCEDA: Okay.

13 MR. HERNANDEZ: Hi. Eduardo Hernandez,
14 Directorate of Standards and Guidance.

15 And Ms. Trevino-Sauceda, I have one question for
16 you on the Heat Injury and Illness Prevention Plan. So
17 in the comments submitted by the -- UCLA's Labor
18 Occupational Safety and Health Program, they mentioned
19 that the absence of a heat safety coordinator role
20 under the California standard has, at times, limited
21 compliance with and effectiveness of the required
22 controls. And I know you have many members in

1 California so we'd like to know if you have a similar
2 experience? And again, you can answer this in -- in
3 post-hearing comments.

4 MS. TREVINO-SAUCEDA: Yes, we will be answering
5 in -- in -- in the post-hearing comments, and this is
6 because there's a lot more to -- to share. And -- and
7 yes, we do have other membership aside from Lideres
8 Campesinas, which is also a member of our organization.

9 Actually, that's -- this is the member
10 organization -- pioneer member organization that
11 started this -- this work in California since the late
12 '80s because we had done some -- some surveys actually
13 talking about -- or asking women in -- in Southern
14 California, which is the Coachella Valley.

15 And then -- that was in 1988, and then, in 1993,
16 we did another survey related to the same, where women
17 were talking about how -- how important it -- it would
18 be for them to really understand what is it that they
19 could be provided to have -- to be safe, to be able to
20 have options and to be -- because the majority -- or if
21 not the majority of -- of workers with their families,
22 their interest is to have a better life for the --

1 their next generations, and make sure that if they have
2 to work in the fields, they will work in the fields.

3 And many more times they end up having to do
4 whatever it takes to finish the day. And because there
5 is -- there is a lot of threats. And -- and of course,
6 we know that California has the California OSHA
7 standards, but at the same time, there -- there's a lot
8 more need to enforcement. More -- more resources so
9 that there is more monitoring in agriculture.

10 As we all know, California is one of the states
11 that's -- has more agriculture than any other state,
12 aside from Florida, aside from other -- other great
13 states that provide the -- the fruits and vegetables
14 and -- and the milk, and you know, through dairies,
15 and -- and the meat, et cetera.

16 But at the same time, workers are always seen as
17 disposable because as Maria and Enriqueta were saying,
18 they were -- they are constantly told by their
19 supervisors or crew leaders that if -- if they are
20 complaining, the door is open. That means that
21 they're -- you know, they can leave if they don't like
22 the -- the -- the working conditions.

1 And workers, the majority of the time, end up
2 having to stay because they -- they feel that
3 agriculture is -- is one of the ways that they -- they
4 know very well because they come from -- from countries
5 where they do have -- they already know the land, they
6 know how to work the land, and they're good at what
7 they do. But that doesn't mean that they work the
8 same -- in the same kind of conditions that they're
9 working in the United States. So I -- at least, I
10 wanted to share that.

11 MR. HERNANDEZ: Thank you.

12 MR. SCHAYER: Thank you this is Stephen Schayer
13 again.

14 I'd like to turn to Patti Downs.

15 MS. DOWNS: I don't think we had any questions,
16 Stephen.

17 MR. SCHAYER: Okay. Thank you.

18 MS. DOWNS: Sorry. Thank you.

19 MR. SCHAYER: In that case, Tiffany DeFoe, do you
20 have any questions?

21 MS. DEFOE: I do.

22 This is Tiffany DeFoe with the Directorate of

1 Standards and Guidance, OSHA. I have a couple of
2 questions about rest breaks. In the written comments
3 that you provided, you said that many farmworkers feel
4 intimidated or under pressure not to take breaks, and
5 you echoed that in your testimony today as well. And
6 you noted that when the breaks are optional, rather
7 than required, workers are not always informed of
8 policies that are in place to allow rest breaks.

9 Can you talk a little bit about your experience,
10 either now or in post-hearing comments -- have your
11 members -- have they experienced better communication
12 about policies for scheduled rest breaks than they have
13 had for policies for requested rest breaks? If they've
14 had an opportunity to experience both of those types of
15 policies.

16 MS. TREVINO-SAUCEDA: Thank you for your
17 questions. What I -- this is Mily Trevino-Sauceda
18 again. And in response, I -- I can only say that the
19 majority of farmworkers have no clue about what rules
20 or regulations exists or what kind of protections they
21 have. Why? Because they are -- you know, they are
22 constantly reminded by the company, you know,

1 supervisors or crew leaders that the -- the demand for
2 their product be -- you know, be provided.

3 And workers and -- and I will -- I will tell you
4 that I have not worked in the field for many, many
5 years now, but during the time I worked in the fields,
6 it was -- we -- my family had no clue what kind of
7 programs, what kind of resources, what kind of -- we
8 didn't even know that unemployment existed. Or we
9 didn't even know that there were any kind of resources
10 because in its majority, we are secluded.

11 We're away from everything the majority of the
12 time. We start very early in the morning. We finish
13 very late. And then, when they're -- when the season
14 is over, we have to migrate to another place or we have
15 to find other means to sustain ourselves. And -- and
16 if there are groups like ours providing information to
17 workers, the majority of the time, the workers will say
18 thank you for the information, but you have no idea
19 what happens when you're in the workplace.

20 Because in the workplace, if we say something,
21 we're threatened. We're told that we -- we cannot --
22 if -- if we don't -- we don't like our work, or we

1 don't -- we don't like the conditions, than you -- you
2 don't -- you know, you -- you don't have -- you -- you
3 don't have to stay. And I -- I can only say that the
4 more -- the more that we -- we provide information to
5 workers, the more people have knowledge.

6 And there have been some complaints that have been
7 filed, and they have been remedied by -- by agencies,
8 and I'm talking about California. In other states,
9 it's very hard to -- to get agencies to come all the
10 way because we see that there -- there might not be
11 that priority in their mind, in terms of the conditions
12 of farmworkers.

13 So farmworkers, again, are -- are -- are living in
14 places, in its majority, where they feel that there's -
15 - there's no kind of, like, resource or anything that
16 they can understand -- can provide for them the
17 information. This is why we're saying if there are
18 going to be rules, or there -- rules that exist, like
19 in California, we've been pushing a lot for -- okay,
20 the rules exist, but how are you monitoring? How are
21 you making sure that all this is happening? How can
22 you be more available? All this is so, so important.

1 And where there is no -- nothing whatsoever, in terms
2 of protections, like, micro conditions that were -- was
3 sharing. What Farmworker Justice was sharing.

4 In its majority, farmworkers will not know where
5 to go, will not know -- and everything is going to be
6 foreign to them because it's a very different system,
7 how the -- how the United States works compared to
8 where they are coming from. Especially, if they're
9 coming from areas that are very -- much more remote in
10 their -- in their home countries also, and might not
11 even have these kind of -- these kind of resources,
12 either.

13 But what I can say is if people know, and if they
14 have complained, some of them have been fired or put on
15 blacklists, and that shows other workers that if they
16 do that, they -- they prefer to be quiet because
17 workers have been put on blacklists or are threatened.
18 And if much more -- if they know that some of them
19 are -- don't have documents to -- or permission to be
20 in the United States, the -- the first ones to know are
21 the crew leaders or the supervisors if people don't
22 have immigration papers to be -- to be -- to have the

1 permission to be in the United States.

2 And what does that mean? That -- that's another
3 way workers are threatened, in terms of people not --
4 you know, not complaining. Either you do your work or
5 if you have -- if you're -- like, myself. I was born
6 in the state of Washington. My whole family, we --
7 we're migrants. Some of us were born in the state of
8 Washington, others in -- in the state of Idaho, and
9 then, we ended up in California, throughout.

10 And because we keep moving and -- and trying to
11 find seasons that would work with us, in terms of being
12 able to have more than one month's work, we -- we were
13 constantly moving around and not -- not knowing what
14 exists unless agencies or -- or -- or resources are out
15 there trying to do the outreach, connecting with --
16 with workers. So I hope I did answer your question.

17 MS. DEFOE: You gave me a lot of valuable
18 information. Thank you. And I have a follow up
19 question. I'll -- let me first say, I -- I --
20 you've -- you're probably aware, but just in case, when
21 OSHA promulgates a rule, like the one that we've
22 proposed here, if we -- if we finalize that rule -- so

1 there's the rule itself. And then, we also develop a
2 lot of, sort of, other written material called guidance
3 that is used to help make sure that employers,
4 employees, and others are -- so that they can
5 adequately understand the rule, and how OSHA expects it
6 to be applied. And also, where they can get more help
7 understanding it or -- you know, or calling for
8 enforcement, for example.

9 So I'd like to ask. To help address the issues
10 that you've raised about intimidation, pressure, and a
11 lack of adequate communication about the policies where
12 they are in place, are there any suggestions that you
13 would make on how OSHA's proposed heat standard might
14 be changed to better address those issues? Or -- and
15 or any change -- any information that you think should
16 be included to help make sure that the guidance we
17 produce --

18 MS. TREVINO-SAUCEDA: I -- I think --

19 MS. DEFOE: -- adequately communicates the -- that
20 information.

21 MS. TREVINO-SAUCEDA: Sorry, sorry. Oh, I
22 apologize.

1 MS. DEFOE: No, no.

2 MS. TREVINO-SAUCEDA: I thought you were done.

3 Mily Trevino-Sauceda, again. I think that it's --

4 it's -- it's a longer response. And as you are

5 listening to me, you're -- you'll find out I -- I have

6 longer -- much longer responses, and it's best that we

7 put this in -- in writing, also.

8 But I just wanted to -- to share with you that

9 if -- if there are any kind of regulation needs to have

10 enough resources to -- and I'm talking about human

11 resources, in terms of investigators, people that are

12 monitoring, people that are -- are -- are -- are

13 representing the agency and know that -- that they can

14 go into a -- a property if they hear a complaint and --

15 without providing -- and you know, it -- it needs -- it

16 needs to be anonymous in its majority of the time,

17 because workers feel -- feel fear to even say that that

18 is going on because they know that they will be not

19 only -- they are already threatened.

20 But at the same time, feel the fear of -- of being

21 not only the threat, but fired for -- for speaking up.

22 And -- and at times, workers, among themselves, are --

1 are -- are, you know -- are treated in a way where they
2 make -- and I'm talking about crew leaders. The way
3 they work is that they -- they try to find out with
4 some of the other workers who is saying what
5 whatsoever.

6 So people in -- in the workplace sometimes don't
7 even feel safe talking to other workers about what's
8 going on. And if they say anything, and if there's a
9 complaint, they know that they're going to be
10 blacklisted. And probably, during the time, they will
11 not be fired but you know, the company will -- will
12 make sure that that person will be fire -- fired, you
13 know, in the -- in the next whatever -- whatever weeks.
14 And I tell you because that -- that happened to me, and
15 that -- and I seen this happening to other workers
16 doing any other -- any other years lately. It -- and
17 when it happened to me, it was more than 30 years ago.
18 And it's still happening in terms of how the tactics or
19 the strategies or the -- actually, more tactics from --
20 from crew leaders, just to -- for workers to not say
21 anything. Just do your work. We don't -- we don't
22 want to hear anything. We just want to know that

1 you're providing the -- and you're complying with the
2 demand that we need here to get the product out, and
3 that's it. We're going to -- we will be providing
4 written comments and responses about this. We're
5 taking notes. Thank you.

6 MS. DEFOE: Thank you very much, both for
7 explaining all that and in advance for any more you can
8 provide. Much appreciated.

9 MS. TREVINO-SAUCEDA: Thank you.

10 MS. DEFOE: That's all I have.

11 MR. SCHAYER: Thank you. This is Stephen Schayer
12 again. Your Honor, if it's okay, we'd like to read
13 some additional questions into the record. Also, we
14 apologize for having to shift and whatnot. There are
15 some issues in the room.

16 JUDGE HILLEREN-WILKINS: Oh, that's not a problem.
17 And yes, you can proceed with the questions.

18 MR. SCHAYER: Lisa Long.

19 MS. LONG: Thank you. This is Lisa Long from the
20 Directorate of Standards and Guidance. And I'll just
21 read these questions into the record and if you could
22 answer them in your post-hearing comments, we'd

1 appreciate that. My first question is, are workers in
2 your company or industry normally paid a piece-work
3 rate for break time or are they normally paid at all
4 for break time? And if so, how are they paid? How is
5 their pay calculated?

6 And my second question is, in the proposed rule,
7 OSHA has given information on calculating compensation
8 for piece-rate employees for rest breaks. In your
9 comment, you stated that OSHA should consider an
10 alternative approach to calculating the regular rate or
11 piece-rate for employees. What are the alternative
12 approaches and factors that OSHA should consider in
13 addition to what OSHA already specified in the proposed
14 rule?

15 Thank you. That's -- those are all of my
16 questions.

17 Thank you.

18 JUDGE HILLEREN-WILKINS: All right. Does that
19 conclude all questions from OSHA?

20 MR. SCHAYER: Yes, Your Honor. And thank you
21 again for this panel. We very much appreciate your
22 testimony.

1 MS. TREVINO-SAUCEDA: Thank you.

2 JUDGE HILLEREN-WILKINS: I echo that gratitude.

3 And are there any questions for the panel from the
4 Solicitor's Office?

5 MS. WILES: Yes, Your Honor. Linda Wiles for the
6 Solicitor's Office. I have just one brief question.
7 When your workers are working in the field, they're
8 presumably exposed to direct sunlight. If you could
9 confirm that, and also, if you could clarify what type
10 of clothing they're wearing while they're working in
11 the field. Are they wearing long sleeves and long
12 pants? Do they have other PPE that they are wearing
13 while they're working in the fields?

14 MS. TREVINO-SAUCEDA: This is Mily Trevino-Sauceda
15 with Alianza. And yes, when they're -- the first --
16 the first thing that workers want to do is make sure
17 that they do have long sleeves and that they do have,
18 you know, long -- long pants. Why? Because we know
19 what it is to be under the sun and it's not -- the
20 majority of the time, it's not just three, four hours.
21 It's eight or ten or even more hours, like Maria and
22 Enriqueta were talking about.

1 And yes, while working under the sun, I don't know
2 if you -- any of you have seen pictures of when workers
3 are working. You either use a hat, if you are doing
4 row crops. Or you use a cap because you're trying to
5 cover yourself and sometimes -- or majority of the
6 time, us women use the -- the -- what's it called?
7 Panuelos we call them. Paliacate we also call them,
8 which are the handkerchiefs that we cover ourselves,
9 not just because of the dirt. It's because of the sun,
10 because we know about sunburn.

11 And we -- these kinds of protections in terms row
12 crop that we use is not provided whatsoever by company,
13 not even many more times, not even by -- not even the
14 gloves or other equipment. It's majority, the workers
15 themselves end up having to buy their own. And -- but
16 if you're working in the lemon trees or the citrus, any
17 kind of citrus trees, you cannot use hats. You can
18 only use caps. And during our time in the '70s and
19 part of early '80s, in California, we pushed for -- and
20 this is through the United Farm Workers, if you all
21 know who the United Farm Workers is, to make sure that
22 in agriculture, especially lemons, if you have -- if

1 you have gotten close to a lemon tree, you will know
2 that the thorns are about six, seven inches long. And
3 there have been many accidents in the -- in this kind
4 of industry.

5 And the majority of the time, if you don't have
6 goggles or you don't have protective equipment, which
7 before I remember I only used a cap because we didn't
8 have what ended up having to be pushed for getting,
9 like, construction hats to wear. You get, you know,
10 you get the thorns on your head. You get the thorns
11 all over your body because you are working all day
12 trying to harvest the lemons or any other kind of
13 citrus that has the long thorns. And workers try to
14 protect themselves using most of the time long sleeves.
15 But if you also do not have a special long sleeve that
16 is supposed to be used while you are working,
17 harvesting lemons or grapefruit or oranges, you get
18 slashes because of the way the branches are and where
19 the thorns that -- that the -- that the trees have.

20 And so workers will -- and it's majority will try
21 to make sure that they're at least covering themselves.
22 It's not just the dust. It's not just the sun. They

1 know about pesticides. They don't know about
2 protections, but they know what happens when there's
3 strong odors or there's too much dust that's still
4 there from the chemicals that have been applied, et
5 cetera, et cetera. You know, all these things and this
6 is why workers try to protect themselves, not only, you
7 know, your arms or your legs. We also try to protect,
8 you know, your face and your head. So as I said, I do
9 have long explanations of things, but that was -- that
10 was my response.

11 MS. WILES: Linda Wiles from the Solicitor's
12 Office. Thank you so much for that, and thank you for
13 your testimony today. That's all from me.

14 MS. TREVINO-SAUCEDA: Thank you.

15 JUDGE HILLEREN-WILKINS: Thank you. Are there any
16 participant questions?

17 MS. CARLON: There are not, Your Honor.

18 JUDGE HILLEREN-WILKINS: That being the case,
19 thank you very much to your panel. We appreciate your
20 testimony today. And we'll move on --

21 MS. TREVINO-SAUCEDA: Thank you very much for
22 having us here. Thank you.

1 JUDGE HILLEREN-WILKINS: You're welcome. And
2 let's move on to the next speaker.

3 MS. CARLON: The next speaker is Leticia Zavala.
4 Please state your name and affiliation for the record.

5 MS. ZAVALA: Hello. My name is Leticia Zavala.
6 And I am here to offer my comments in support of these
7 new rules to be implemented as soon as possible. And
8 specifically, in support for the requirements for
9 breaks, shade, access to medical attention, and
10 acclimatization. I worked in the fields of Ohio,
11 Michigan, Pennsylvania, and Florida from the age of 6
12 to 18. After college, I came back to the fields as an
13 advocate and organizer and have organized in Ohio,
14 Florida, and North Carolina.

15 I wanted to come and testify because I have heard
16 lots of growers and grower groups come on and talk
17 about what they are already doing, and that they do not
18 need regulations to do good. And although I
19 congratulate them for this, they are part of the
20 minority in agriculture. In 2022, a group of workers
21 decided to form an organization called El Futuro es
22 Nuestro because of the lack of response from growers

1 due to the pandemic and the large number of workers
2 dying and becoming sick. I want to speak to the fact
3 that we support these new rules, despite them not being
4 perfect. And the main reason is because we have seen
5 that recommendations that OSHA gives after
6 investigations do not work if there is no enforcement
7 afterwards.

8 In North Carolina, we have had -- we have not had
9 a harvest without workers dying in the fields due to
10 lack of medical attention, heat, accidents on the job,
11 and even mental health. The North Carolina Grower's
12 Association is the largest H-2A employer in the
13 country, bringing in over 10,000 workers from Mexico
14 each year. This grower's association has a policy of
15 allowing each individual grower to make their decisions
16 based on breaks. We only know of a handful of growers
17 that provide breaks out of approximately 600 grower
18 members, and dozens of growers actually forbid breaks,
19 drinking water during specific times of the workday,
20 calling 911, or transporting workers to the clinic if
21 the worker becomes ill.

22 There are growers that are conscious of the

1 conditions that the workers are under because they are
2 out in the fields with their employees, but this only
3 applies for those small growers. Large corporate and
4 profitable growers are seldom out in the field with
5 their workforce, and oftentimes have complex structure
6 of hierarchy to where only a few people really know
7 what is going on on the ground.

8 In July 2024, we were called out to a farm where a
9 worker had passed out on a Tuesday, and the grower gave
10 instruction for him to be removed to the side of the
11 field to not disrupt the general workday. No medical
12 attention was offered, neither then nor after. The
13 second day, the heat continued to be bad. A few
14 workers stepped out to the shade. When the grower
15 arrived, he called them lazy Mexicans. He said either
16 you go back to the field or you go back to Mexico.
17 Workers told him that it was too hot and that they
18 could not go on longer, that they needed a break and
19 they could come back when it was cooler. He did not
20 accept this offer. He continued to say either you go
21 back in the field or you go back to Mexico because he
22 had spent too much money on bringing them here.

1 On Thursday, the North Carolina Grower's
2 Association got involved and asked who wanted to go
3 back to Mexico. Eight workers said they wanted to go
4 back to Mexico. As one worker was telling me this
5 story, he said, I felt like I needed to choose between
6 my life and my job. The worker who passed out was
7 offered transportation to the bus station, but not to
8 the doctor. He was still having symptoms of heat
9 stroke when he got on the bus to go back to Mexico. He
10 is now blacklisted from returning to any of the growers
11 under the North Carolina Grower's Association.

12 It was going to cost the grower about \$12,000 to
13 replace the eight workers that wanted to go back, and
14 maybe more if he needed to train them to do the job.
15 The grower ended up agreeing to not send them back to
16 Mexico -- some of them back to Mexico but he continued
17 to aggressively push workers to speed up production.
18 He continues to not provide breaks to his workers.
19 There were at least four other instances of the same
20 situation reported during that month. The majority of
21 those workers who spoke up did not return this year.

22 The other group of employers, who I think this law

1 is important to cover, is farm labor contractors in the
2 industry, who are scrupulous and have known to have
3 conditions of trafficking and forced labor. Just two
4 days ago, I was kicked out of a camp while trying to
5 talk to workers about heat and distributing hydration
6 packets. The farm laborer kicked me out of the housing
7 unit and forbid the workers from taking my information
8 packets and the hydration packets.

9 We need regulations in order to protect workers
10 from those who do not understand the importance of life
11 and to put profit over health and safety. We need
12 mandatory breaks, shade, access to water,
13 acclimatization, and medical attention. We appreciate
14 the opportunity to provide this testimony today.

15 JUDGE HILLEREN-WILKINS: Thank you. Are there any
16 questions from OSHA for the speaker?

17 MR. SCHAYER: Yes, Your Honor. We do have some
18 questions. I'd like to turn to Eduardo Hernandez.

19 MR. HERNANDEZ: Hi. Eduardo Hernandez,
20 Directorate of Standards and Guidance. And I have a --
21 I have a question on the training requirement. And I
22 was just curious, we got some comments asking if, you

1 know, OSHA would allow, like, virtual trainings and
2 things like that as an option. And we wanted to hear
3 if you had any concerns or issues with online training
4 as an option to comply with the training requirements.

5 MS. ZAVALA: I think it vary -- it varies, very
6 much so. I'm sorry. Leticia Zavala, El Futuro es
7 Nuestro. The North Carolina Grower's Association, for
8 example, on some of their pesticide trainings, they
9 will put the pesticide training video on -- in their
10 route from Texas to North Carolina repeatedly in the
11 bus as they're traveling to get here. That does not
12 work. They will play it again while their paperwork is
13 being processed in the -- in the place where they are
14 distributed. And oftentimes, workers are not paying
15 attention to it. I think that it needs -- it can be
16 online, but it has to be a space where workers are
17 focused and where workers are paid to be part of this
18 training so that they are focus -- paying attention to
19 what is going on and what the training is actually
20 entailed.

21 MR. HERNANDEZ: Thank you. And as a follow-up, do
22 you have any other experiences with annual training for

1 farm workers, maybe like recommendations of what's most
2 effective or yeah things of that nature?

3 MS. ZAVALA: There are some things that we see
4 function. Like for example, in North Carolina, the
5 Department of Commerce does some trainings and they
6 will bring growers and workers together and they will
7 train them on certain policies and procedures. And
8 that works because I think everybody is looking at each
9 other. And then, also, just allowing for non-profits
10 to also provide some of those trainings, so they get
11 different perspectives.

12 MR. HERNANDEZ: Thank you.

13 MR. SCHAYER: Thank you. This is Stephen Schayer
14 again. We also have some questions from Lisa Long.

15 MS. LONG: Hi. My name is Lisa Long from OSHA's
16 Directorate of Standards and Guidance. And I have
17 request -- one question about whistleblower and anti-
18 retaliation protection. As you know, OSHA's proposed
19 rule requires employers to train employees on their
20 rights and protections against retaliation. In your
21 comment, you've highlighted many worker stories of
22 employer retaliation against employees for taking

1 action such as asking for water or take a break. Do
2 you have any recommendations for stronger anti-
3 retaliation protection in the proposed standard?

4 MS. ZAVALA: I think especially within the guest
5 worker program, the fact that they go back and that
6 Mexico is not part of OSHA's jurisdiction, it makes it
7 very difficult. But I think if an employer has been
8 bringing H-2A workers for 20 years, ten years, five
9 years, then it -- they should be considered permanent
10 workers, right. Because we see it especially with
11 older -- older workers. There's workers that come for
12 20 years with a grower, and all of a sudden they're too
13 old to get recruited or they -- any little minor issue,
14 they're sent back to Mexico. And so I think -- I think
15 it's important to specify or to address the H-2A
16 workers under any whistleblower protections and
17 retaliation protections.

18 MS. LONG: Thank you.

19 MR. SCHAYER: Thank you so much for your
20 testimony. And Your Honor, that concludes OSHA's
21 questions.

22 JUDGE HILLEREN-WILKINS: Thank you. Are there any

1 questions on behalf of the Solicitor's Office?

2 MS. WILES: Thank you, Your Honor. Linda Wiles
3 for the Solicitor's Office. I don't have any questions
4 but I thank you so much for your time and your
5 testimony today.

6 JUDGE HILLEREN-WILKINS: And are there any
7 participant questions?

8 MS. CARLON: Yes, Your Honor. We have one from
9 Mr. Glucksman. Please state your name for the record.

10 MR. GLUCKSMAN: Thank you. My name is Dan
11 Glucksman. And my question, Leticia, is towards the
12 end of your testimony, you mentioned that you provided
13 hydration packets. And I was wondering if those
14 were -- if you could talk more about what those were.
15 Were those electrolyte packets or what kind of
16 hydration packets were they?

17 MS. ZAVALA: Yes. We have a health and safety kit
18 that we give out and it includes hydration packets,
19 reusable ice packs, some cooling towels, a fan, and
20 just some information or material about heat and our
21 organization.

22 MR. GLUCKSMAN: All right. Thank you. And the

1 workers seemed -- would really like to use that stuff,
2 especially the cooling towels?

3 MS. ZAVALA: I'm sorry?

4 MR. GLUCKSMAN: Do the workers generally want to
5 use the cooling towels?

6 MS. ZAVALA: We accompany the distribution with a
7 training. We have a training called the collective
8 responsibility training. And so we talk about reasons
9 why workers sometimes do not want to inform their
10 grower that they're sick or why they don't want to take
11 a break. And we also talk about each individual thing
12 that we have in the kit and we explain to them the
13 need. And then workers elect a worker leader that will
14 be responsible to help everybody out and to keep an eye
15 out for each other in case anything happens.

16 MR. GLUCKSMAN: Okay. Great. Thank you.

17 JUDGE HILLEREN-WILKINS: Are there any other
18 participant questions?

19 MS. CARLON: No. There are not, Your Honor.

20 JUDGE HILLEREN-WILKINS: All right. Thank you
21 very much for your testimony, ma'am. We'll move on to
22 your last speaker of the day.

1 MS. CARLON: The next speaker is Linda Pryor.

2 Please state your name and affiliation for the record.

3 MS. PRYOR: My name is Linda Pryor, and I am a
4 farmer in North Carolina. Can -- my video is not
5 coming up. Did it start?

6 JUDGE HILLEREN-WILKINS: Yes. We can see you and
7 we can hear you.

8 MS. PRYOR: Oh, okay. Sorry.

9 JUDGE HILLEREN-WILKINS: That's all right.

10 MS. PRYOR: So I have been involved in this
11 process since 2023, when I was part of a SBREFA panel.
12 And so I appreciate the opportunity to get to speak
13 again today. As a third generation farmer in Western
14 North Carolina, I'm speaking on behalf of my family's
15 farm, sharing our concerns for the impact this mandate
16 would have on agriculture in North Carolina. Our farm,
17 like most, is family owned and operated with seasonal
18 and year-round employees. Every August, up to 20
19 people that I consider to be the most valuable asset to
20 our farm join us to perform the job of hand harvesting
21 the apples that we grow. Myself and my husband are in
22 the orchard, side by side with the employees all day

1 throughout harvest season. Our farm takes employee
2 safety very seriously and I'm proud to say that in the
3 last 50 plus years that we have record for, we have not
4 experienced a heat-related illness or injury on our
5 farm.

6 Agriculture is unique and should not be combined
7 with other industries. Imposing a blanket one-size
8 fits all rule that does not account for regional
9 climates or crop timing or diversity of farms will do
10 more harm than good. A rigid heat stress rule would
11 add a burden without improving safety outcomes. And I
12 think most importantly, would have unintended
13 consequences by causing new safety concerns.

14 I share a lot of the same concerns as others had
15 expressed today, but I want to focus on one particular
16 issue. And that is, if implemented as written, this
17 rule would effectively force farms like mine to shift
18 much of our work to nighttime or very early morning
19 hours, when it's dark. On paper, that may seem like a
20 practical solution, but in reality, it would introduce
21 new dangers. Working in the dark would be
22 significantly more dangerous than it is to work in the

1 heat with the precautions that we have in place to
2 protect our employees. The safety concern for this
3 rule should be visibility.

4 A large part of our current safety training and
5 something that I know makes a difference in preventing
6 injuries is visibility. Training employees to be sure
7 that they are visible to others and that they are
8 constantly watching for others, visibility while moving
9 among each other, and the visibility for us to be able
10 to detect any changes in the employee's well-being.
11 Shifting to work outside of daylight hours would make
12 visibility very difficult, even with added lights.

13 Apples are picked by hand. Employees move up and
14 down their ladder to reach the apples, pick them into a
15 bag, and then once filled, they transfer the apples in
16 their bags to large bins, all while other employees are
17 moving through the orchard rows on tractors, picking up
18 the bins once they are full, and then taking them to a
19 loading area where they're placed on trucks. Everyone
20 is working in very close proximity to each other and
21 the equipment. There are people walking between the
22 trees and the bins, people carrying their ladders to

1 the next tree, and multiple tractors bringing in empty
2 bins to be filled and carrying out the full bins,
3 working independently, but simultaneously.

4 The tractor drivers must be able to see the
5 employees that are walking and must be able to see
6 where ladders are leaned into trees. Those moving
7 ladders must be able to see well to ensure that they
8 don't injure anyone or themselves with the ladder. As
9 it's leaned into a tree, it's imperative to be able to
10 see that the legs are on stable ground and the top of
11 the ladder is leaned into a secure location. So now,
12 imagine all of those tasks that I've described being
13 performed in the dark.

14 Part of our current safety plan includes an annual
15 visit with our county's emergency services. And when
16 speaking with them recently, we discussed
17 considerations for nighttime work. Reaching
18 farmworkers during emergency is a top priority. Fields
19 and orchards can be difficult to find since most cannot
20 have a specific address. And response times for
21 emergencies during nighttime hours would increase due
22 to the decreased visibility. Working at night would

1 also decrease the employee's access to resources. We
2 partner with multiple agencies that provide resources
3 through on farm visits, but those visits occur during
4 the day.

5 And the estimated cost of \$5,242 per year for
6 fruit farms would not come close to covering the
7 expense of the lights that would be needed to ensure
8 employee safety. Work is performed over several acres
9 at one time. It would take significant lighting to
10 cover the work area, as well as a dedicated employee to
11 move the lights as the employees work from tree to
12 tree. Harvesting produce is a fluid activity, with
13 constant movement from one tree to the next and one row
14 to the next, and orchard -- one orchard to the next.
15 Our apples are located in 13 different orchards over
16 several miles, and we may spend a few hours up to a few
17 days in each orchard.

18 This rule would increase expenses, specifically
19 for farms like mine, without improving the safety
20 outcomes. This rule could ultimately push some farms
21 out of business, not because they don't care about
22 worker safety, but because the mandates are unworkable.

1 So my ask is for a different approach that allows for
2 regional variances and recognizes the variability of
3 farm work. Many farms like ours already implement heat
4 safety measures, providing water at the temperature
5 that the employees prefer, shade, breaks, and most
6 importantly, training. Those are the things that make
7 a difference and should be encouraged and not be
8 overshadowed by costly, rigid mandates that, while
9 trying to protect the employees, could have the
10 unintended consequences of actually increasing risk and
11 stripping them of their personal preferences and
12 choices.

13 JUDGE HILLEREN-WILKINS: Thank you very much. Are
14 there any questions for this speaker from the OSHA
15 panel?

16 MR. SCHAYER: Yes, Your Honor. This is Stephen
17 Schayer from the Directorate of Standards and Guidance.
18 Thank you for your testimony. I had a couple questions
19 related to drinking water. So the first was, in your
20 experience, what are the most common challenges for
21 employers in consistently providing suitably cool water
22 throughout the work day, especially in remote or large

1 agricultural fields?

2 MS. PRYOR: We provide water so it's not an issue
3 to provide water. I have an issue with the suitably
4 cool. I think we are -- I know we are employing adults
5 and it's not my place to tell an adult what temperature
6 that they should prefer their water. I think in
7 America, we tend to prefer ice and cooler temperatures.
8 And a lot of other cultures don't drink their beverage
9 the same way. And so I think that if I'm serving
10 someone something that is colder than what is their
11 preference, and they're choosing to not drink it
12 because they don't like the temperature, I'm not
13 helping them. So I would rather provide water that's
14 the temperature that they're going to consume rather
15 than something that they are not going to.

16 MR. SCHAYER: Okay. Thank you. And the second
17 question was just about what do you think is the
18 maximum reasonable distance a worker should have to
19 walk for water in an agricultural field? Maybe if you
20 could share how you handle it on your farm, that would
21 be very helpful.

22 MS. PRYOR: So everyone carries their own with

1 them. Most it's about a gallon at a time, just because
2 that's a reasonable amount to carry. And then there
3 are water stations in different places where they can
4 refill their water. And then we also provide bottled
5 water if they just want a single use and don't have
6 their container.

7 MR. SCHAYER: Okay. Thank you very much. One
8 final question. I was just wondering if there are
9 other provisions of the rule that you would find
10 infeasible on your farm that would prevent you from
11 doing in a normal daytime operations.

12 MS. PRYOR: The breaks would be the main reason
13 for needing to transition to nights.

14 MR. SCHAYER: Okay. Thank you, now I'd like to
15 pass to Jason Hammer, who actually has some questions
16 about --

17 MR. HAMMER: Good segue. Hi, Jason Hammer with
18 the Directorate of Standards and Guidance. Thank you
19 for your testimony today as well as your participation
20 in this SBREFA process.

21 Yeah, so as it was mentioned, I have two questions
22 related to rest breaks. So first, in your submitted

1 comments following SBREFA you said, quote "mandated
2 break times would not be practical. It is healthier to
3 allow an employee to take a break when they feel that
4 they need to, rather than -- rather than them waiting
5 for an arbitrated designated break time."

6 So OSHA has received comments from workers and
7 heard from many representatives testifying today that
8 they are discouraged from or penalized for taking
9 breaks, even when feeling at risk of overheating. So
10 can you explain -- expand on your SBREFA comment and
11 describe any strategies that could be used to ensure
12 workers are encouraged and feel safe to take breaks as
13 needed?

14 MS. PRYOR: Yes. So I don't know if you -- in my
15 testimony just now, everyone is working together, but
16 independently, and so for the apples that we're
17 harvesting, if I am working and harvesting apples, I am
18 putting all of the apples that I pick into one bin and
19 then they're all -- and that's for traceability, that
20 is a food safety thing. So each bin is marked, has a
21 label, I can go back if that worker were to say, I
22 don't know, I cut my hand or something and didn't

1 realize it and this bin was contaminated, I can --
2 that's why we don't mix different pickers contributing
3 to one bin.

4 So they are working, you know, we're very close
5 and very together, but each person is working very
6 independently too, into their bins. And so if say I
7 want to -- I'm out at the end of my bin so rather than
8 start a new one, I'm going to go take a break. You
9 aren't, you maybe have a quarter of the way left and
10 you want to wait and finish yours to take a break, so
11 having a mandated -- okay, it's 9:00, everybody has got
12 to take a break, doesn't work in this situation.
13 Whereas, giving them the freedom to, you know, take
14 breaks when you want to. If you feel like you need to
15 take a break, go for it. No problem. I'm not going to
16 dictate to you, and I think that goes back to that
17 personal choice and preference and knowing your own
18 body.

19 And somebody -- you know, there's days we just
20 don't feel as good as we do other days and maybe you
21 need a little extra breaks that day and you don't the
22 next day, and that's okay too. And giving people the

1 education and the training so that they know and they
2 can go based on how they feel versus what I'm telling
3 you how to feel. I think that's way overstepping what
4 I have a right to do.

5 MR. HAMMER: Okay. Thank you. And a second
6 question. Some commenters have suggested that OSHA
7 should provide guidance on as needed breaks, just to
8 make sure that employers and workers understand what
9 kind of frequency or duration might be usual for
10 preventive rest breaks. And when the frequency or
11 duration of worker requested breaks should be
12 considered as a possible sign of a heat-related
13 illness. In your opinion, could guidance or training
14 of this kind help employers and workers normalize the
15 use of as needed rest breaks?

16 MS. PRYOR: I think training is the most important
17 for anything. Anything that's done without training
18 it's not going to matter; it's not going to be
19 implemented properly if the people using it aren't
20 trained on it. So that's number one, training has to
21 be so important. I'm very thankful North Carolina
22 Department of Labor has excellent resources; our

1 cooperative extension has excellent resources. And
2 like I referred to, we have people that come on farm
3 multiple times per week and are checking in and we have
4 a local health organization that they will even do
5 health checks on a farm if -- medication refills,
6 whatever, so we're very fortunate to have that and
7 utilize those individuals to help us convey our
8 message. And we do have excellent relationships with
9 our employees, and they come year after year and so
10 that trust is there and that makes a big difference.
11 And so just being on site and being with your
12 employees, whether they're seasonal or year-round,
13 whatever the case may be and just having those
14 relationships and that's -- the visibility issue, I
15 know what each person looks like on their good day, so
16 if their health is declining, I can see that.

17 There's obviously things that we can't always see
18 that aren't physical, but I feel like I have a good
19 grasp on, you know, even if they're on a break, you're
20 not looking like yourself right now. I think that
21 that's important -- and training the employers too to
22 be able to see those early -- very early signs and

1 that's the best step for prevention is to catch
2 those -- those very early signs.

3 MR. HAMMER: Thank you. That's it for me, Steve.

4 MR. SCHAYER: Thank you. Stephen Schayer again,
5 I'd now like to turn to Eduardo Hernandez.

6 MR. HERNANDEZ: Hi. Eduardo Hernandez,
7 Directorate of Standards and Guidance. And I have one
8 question on the observation for signs and symptoms.
9 And so we had a few comments, especially some of the
10 worker testimonials that just happened earlier today,
11 about workers not being forthcoming about their
12 symptoms. And could you discuss your experience with
13 this on your farm and maybe why this is a case in
14 general and what can be done to improve this? And
15 maybe have a more systematic way to reduce the risk of
16 heat-related illnesses.

17 MS. PRYOR: I think that historically there has
18 been a fear of being able to be forthcoming with
19 information and the only way to break that cycle is
20 just the repetitive reminder that it's okay and
21 checking in and asking. And I think with anything that
22 becomes habit and routine, then you become more

1 comfortable with it. And so if I am asking you every
2 day, multiple times a day how are you feeling? How are
3 you doing? Then, you know, eventually that cycle of
4 not wanting to speak up can be broken, and I know that
5 different areas of the country are different and things
6 change year to year and season to season even, but you
7 know, what I am seeing -- it's very hard -- I was
8 really listening to some of the other testimony and
9 thinking about it, because here in the area that I am
10 in, I feel like -- we're hearing people say that the
11 workers can't speak up and they don't have the option
12 to speak up and they're told they're going to be sent
13 back home if they speak up. We're not experiencing
14 that, because I know how bad I need them, and they know
15 how bad I need them. And so I'm not personally
16 experiencing any of that and I'm thankful that I'm not
17 because I wouldn't ever want to put somebody in that
18 situation where they felt like they were going to be
19 retaliated against.

20 I would say, if anything, the spot we're in right
21 now is employees have the upper hand. If somebody came
22 to me right now and said, you know, I've got to have

1 this, this and this or I'm leaving, I'm going to have
2 to give it to them because I know I have to have them.

3 MR. HERNANDEZ: Thank you. And if there are any
4 like training material copies that you're willing to
5 share and post-hearing the comments, we really do
6 appreciate it. But thank you for your testimony.

7 MS. PRYOR: Okay.

8 MR. SCHAYER: Okay. Stephen Schayer again. If
9 it's okay, we just have two more questions. The next
10 one is from Lisa Long.

11 MS. LONG: Hi. This is Lisa Long from the OSHA
12 Directorate Standards and Guidance. During SBREFA, you
13 refer to benefits of your safety program and fairness
14 practices. Some commentors have expressed concern that
15 it might be challenge - challenging to implement some
16 of the proposed emergency response and training
17 provisions at some type of worksites, like those that
18 are in remote or isolated areas. Can you explain if
19 you agree or disagree and how these requirements could
20 be feasible in these type of worksites in more rural
21 settings?

22 MS. PRYOR: I couldn't hear the very first part of

1 your question.

2 MS. LONG: I was just referring to during SBREFA
3 you were referring to the benefits of your safety
4 program and preparedness practices.

5 MS. PRYOR: Yes. So we are in a rural area, and I
6 don't know if other states are like this, but in North
7 Carolina or in the county that we're in, you cannot
8 have a physical address if you don't have a residence.
9 So most times, orchards and fields do not have a
10 physical address that you can give to someone during an
11 emergency. So what we do, we have -- on our break
12 trailer, which is where like the portable toilet is
13 located and handwashing station and safety signs and
14 things like that, we have a flip chart and since we do
15 have 13 different orchards that we move between we will
16 flip that chart that's weatherproof to the orchard that
17 we're in, that way if there is any injury at all we --
18 part of our training is that one employee would let one
19 of us know immediately, one employee would stay with
20 the person that was injured and another person goes to
21 call for help.

22 Since they may not know a good description of

1 where they are they can easily look at that chart and
2 there is intersection or some type of identifier since
3 there's not a physical address and they can give that
4 to the 911 operator. We have done practice scenarios
5 with this, and it has been very effective and seems to
6 be what works for us.

7 I think every rural area is different and so you
8 have to figure out what works for your area. We are in
9 an area that is still very dependent on volunteers for
10 emergency services and so that can affect response
11 times too, because you may not have as many volunteers
12 available when your injury occurs.

13 MS. LONG: Thank you.

14 MR. SCHAYER: Thank you. Stephen Schayer again.
15 Our final question is from Bob Blicksilver.

16 MR. BLICKSILVER: Hi. Bob Blicksilver, OSHA
17 Standards and Guidance. You testified to the
18 importance of training here and in your SBREFA
19 comments. In post-hearing comments, could you expand
20 on the training programs that you implement? And would
21 you be able to share any materials with us in post-
22 hearing comments and any other details on your program

1 such as the materials that you cover, the frequency of
2 training?

3 MS. PRYOR: Yes.

4 MR. BLICKSILVER: Thank you. Greatly appreciate
5 that. That's all, I have.

6 MR. SCHAYER: Okay. This is Stephen Schayer
7 again. Thank you, Ms. Pryor for your testimony and
8 also for when you joined us in the SBREFA.

9 MS. PRYOR: Thank you.

10 MR. SCHAYER: Your Honor, that completes OSHA's
11 questions.

12 JUDGE HILLEREN-WILKINS: Thank you. Are there any
13 questions from the Solicitor's Office?

14 MS. WILES: Thank you, Your Honor. Linda Wiles
15 from the Solicitor's Office. I did have one follow-up
16 question to something that you had mentioned in your
17 testimony, Ms. Pryor. You stated that you have an
18 annual visit with your local county emergency
19 responders or some organization. Is that something
20 that you do every year and is that voluntary?

21 MS. PRYOR: Yes. That is something that I do
22 every year and that is voluntary.

1 MS. WILES: And I also know that North Carolina is
2 a state plan state, and you mentioned other resources
3 that you have for support. Is that provided through
4 the North Carolina OSHA State Plan or are these
5 resources that are through other agencies or entities?

6 MS. PRYOR: North Carolina Department of Labor
7 has -- it's called Beat the Heat, their own program
8 that we can utilize their resources and then North
9 Carolina Cooperative Extension, even though it's state
10 based but each county has their own office, and we are
11 very lucky that in the county that I'm in that we have
12 a liaison that is just so, so, so helpful. And so he
13 actually helps provide most all of our training because
14 I don't speak great Spanish and he does and so then
15 that way I can -- we used to use different methods for
16 translation, and I wasn't comfortable with those. I
17 wanted to be absolutely sure things were being
18 translated the way that I thought that they were or
19 wanted them to be, and so we started using him and he
20 has just a great rapport with our employees, and
21 they're used to seeing him. He visits every week, so
22 it's another person that they're comfortable with.

1 It's another person besides me that if there is a
2 problem and they don't feel comfortable, for whatever
3 reason, talking to me, it's at least another contact or
4 an interaction that's coming to them that they can, you
5 know, voice any concerns to.

6 MS. WILES: Thank you so much, Ms. Pryor. It's
7 very helpful. Nothing else from me, Your Honor.

8 JUDGE HILLEREN-WILKINS: Are there any participant
9 questions?

10 MS. CARLON: No, there are not, Your Honor.

11 JUDGE HILLEREN-WILKINS: Thank you, Ms. Pryor, for
12 your testimony today.

13 MS. PRYOR: Thank you.

14 JUDGE HILLEREN-WILKINS: We are now at the end of
15 all scheduled witnesses for today. I'd like to remind
16 the hearing participants that they may submit
17 additional evidence or statements relevant to the
18 proceeding within 90 days of the end of the hearing,
19 which will be September 30th, 2025.

20 At that point the record for this rule making will
21 close.

22 Are there any administrative or logistical matters

1 we need to address before we adjourn? From OSHA or the
2 Solicitor's Office?

3 MS. WILES: No, Your Honor.

4 JUDGE HILLEREN-WILKINS: All right. And Ms.
5 Wiles, we did have an interpreter for a portion of the
6 testimony, would the Solicitor's Office suggest that
7 that interpreter be identified by name, for the record?

8 MS. WILES: Yes. I think that would be a good
9 idea. I don't know if the interpreter is still on the
10 line or if that information can be communicated to the
11 court reporter.

12 JUDGE HILLEREN-WILKINS: Madam Interpreter, if
13 you're still on the line, would you please state your
14 name for the record.

15 MS. CONTRERAS: I am currently on the line. My
16 name is Paolo Contreras, I am one of the interpreters
17 today. We have two interpreters on the line.

18 JUDGE HILLEREN-WILKINS: Will the other
19 interpreter please state your name for the record?

20 MS. WEISMAN: Annabella Weisman.

21 JUDGE HILLEREN-WILKINS: Thank you for clarifying
22 that.

1 MS. WILES: Thank you, Your Honor.

2 JUDGE HILLEREN-WILKINS: On behalf of the
3 Department of Labor, I'd like to publicly thank all
4 those people who gave their time and their testimony to
5 contribute to this hearing today.

6 To all participants, thank you for your interest
7 in this matter.

8 The hearing is hereby adjourned for today and we
9 will reconvene at 9:30 a.m. Eastern Time tomorrow.

10 Thank you.

11 (Whereupon, at 4:15 p.m., the hearing was
12 adjourned.)

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21

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WORD INDEX

< \$ >

\$1,200 146:13**\$12,000** 253:12**\$5,242** 264:5

< 0 >

00001 1:1

< 1 >

1 129:8, 11**1.3** 142:1, 15**1.9** 119:12

120:1 126:1

10 3:3 30:4

118:2, 21

10,000 251:13**10.5** 118:21**10:00** 12:5**100** 85:19 92:2

119:2 126:9

169:9, 22

102 220:18

224:1

103 118:15**105** 85:19

142:19 143:1

205:14

108 11:18**11** 90:12 93:8**11(c)** 191:13**110** 3:14 169:10**1105** 206:21**114** 118:11**115** 117:13**116** 3:15 12:4**12** 1:13 66:14

120:21 121:2

184:20

13 136:22

264:15 275:15

131 3:17 118:11**13-years-old**

205:10

14 26:8**15** 133:2

140:11 169:21

207:22

150 224:2**159** 3:19**15-minute** 156:5

220:20 221:12

223:14

16 155:11**160** 133:3**165** 3:21**17** 11:12

184:17 206:5

176 4:1**18** 91:7 219:15

250:12

180 4:2**19** 205:3**1911** 6:10**192** 120:12**1984** 181:8**1985** 220:9**1988** 65:12

233:15

1993 233:15**1997** 204:22**1st** 206:22

< 2 >

2,000 90:10

222:20

2,600 60:8**2.5** 18:6 19:3**20** 1:14 139:2

140:12 172:5

177:21 257:8,

12 260:18

200 155:15**2007** 24:6**2008** 184:16**2010s** 185:13**2013** 56:13**2015** 55:4**2018** 55:14

167:6 168:18

202 4:4**2020** 90:5

117:10

2021 157:13**2022** 117:10

250:20

2023 11:1 12:3

91:3 111:4

260:11

2024 5:8 10:11

92:4 177:20

206:20 252:8

2025 1:14 7:9

65:14 92:1

279:19

2026 66:12**2050** 93:9**207** 4:5**211** 4:6**218** 4:8**220** 4:9**225** 141:16**226** 4:10**23** 13:14 133:6**24** 11:20

117:10 120:11

134:4

25 3:5 42:9

226:3

250 4:12 141:16**25-foot** 141:17**260** 4:14 91:4**28** 100:22**29** 6:10 111:3

< 3 >

3 223:16**30** 90:19 126:9,

10 133:2

136:22 144:17

169:16 219:16

220:19 228:3

231:7 243:17

30th 5:8 7:9

279:19

31 127:10**3395** 175:2**3396** 175:5**35** 10:21 178:3

206:15

360 205:2**365,000** 141:21**37** 90:14**38** 117:22

< 4 >

4 1:13 220:17**4:15** 281:11**40** 60:9 140:11

155:10 221:15

400 72:7**41** 25:14**433** 92:11**44** 91:7 119:14**45** 119:17

120:14 140:11

450,000 141:19**47** 118:4**49** 10:13

< 5 > 5 223:14 5,600 65:15 5.5 118:18 50 30:18 261:3 52 93:9 54 3:7 58 11:6 59 3:8 < 6 > 6 33:16 128:22 250:11 6,700 90:11 6,800 137:1 6.5 119:4 60 66:8 600 90:10 251:17 62 88:18 64 3:9 120:17 68 120:11 < 7 > 7 129:1 134:5 220:15, 16 223:11 7:30 223:11 70 181:16 70698 5:9 70s 247:18 75 71:19 78 11:6 < 8 > 8 175:2 217:14 80 72:4 87:3 135:22 136:10 141:16 155:3, 11, 13 167:22 171:1 184:6	80,000 153:4 160:21 161:1 80s 233:12 247:19 83,000 10:12 84 3:11 85 122:8 87 11:4 89 3:12 5:8 < 9 > 9:00 269:11 9:30 1:15 281:9 90 7:8 22:14 96:20 118:19, 22 155:7, 12, 14 169:8 171:2 183:9 279:18 90s 111:7 911 251:20 276:4 95 11:14 85:19 118:14 < A > a.m 1:15 12:5 220:15, 16 281:9 A-B 193:18 abide 156:2 abilities 74:10 ability 70:19 87:12 109:13 167:16 able 8:19 18:16 19:5 21:8 28:6, 11, 12, 13, 22 32:3, 15, 20 33:12 40:16 43:13 48:21 49:11, 12 51:7, 14, 15, 22 54:9	63:3 72:20 79:6, 9 102:4 105:6, 8, 9 108:18 122:12, 15 125:1 130:21 154:19 160:10 166:11 167:6 168:18 173:15 174:21 178:1 184:8 187:12 188:12 204:1 207:12 210:17 212:17 215:10, 11 228:14 233:19 240:12 262:9 263:4, 5, 7, 9 271:22 272:18 276:21 absence 181:16 232:19 absenteeism 93:2 115:10 absolutely 21:18 50:8 68:1 103:14 104:22 190:5 198:18 278:17 absorption 26:18 abstract 11:8 111:15 Abt 4:17 129:10 AC 111:8 141:11 accept 159:5 252:20 access 11:15 14:9, 10 15:4 18:3 19:2, 5	20:9 55:19 74:5, 7 85:22 86:8, 10 88:17 101:6 129:18 130:2, 4, 11 167:16 179:21 188:8, 11 196:22 197:11 205:21 206:8 210:5 211:15 250:9 254:12 264:1 accessibility 203:7 accessible 18:15, 20 19:4 112:21 166:16 209:22 210:2 accessing 10:12 accidents 12:13 87:22 248:3 251:10 acclimated 63:15 69:15 107:4 acclimatization 30:12, 16 31:2, 13 35:2, 6, 17, 20 61:19 63:6, 7, 17 64:2 67:11 68:21 107:8 111:20 112:3, 9, 16 135:18 136:11 150:21 151:2 181:12, 21 182:14, 15 183:21 200:10 250:10 254:13

acclimatize 68:18 194:16 200:20 acclimatized 31:5, 11 68:19 149:20, 22 150:9, 12 183:11 194:6, 13 201:12 accommodate 133:21 accommodations 155:6 accompany 259:6 accomplish 168:13 account 87:6 154:8, 14, 17 159:14 261:8 accountability 58:7 accountable 92:19 accounted 95:6 accounts 86:4, 7 87:17 89:8 104:5 105:17 accumulative 174:20 accuracy 21:9 accurate 5:21 8:20 27:17 195:14 196:13 accurately 9:18 67:6 131:21 accused 12:1 accustomed 9:6 149:19 199:18 AccuWeather	91:22 achievable 60:22 achieve 61:7 62:6 63:4 71:15 72:21 153:8 155:22 achieving 68:5 acknowledge 25:15 26:4 83:4 acres 264:8 Act 12:18 191:14, 18 action 12:21 56:14 81:14 82:3 92:12 213:11 257:1 actions 93:6 actively 167:15 activities 134:10 activity 112:9 264:12 actual 137:14 acute 114:4 adapt 112:13 adapted 198:14 add 26:12 62:1 82:5 88:7 106:5 109:5 124:15 127:9 172:16 175:12, 13 192:19 261:11 added 26:20 57:19 201:21 262:12 adding 62:5 addition 9:3 26:22 38:15 41:22 67:17 136:17 153:13	186:17 222:10 227:15 245:13 additional 7:7 8:11 38:6 63:21 64:7 76:5 77:18 87:16 90:14 99:2 133:2 147:6, 7 155:6, 11 156:12 185:3 216:12 217:2 221:12 228:7, 12 244:13 279:17 Additionally 57:20 62:14 63:13 90:4 221:9 address 22:19 24:2 28:10 30:21 69:2 96:9, 13 127:21, 22 146:8 148:5 158:2, 22 170:14 202:3 241:9, 14 257:15 263:20 275:8, 10 276:3 280:1 addressed 83:10 137:7 202:10 addresses 110:14 addressing 199:18 adds 201:22 adequate 78:19 114:2 122:5 151:4 158:17 241:11	adequately 110:14 153:18 241:5, 19 adhered 130:12 adjourn 280:1 adjourned 281:8, 12 adjust 181:20 182:7 adjustments 75:13 ADMINISTRATI ON 1:5 161:6 Administration's 5:5 152:21 Administrative 2:4, 5 5:10 279:22 admitted 128:19 129:3 217:17 adopt 85:13 93:21 166:18 adult 266:5 adults 266:4 advance 131:5, 6, 8 244:7 advancing 10:9 advantage 63:2 advisories 162:14 164:15 advocacy 108:10 advocate 43:10 113:8 205:9 206:21 250:13 advocated 109:9 advocates 65:11 166:6 advocating 12:16 185:8 219:17 Affairs 10:2

affect 83:8 115:7, 8 211:7 222:1 227:3 276:10 affiliation 7:20 9:16, 22 25:7 54:12 59:18 64:17 110:7 116:18 132:1 152:15 165:18 177:1 203:13 218:17 250:4 260:2 affiliations 84:19 affirm 25:15 affordable 154:20 afforded 199:16 AFL-CIO 53:14 125:19 198:4 200:8 aforementioned 159:3 afraid 209:14, 17 212:11 afternoon 133:20 165:19 211:1 218:19 220:7 Ag 55:8, 13 57:12 66:14 67:7, 18 79:21 age 117:22 250:11 agencies 66:8 214:2, 8 238:7, 9 240:14 264:2 278:5 agency 30:22 66:2 101:4	159:1, 2 242:13 agency's 158:21 ages 91:7 aggravate 229:15 aggravator 89:12 aggressively 253:17 ago 31:12 32:1 34:22 45:9 223:18 243:17 254:4 agree 151:8 157:9, 11 159:16 187:22 188:4 274:19 agreeing 253:15 agreements 123:22 agricultural 10:10 18:11, 16 23:12 24:9 30:15 50:22 54:21 55:3, 16 62:16 64:22 65:5, 13 70:11 85:7 95:3 98:5 101:15 110:16, 21 112:17 113:21 114:9 117:3, 6 118:2 143:19 153:7 154:15 156:15, 17 158:22 162:5 171:13 172:5 174:7 180:2 196:17, 21 199:15, 17 204:13 209:21	212:9 214:3, 6 266:1, 19 agriculture 16:19 35:13, 22 55:7 58:19 83:8 144:4 154:9 164:13 178:3, 6 180:12 184:19, 21 185:19 192:7 199:13 200:2, 4 208:1 211:3 213:18 234:9, 11 235:3 247:22 250:20 260:16 261:6 ahead 33:8 49:17 110:4 204:11 216:21 230:21 AI 95:11 aid 157:7 213:7 AIHA 189:1 aim 58:20 68:5 aims 177:12 air 47:10, 15 48:10 135:9 141:12, 13, 22 142:2, 9, 14, 18 156:6 179:21, 22 223:10 226:17 229:2 air-conditioned 61:2, 3, 4 74:6 150:11 156:5 air-conditioning 141:11 airflow 58:14 70:13 190:3 airy 144:12 alarming 113:18	alert 54:5 94:12, 17 96:1 168:11 170:8, 12, 16 alerts 95:19 96:18 111:21 112:18 113:2 Alexis 4:1 176:22 177:7 180:21 187:3, 4 188:3 190:5, 22 191:20 195:15 ALIANZA 4:7 218:13, 21 219:11, 12 230:17 246:15 Alliance 219:14 allotted 6:15 130:11 allow 6:14 49:22 77:16 113:15 133:20 139:19 168:15 223:6 236:8 255:1 268:3 allowed 63:19 227:10 228:16 allowing 35:19 112:13 207:3 251:15 256:9 allows 90:20 207:3 265:1 alluded 84:4 Allyson 3:7 54:10, 11, 13 60:19 70:9 71:6, 20 72:13 73:16 78:22 79:16 80:10 81:5, 20

alongside 153:12 158:5	197:18 198:5, 17 200:15 202:5	anticipation 61:13	171:5, 16
alternative 81:19 169:6 245:10, 11	analysis 51:17 75:9 123:17 147:3 206:14	anti-retaliation 14:14 191:8, 18	188:21 202:17 230:8 232:10 245:1, 21
Alvarado 4:4 203:11, 15, 16 204:12 213:15 215:10, 18 216:19 217:6 218:2, 7	Angel 11:20	anybody 221:20	249:19 254:13 260:12 274:6 277:4
Ambiguity 156:11 178:22	Annabella 280:20	anytime 105:6	appreciated 52:16 139:16 172:20 244:8
ambiguous 156:2	announce 9:19 25:5 52:22 53:21 59:16 64:15 84:15 110:5 152:13 176:19	anyway 82:15 84:9 150:8	appreciates 152:19
ambulance 205:19 223:19	announced 210:7	a-okay 201:7	approach 35:21 68:3 112:12 154:4 159:16, 18 179:6 245:10 265:1
America 95:4 107:4 113:22 266:7	announcements 9:10	apologize 241:22 244:14	approached 120:13
American 153:13 154:6 161:7 182:12	annual 255:22 263:14 277:18	Apopka 25:12	approaches 214:4 245:12
America's 154:17, 21 158:11	annually 146:13	app 130:14, 16 189:1, 4	appropriate 58:16 111:22 134:21
AMOR 4:7 218:15 219:10	anonymous 242:16	appeals 167:5	appropriately 19:20
amount 144:16 267:2	answer 8:13 21:8 30:1 32:20 69:8 81:21 104:22 105:5 165:4 174:22 186:8 187:3 195:5, 7 214:15 215:2 216:16 233:2 240:16 244:22	appear 6:6 7:18	approximate 120:7
amounts 44:13	answering 9:4 68:11 94:6 186:7 233:4	applauded 157:17	approximately 9:9 140:11 155:15 161:3 251:17
AMY 2:13 4:2 17:3, 4 40:8, 9 73:4, 6 97:5, 6 99:4, 21 176:22 177:10 180:20 181:3 189:13 192:18 194:2	answers 8:14 35:8 40:4 198:5	apples 260:21 262:13, 14, 15 264:15 268:16, 17, 18	Arberry 53:10, 13 107:14, 15
	anti 256:17 257:2	applied 144:3 196:18 229:13 241:6 249:4	arbitrated 268:5
		applies 81:13 85:20 98:15, 20 159:20 252:3	area 72:5 109:13 124:10 150:7, 13 156:6, 9, 21 200:12 211:3 222:16 223:5, 8 262:19
		apply 14:10 60:15 75:15 97:17 144:8 160:9 211:17	
		appreciate 25:4 32:17 37:21 69:22 78:3 132:4 149:14 158:21 159:5 160:6 170:15	

264:10 273:9 275:5 276:7, 8, 9 areas 22:22 23:21 34:20 35:7 41:20 51:11 58:9 61:16 76:7 111:19 115:10, 15 135:19 136:14 137:15 142:5, 18 149:18 156:4, 18 160:1 162:20 172:14 173:2 183:12 189:22 190:4 228:22 229:5 239:9 273:5 274:18 arguably 93:1 argument 6:16 Arizona 11:3, 6 12:4 15:15 183:5 arms 249:7 arrangements 97:19 99:7 223:9 arrest 111:6 arrive 63:13 69:15 arrived 107:3 252:15 arriving 111:6 arrow 33:2 article 199:22 Arturo 111:3 Arturo's 111:17 112:2 Asia 113:22	aside 233:7 234:12 asked 13:15, 16 29:4 38:13 86:17 117:14, 17 121:12 131:2 253:2 asking 7:15 9:4 58:1 233:13 254:22 257:1 272:21 273:1 as-needed 19:18 50:18 106:6 171:20 aspects 88:10 157:19 175:19 assert 180:11 191:12 192:8 196:2 asserting 180:16 assertions 92:21 assess 202:2 asset 153:12 260:19 assigned 109:16, 18 assist 62:17 134:14 ASSISTANCE 3:20 65:7, 20 158:14 165:20 166:2 assisted 10:11 65:15 77:12 Associated 103:8 115:11 147:9 ASSOCIATION 3:4, 16 25:11 26:7 45:9 54:15 55:6	75:8 78:15 117:1 132:8, 9 144:1 151:9, 11 251:12, 14 253:2, 11 255:7 associations 86:6 assume 80:6 162:22 194:19 195:4 assumed 147:3 assumes 123:22 assumption 123:17 124:18 assumptions 51:20 124:3 201:4, 5 assurances 86:5 assure 158:10 Assuring 56:1 Asuncion 12:17 atmosphere 145:19 at-risk 67:6 attack 90:4 attempt 86:10 attempts 137:11 attendee 54:3 attendees 129:17, 18 130:4, 10 attention 27:2 89:2 91:11 113:17 115:13 250:9 251:10 252:12 254:13 255:15, 18 attests 86:16 attorney 85:1 89:15 attorneys 172:3 attribute 147:15	ATVs 17:14 18:10 audience 172:2 audio 24:8 29:5, 6, 13, 14, 15 33:5 37:6, 7 39:8 48:4, 18, 19 204:8 226:5 231:13 August 5:8 260:18 auto 130:2 automated 70:4, 18 71:20, 21 automatically 70:16 106:15 129:18 147:2 availability 79:2 available 6:2 18:4, 18 20:13 56:2 78:20 79:1, 9 87:15 113:3, 8 122:8, 9 126:14 128:3 180:19 188:10 238:22 276:12 average 51:13 87:19 117:22 118:1, 10, 14, 15, 18 119:2, 13, 17 120:10 155:10, 15 avoid 15:10 17:13 207:4 aware 31:4 71:7 122:22 124:5, 12 150:20 164:17 188:7 189:3, 6 190:17, 22

191:22 208:21 240:20 awareness 35:20 57:6 214:6 awful 127:19 awnings 77:17 Ayusha 198:3 200:7	bags 262:16 balance 172:7 bale 133:13 134:7, 10 140:8, 10 bales 132:14 133:5, 6 134:9 bamboo 226:2 bandanas 39:2 banning 39:16 B-A-R 193:17 BARAB 78:13 79:11, 14 80:4 81:1, 17 82:4 83:11 103:4 104:22 105:4 106:13 107:10 149:12, 13 150:10, 20 151:4, 10 152:1, 5, 8, 10 193:16, 17 195:4, 10 196:11, 12 197:14, 19 199:14 B-A-R-A-B 78:13 bargaining 123:22 124:9 barn 70:20 71:17, 19 barns 58:11, 14 61:8 70:13, 18 74:5 barrier 86:22 barriers 122:5 209:7 bars 77:12, 17 Based 8:5 17:15 35:6 79:15 93:9	159:15 174:13 219:21 231:7 251:16 270:2 278:10 basic 15:9 86:10 199:19 basically 121:9 124:8 134:7, 10 175:20 basis 16:20 26:14 70:20 145:16 bathroom 51:14 227:11, 14 228:15 bathrooms 210:14 Bay 90:13 bean 226:4 Beat 278:7 becoming 88:5 90:20 251:2 bed 28:7 began 13:9 199:10 205:9 begged 11:22 beginning 5:9 9:4 166:14 219:7 begins 7:1 behalf 10:4 16:5 52:6 85:3 89:16 94:21 96:12 98:2 100:9 101:19 102:17 103:14 105:10 106:17 108:3 116:4 125:11 132:9 149:4 152:16 163:17 176:7	193:8 217:10 258:1 260:14 281:2 beings 210:17 believe 9:11 15:20 17:17 18:3, 22 19:22 20:5 52:11 54:8 62:5 79:3, 11, 15 81:6 87:9 95:8 96:17 97:19 106:6 107:1 115:22 126:8 137:12, 16 138:1 143:1 158:15 159:18 166:14 167:1, 11 168:1, 10 170:20 185:18 209:17 212:3 213:1 believed 91:8 159:1 168:21 believes 154:13 bend 227:8 bending 144:10 beneficial 115:14 beneficially 167:3 benefit 172:19 benefited 174:5 benefits 200:1 206:20 274:13 275:3 Benito 205:5 best 48:15 56:8 66:6 76:21, 22 81:11, 13, 14 82:3 97:1

99:10 112:14 158:6 161:11 242:6 272:1 better 28:20 45:12 47:8, 20 56:18 58:18 103:11 120:7 140:1 144:13 165:2 168:13 195:12 233:22 236:11 241:14 beverage 266:8 beyond 85:12 100:3 103:17 145:12 146:17 147:18 168:20 169:1 172:12 191:19 big 38:13 39:14 41:4, 5 43:20 88:15 141:21 172:6 197:1 218:2, 3 271:10 bigger 194:4 biggest 212:18 Bill 92:10, 11, 15 billion 93:8, 9 bills 92:13 225:12 bin 268:18, 20 269:1, 3, 7 binding 104:3 bins 262:16, 18, 22 263:2 269:6 biometrics 117:17 bit 26:12 35:3 38:4, 8 47:21 48:17 83:12 141:13 186:22	200:13 202:13 236:9 biting 39:8 Black 3:17 119:21 131:22 132:2 138:11, 21 140:4 141:9, 15 142:7, 12, 22 143:9 144:5 145:2 146:4, 12 148:3, 9, 20, 22 149:7, 8 150:1, 2, 14 151:3, 6, 15 152:4, 6, 9, 13 blacklisted 109:7 180:15 243:10 253:10 blacklisting 192:11 blacklists 239:15, 17 blanket 153:20, 22 154:14 157:12 261:7 BLICKSILVER 2:16 20:18, 19 21:12 22:11 23:1 51:5, 6 74:14, 15 100:15, 16 101:16 102:12 115:4, 5, 21 123:14, 15 124:11 125:5 146:10, 11 148:7 160:15, 17 161:3, 19, 20 174:1, 2 175:7 176:1 276:15, 16 277:4 blockage 101:2	blood 120:20 223:20 blow 223:10 BLS 206:14 blue 119:22 blurry 205:16 BMI s 67:12 board 99:16 108:21 136:18, 20 167:5 168:17 BOB 2:16 20:17, 19 21:12 22:11 51:5, 6 74:13, 15 100:14, 16 101:16 115:3, 5 123:14, 15 146:10, 11 148:7 160:15, 17 161:19 174:1, 2 175:7 276:15, 16 bodies 181:19 229:20 body 11:18 39:21 112:13 113:15 182:7 205:15 212:15 222:8 224:2 226:16 227:17 229:14 248:11 269:18 boots 229:10, 11 border 194:20 born 227:17 240:5, 7 boss 224:7, 8, 22 bosses 216:1 221:19 223:4 225:13	bottle 145:4 222:21 223:21 bottled 145:7 267:4 bottom 33:5 54:5 131:10 186:1 203:3 boundaries 160:2 box 88:15 boxes 208:12, 16 branches 248:18 break 14:5 24:8 29:5, 6, 13, 14, 15 37:6, 7 39:7, 8 44:14 46:12 48:4, 18, 19 61:2 74:5 104:15 106:10, 12 119:13, 15 121:13 124:19, 20, 21 129:9 134:18 135:1 140:5, 14, 17, 22 156:8 168:16, 20 171:12 187:7, 8, 13 196:4 215:21 220:20 221:12 223:7, 14, 15, 16 224:7 227:12 228:4, 14 245:3, 4 252:18 257:1 259:11 268:2, 3, 5 269:8, 10, 12, 15 271:19 272:19 275:11 breakdown 134:12 breakdowns 134:14, 15

breaks 13:11,
13 14:10 15:8
17:15 19:15, 18
20:1 21:15, 17
50:15, 18, 22
51:15, 21 52:2,
3 60:22 73:11,
13, 19 74:10
85:17 86:17
87:10, 12, 13, 15
88:20 101:5
105:6, 9, 13
106:4, 9 112:11
117:2, 19 119:9,
10, 12, 15, 16, 18,
20 120:1, 2, 6
121:12, 16
122:12 123:19,
21 124:2, 8, 13
125:3, 4, 21
126:1, 2, 5, 8, 10,
11 127:6, 7
128:2 134:1, 11,
17, 21 137:18
143:16, 20, 21
144:2 145:17,
18 146:2 156:5
162:16 167:19,
22 168:5, 12, 21,
22 170:20
171:20 173:8
185:4 186:15,
17, 20, 21 187:1,
5, 11 210:13
212:13 220:20
228:5 229:19
230:9, 12, 13
236:2, 4, 6, 8, 12,
13 245:8 250:9
251:16, 17, 18
253:18 254:12

265:5 267:12,
22 268:9, 12
269:14, 21
270:7, 10, 11, 15
breathable
229:6
breathe 221:22
breathing 39:12
breeze 47:18, 19
48:17 61:7
71:16, 17
bridge 101:7
204:17
brief 23:9
224:7 246:6
briefly 46:19
53:8 199:13
briefs 49:19
Brimmer 70:2
bring 13:22
26:5 41:4 46:6,
7, 11 85:10
126:20 143:3
256:6
bringing 251:13
252:22 257:8
263:1
broad 97:9
broader 114:13
139:20
broadly 144:4
broken 273:4
Bromelia 220:11
brought 126:19
185:15 199:8
223:21
brutal 47:5, 6
buddies 215:19
buddy 42:1, 3, 4,
6 184:1, 2, 3

215:5, 14, 18
buffering 27:15
bugs 15:17
build 57:5
building 88:2, 9
103:8 135:8
141:16 144:9
150:16
buildings 150:12
built 17:18
156:7
bulb 189:2
bunch 44:15
burden 59:5
75:4 178:20, 21
198:11 261:11
burdens 57:16
153:21
BUREAU 3:18
60:6, 7 90:4
152:17, 19
153:2, 14, 15
154:6, 12
157:17 159:18
160:8, 20
161:16 162:11,
21 164:10, 22
Burkhardt 3:11
84:18, 22 85:1
94:11, 20, 21
96:7, 11, 12
97:4 98:1 99:9,
11 100:8
101:12 103:13
105:10 106:17
107:21 109:4
burners 133:14
bus 31:9, 10
111:8 253:7, 9
255:11

business 29:2
42:12, 17 43:5
60:12 65:16
72:21, 22
104:10 161:6
264:21
businesses 55:4
56:22 92:21
137:20 138:1
button 8:3
131:10
buttons 34:14
52:12
buy 247:15

< C >
Cal 167:5, 10
168:17
calculated 245:5
calculating
245:7, 10
CALIFORNIA
3:20 12:6
14:19 15:15
17:12 18:7
21:1 24:7, 9
136:6 165:20,
21 166:2, 19
167:4 168:3
169:13 172:8
173:19 174:5,
15 175:9, 11
184:18 205:9
208:15 210:19
213:17 231:12
232:20 233:1,
11, 14 234:6, 10
238:8, 19 240:9
247:19
California's
11:13 15:3

18:11 30:15 171:11 174:8 call 12:21 33:7, 10 80:13 118:20 163:4 184:8 247:7 275:21 called 8:4 9:15 54:6 131:1, 4, 12 205:19 219:12 222:16 223:19 241:2 247:6 250:21 252:8, 15 259:7 278:7 calling 181:8 241:7 251:20 Calor 85:9 105:15 Cal-OSHA 174:22 camera 130:22 131:1 camp 254:4 campaign 85:9, 10 105:15 157:14, 18, 20 campaigning 105:15 CAMPESINAS 4:3, 7 203:11, 16 204:15, 21 206:17 213:21 217:15 218:14, 21 219:13 231:12 233:8 canaries 117:6 canopies 101:21 cap 247:4 248:7 capacity 93:3	capes 229:9 caps 247:18 caption 129:21 captioning 129:19 203:9 capture 18:16 capturing 22:20 cardiac 111:6 care 11:16 29:11 41:13 54:18 65:7, 19 89:2 104:7, 8 139:3, 4, 8 141:2 144:14, 22 145:3 188:8, 14 197:8 208:6, 21 212:5, 6, 21 225:3, 13 264:21 carefully 67:16 135:17 caring 42:16 CARLON 4:17 9:20 25:2, 6 32:15, 17 33:1, 4, 8, 19 34:2, 5 53:2, 10 54:1, 10 59:17 64:16 78:11 82:21 84:17 103:2 107:13 110:6 116:10, 17 125:16 128:9 129:10 149:11 152:14 164:2 165:13, 17 176:20 193:15 197:22 201:16 202:19 203:21 207:17, 20 218:9, 13 249:17 250:3	258:8 259:19 260:1 279:10 Carolina 111:5 231:16 250:14 251:8, 11 253:1, 11 255:7, 10 256:4 260:4, 14, 16 270:21 275:7 278:1, 4, 6, 9 carried 185:12 carriers 17:14 carries 266:22 carry 14:3 267:2 carrying 13:16 262:22 263:2 cart 221:20 case 6:19 22:3 31:11 69:4, 12 80:22 84:13 128:11 140:7 165:14 211:22 213:8, 12 218:10 228:22 235:19 240:20 249:18 259:15 271:13 272:13 cases 14:2 20:11 21:16 31:3 41:15 69:17 173:9, 17 184:20 210:10 212:9 222:14 catastrophic 114:12 catch 272:1 category 105:13 cause 77:10 90:1 170:9 178:15	caused 186:2 191:17 222:12 causes 48:6 causing 178:15 261:13 caution 118:20 120:6 CC 129:20 Center 55:16 62:16 64:22 65:5 79:21 188:9 centers 66:10, 14, 21 67:18 88:15 Central 11:14 95:4 107:4 113:22 132:3, 6 133:7 136:17 167:5 174:8 certain 51:20 72:1 161:7 187:19 197:9 256:7 certainly 28:15 41:20 73:8 76:3 99:9, 18 139:7 149:15 173:16 certificate 90:1 cetera 234:15 249:5 CFR 6:10 Chair 60:6 challenge 172:15 274:15 challenged 179:2 challenges 17:7 58:5 63:21 175:10 197:5 199:12 265:20

challenging 274:15 chance 32:21 47:9 121:17 122:18 181:19 chances 92:14 change 10:18, 20 29:12 73:19 89:12 91:15 96:16 170:14 206:12 241:15 273:6 changed 69:2 90:5 228:11 241:14 changes 112:5 134:2 204:18 262:10 changing 134:1 channel 203:5 channels 112:19 charge 98:21 chart 275:14, 16 276:1 checking 215:6, 15 271:3 272:21 checks 271:5 chemicals 249:4 Chenay 53:13 107:15 Chief 181:4 children 28:5 36:19 184:13, 20 chili 205:11 choice 140:10 269:17 choices 58:15 265:12 choose 130:7 253:5	choosing 266:11 chose 158:1 CHRISTINE 2:4 5:10 chronic 13:7 27:20 66:16, 17 113:19 114:12 chunk 197:1 circulation 47:16 229:1, 2 circumstances 49:21 110:15 citation 167:10 175:1 citations 179:1 207:7 cite 93:10 106:18 168:18 cited 109:6 175:3 CITIZEN 4:13 110:10 CITIZENS 3:13 citrus 247:16, 17 248:13 civilian 11:1 CKDu 113:20, 21 claim 86:20 87:10 claims 115:11 136:21 137:1, 2, 4 151:19 196:13 clarification 203:19 clarify 30:20 146:16 174:19 183:17 217:21 246:9	clarifying 7:6 85:19 111:22 125:19 280:21 clarity 98:14 classes 213:7 classifiable 190:1 Classification 161:8 classroom 55:21 clause 57:18 178:13, 17, 19 179:1, 2 clean 14:9 126:15 128:3 210:14 cleaned 133:12 cleaning 133:10 clear 15:3, 12 33:13 49:17 68:11 89:3 103:9 113:7 156:16 168:15 209:21 210:2 214:16 216:10, 16 clearly 9:17 112:15 131:20 Click 33:4 203:2, 4 clicking 129:19 130:5 203:22 climate 10:17, 19 63:14, 16 69:14, 20 70:5, 7, 20 71:5 72:18 89:12 91:15, 16 106:15 107:9 117:6 136:14 159:20 194:21	200:18, 19 201:6, 7 204:14 206:12 207:1 213:18 231:22 climates 22:16, 21 136:5 149:22 193:22 200:9 261:9 climatic 169:15 clinic 251:20 CLINICIANS 3:22 176:21 177:10, 19 181:4, 6 185:5 clinics 214:1 clock 106:2 close 7:11 26:8 101:1 120:3 128:15 143:2 166:18 167:1, 8, 13 248:1 262:20 264:6 269:4 279:21 closed 5:16 129:18 closely 56:15 61:14 closing 134:8 140:10 closure 66:21 clothing 38:6 39:3, 5, 10 40:2 58:15 246:10 clue 236:19 237:6 Coachella 169:12 205:1 233:14 Coalition 100:1 code 161:7, 8 175:2

cold 17:8 44:7, 9 145:9 229:21 colder 266:10 collaborated 56:16 collaborators 214:1 collapsed 11:13 12:3 colleague 85:2 89:10 177:9 205:17 207:15 210:21 212:8 213:14 colleagues 56:17 205:7 209:12, 14 211:19 collected 117:9, 16 collection 117:14 120:21 collective 123:22 124:9 259:7 College 55:7 182:12 250:12 Colorado 166:21 168:4, 7 combination 112:8, 12 combine 127:18 combined 127:11 228:18 261:6 come 5:3 28:2 41:9 46:11 71:19 73:22 106:14, 16 139:2 140:8 150:3 158:4 162:1 191:4	193:21 199:5 228:10 231:11 235:4 238:9 250:15, 16 252:19 257:11 264:6 271:2, 9 comes 65:22 156:15 163:2 164:12 201:6 comfortable 70:21 72:18 273:1 278:16, 22 279:2 coming 61:14 69:13 107:8 120:3 173:4 183:10 194:5, 8, 10, 19, 20 200:21 210:12 225:9 239:8, 9 260:5 279:4 commend 110:11 commendable 57:15 comment 5:16 8:16 17:1, 21 21:8, 10 22:20 24:3 49:20 54:22 73:10 97:3, 9 105:14 106:18 124:16 139:18 148:15 165:9 188:22 189:21 190:7 200:14 202:1, 7 245:9 256:21 268:10 commented 212:8	commenters 23:10 99:22 162:4 167:20 270:6 commentors 274:14 comments 6:17 7:6 16:18 18:14 19:13, 16, 21 20:7 22:17 25:17 26:6, 10 30:13 38:4 40:12 43:10 49:16 50:14, 15 51:9, 11, 22 52:15 70:3 74:16, 21 76:4, 6 83:5 85:17 93:11 95:1, 22 96:10, 14 97:16 98:3, 14 99:5 100:10, 22 102:11 105:21 107:7 115:10, 14, 20 124:12 132:11 138:15 139:13 141:10 143:18 146:8, 15 147:11 148:6, 11, 21 153:14 159:3 161:11, 17 163:8 165:6 166:2, 5, 8 171:10, 15 172:2, 12 173:7, 11 174:3, 16 175:13 177:19, 21 179:9 185:5, 11 186:14, 16 187:18 189:7, 9	190:8, 15, 21 191:9 196:16 197:4 199:22 202:12, 14 215:3 230:10, 14 231:6 232:17 233:3, 5 236:2, 10 244:4, 22 250:6 254:22 268:1, 6 272:9 274:5 276:19, 22 Commerce 256:5 Commission 178:18 commitment 55:2 57:8 committed 54:16 Committee 60:6 205:1 211:2 committees 214:5 commodities 153:6 common 13:6 17:7 21:18 28:18 62:4 83:13 87:6 93:15 121:14 146:3 169:11 265:20 commonly 18:9 143:19 179:2 commonplace 174:11 communicate 108:9 121:10 communicated 167:15 280:10

communicates 241:19	competitors 83:18	comply 42:10, 13 43:6 146:14, 19 210:9 217:4 226:22 227:1 255:4	109:6 153:15 159:1 217:3 255:3 260:15 261:13, 14 279:5
communicating 94:16	compiled 173:14	complain 206:9	conclude 185:10 245:19
communication 101:7 112:19, 22 209:7 236:11 241:11	complained 108:7 239:14	complying 24:10 81:2 174:15 198:10 213:6 227:7 244:1	concludes 16:9 68:6 78:1 94:3 102:14 115:22 123:11 125:9 128:11 129:6 163:15 176:2 186:3 193:5 217:7 257:20
communities 54:18 113:22 205:3	complaining 234:20 240:4	component 65:21 139:20 192:20	conclusion 8:12
community 54:21 55:2 113:5 158:22 172:3 209:12 214:1, 7 216:5	complaint 191:16 242:14 243:9	components 75:2, 3, 5	concurring 153:13
community- based 172:22 177:17	complaints 238:6	compounding 26:16 40:1 88:1 182:9	condition 142:3 188:16
comorbidities 67:11	complete 5:20 132:21	comprehension 113:3	conditioning 141:14 156:7 179:22
comp 144:17 151:18	complex 252:5	comprehensive 68:3 73:11 100:7	conditions 10:17 23:13 26:18 30:18 34:15 35:6, 14 41:6 46:8 67:15 69:1 70:15 74:19 80:18, 19 85:6 87:21 96:5, 6, 16 100:19, 21 107:18 108:14, 20 135:2, 12 141:13 149:16 151:1 158:12 162:6 169:15, 18 177:14 178:8 187:10 196:10 202:10 207:5 229:15
companies 228:2, 6 232:3	complexity 57:20	comprehensively 202:4	
company 136:20 223:18 236:22 243:11 245:2 247:12	compliance 21:2, 4, 5 58:8 75:8, 12 83:15 156:3 157:6, 9 171:20 172:6, 9 175:9, 10, 19 180:10 182:4 232:21	comprise 75:4	
compared 178:4 239:7	compliant 20:22 66:22	concentrate 7:5 concentrated 183:4	
comparing 164:19	complicated 29:21 31:18 34:16 35:10 43:3	concern 38:13 39:14 61:17 62:8 69:3 98:13 99:11 100:2 156:13 262:2 274:14	
compassionate 228:13	complications 30:1	concerned 57:20 65:2 77:9 83:6	
compensation 93:5 115:11 136:20 196:12, 17, 20 197:1, 3, 6, 11 245:7	complied 14:21 198:15 207:9 211:18	concerns 26:2 28:10 63:9 75:10 96:4	

234:22 235:8 238:1, 11 239:2 252:1 254:3 conduct 66:2 conducted 51:16 conducting 5:20 66:11 confident 200:3 confine 132:10 confirm 246:9 conflict 140:1 conflicts 100:6 confusion 121:1 184:9 congratulate 250:19 Congress 66:2 conjunction 154:6 connected 131:3 connecting 240:15 connection 48:3 conscience 214:6 conscious 54:17 251:22 consensus 169:13 consequence 111:13 120:14 212:14 consequences 12:14 27:3, 20 114:10 212:6 221:17 261:13 265:10 consider 21:6 23:8 30:14 35:19 36:8 76:19 147:7 148:14 159:2, 3	160:2, 10 165:8 172:11 202:12 221:22 222:11 227:2 245:9, 12 260:19 consideration 20:7 34:19 35:4 49:19 153:18 170:1 considerations 80:20 179:12 263:17 considered 26:19 38:10 44:20 63:16 156:18 190:13, 14 257:9 270:12 considering 82:17 112:16 173:12 consistency 58:10 consistent 18:7 70:13 124:4 consistently 17:8 58:10 87:17 114:1 171:9, 11 175:3 265:21 constant 171:2 212:12 264:13 constantly 135:11 234:18 236:22 240:13 262:8 Constible 82:22 83:2 84:10 construction 85:7 87:20 88:2 93:18	98:10 101:8 248:9 consult 58:6 consultants 199:5 consultation 56:21 212:22 consume 266:14 consumer 54:17 consumers 88:14 contact 214:11, 12 279:3 contain 20:3 contained 156:22 container 43:20 267:6 contains 87:16 contaminated 269:1 content 5:17 context 85:20 151:7 continually 135:12 continue 24:8 53:5 57:6, 10 62:19 84:7 117:8 131:17 145:15 158:16, 21 174:11 175:8 205:4 212:10 224:18, 19 continued 14:21 59:3 80:1, 3 252:13, 20 253:16 continues 132:19 179:19	213:17 225:21 253:18 continuing 174:9 continuous 57:9 contract 13:8 208:13 contractor 9:13 98:20 129:11 183:18 contractors 98:11 103:9 183:17 254:1 CONTRERAS 280:15, 16 contribute 222:12 281:5 contributing 269:2 control 23:18 70:5, 7 71:5 100:6 107:19 178:7, 9 179:20 187:9 196:9 213:2 controlling 98:17 100:4 controls 46:20, 22 47:3 50:1 72:10 135:7 232:22 convenience 43:2 Conversely 186:18 convey 271:7 cook 28:3 cool 14:9 23:20 29:9 44:3 45:19 46:12 48:14 60:21 107:19 121:17

122:18 128:3 135:21 143:4 162:19 210:13 229:20 265:21 266:4 cool-down 167:19, 22 168:20 170:20 cooled 112:1 113:10 cooler 43:12 133:19, 21 136:8 140:19 150:19 183:12 195:6 252:19 266:7 coolers 18:9 cooling 49:20, 21 142:6 190:3 258:19 259:2, 5 Co-op 132:3 133:7 cooperate 108:8 cooperative 132:15 271:1 278:9 cooperatives 55:5 56:3 Coordinator 10:3 25:10 58:6 232:19 co-own 60:8 copies 274:4 copy 139:13 core 39:20 113:15 158:10, 16 Cornell 55:12 Cornell's 55:7 56:17	corner 129:20 130:6 corporate 252:3 correct 21:11 34:8 79:13 80:9 134:13 195:6 correctly 35:8 161:1 corresponding 179:18 cosigned 177:21 cosmetic 172:9 cost 17:11 75:14, 15 76:16 93:7 124:21 154:21 155:18 156:11 253:12 264:5 costly 265:8 costs 63:21 75:8, 12 92:21, 22 93:3 95:12, 16 115:11 146:13, 17, 21 147:6, 7, 8 208:17 cost-sharing 65:7 COTTON 3:16 132:7, 8, 10, 12, 13, 14, 17 133:4, 9, 11, 13 134:8 136:18 140:8 142:9 146:19 151:8, 17 152:2 Council 55:8 57:13 83:3 count 224:4 countdown	130:11 counter 87:12 counterproductiv e 135:1 counties 160:11 countries 106:15 193:21 235:4 239:10 country 26:2 29:6 34:20 43:6 72:15 107:3 110:19 135:19 177:16 183:5, 10 194:6, 7, 8, 20 195:18 210:19 251:13 273:5 County 60:4 91:5 105:16 160:3 205:5 206:7 275:7 277:18 278:10, 11 County's 91:7 263:15 couple 23:7 31:12 61:16 78:14 91:21 94:12 95:9 122:2 125:19 127:6 140:15 147:13 187:17 193:19 236:1 265:18 coupled 114:10 course 20:4, 9 51:8 61:12 75:15 81:14 82:3 117:10 119:16 121:6 188:6 234:5	court 8:18, 22 9:17 131:20 179:2 280:11 cover 64:1 151:5 247:5, 8 254:1 264:10 277:1 covered 179:13 223:5 226:19 covering 51:11 190:12 248:21 264:6 covers 179:15 COVID 39:11 cow 60:8 coworker 12:7 coworkers 13:1 57:22 208:21 211:20 225:8 227:16 cows 54:19 70:22 72:1, 19 cracks 97:20 cramping 121:2 cramps 208:8 crawling 15:17 create 48:16 57:19 63:20 153:21 154:10 155:8 157:3 214:5 created 66:2 74:9 77:4 creates 57:21 74:9 204:18 creating 55:2 61:22 62:18 63:17 65:16 92:8 98:17 155:16

creation 12:18 creativity 45:6 Credit 57:2 Cremins 3:21 165:17, 19 166:1 170:6, 15 172:1, 21 173:12 174:18 175:15 176:3, 5, 10, 12 Creole 20:11 crew 42:7 45:21 46:1, 5 98:6 169:1 208:19 209:1 211:22 234:19 237:1 239:21 243:2, 20 crews 18:21 133:17 crisis 113:18 204:14 criteria 169:5 critical 111:1 Critically 15:6 134:21 crop 133:6 153:6 167:7 247:12 261:9 crops 63:12 110:18 144:11 247:4 crucial 110:20 179:6 180:7 cubic 141:22 cue 131:6 cues 20:12 culture 55:3 57:10 58:20 65:16 86:9	87:18 104:13, 14 144:21, 22 cultures 266:8 curious 23:15 53:17 139:21 170:9 215:5 254:22 current 76:8 123:18 124:13 147:22 153:17 154:16 262:4 263:14 currently 9:13 70:8 97:20 123:19, 20 131:18 146:18 147:11, 19 148:16 151:16 162:19 166:15 178:11 206:13 209:19 280:15 curtains 70:17 cut 95:12 215:12 268:22 cuts 62:21 66:8 67:21 83:5 84:8 cycle 272:19 273:3 < D > daily 26:14 70:19 74:1 dairies 185:12 234:14 Dairy 54:14, 15, 17 55:4, 22 56:2, 4, 13 57:3, 7 58:13, 21 60:4, 8 69:11 70:5, 8, 10 71:8 72:5, 14, 16	73:17 74:1, 9 75:7 78:15 198:7, 8, 9, 19 199:1 Dallas 91:5, 7 DALTON 2:11 38:1, 2 damage 13:6 86:15 damaged 93:4 Dan 258:10 danger 22:8 119:1, 3, 4 120:6 126:4 dangerous 10:17 13:13 15:2 87:21 91:20 113:1 224:18 228:19, 21 232:2 261:22 dangers 110:12 114:19 261:21 Danielle 3:12 84:18 85:2 89:10, 14 101:13, 18 107:22 108:2 Dario 12:3 dark 261:19, 21 263:13 data 10:21 52:1 66:20 115:12 116:22 117:9, 14, 16 119:7 120:21 121:10 123:5 124:12 136:15 160:4 188:18 189:3, 6 190:21 206:15 date 92:5	David 3:21 165:17, 19 Day 1:13 11:18 12:9, 22 13:15 16:5 26:1 28:6 39:5 61:1 85:8 98:8 106:22 107:5 111:7 120:15, 16 130:3 133:22 134:5, 11 135:22 140:13 143:18 169:15 181:11, 15 205:21 207:13 226:22 228:5 234:4 248:11 252:13 259:22 260:22 264:4 265:22 269:21, 22 271:15 273:2 daylight 262:11 days 7:8 12:11 22:14 87:20 90:19 91:21 117:10, 14 120:21 121:3 134:5 140:17 150:11 155:16 158:4 178:2 207:1 210:12 211:14 221:9, 11 254:4 264:17 269:19, 20 279:18 daytime 267:11 day-to-day 86:3 143:16 DE 4:7 218:14, 21 219:12

dead 12:11 deadly 112:11 deal 41:10 76:20 144:8 201:21 death 12:7 77:10 85:15 89:11, 19 90:1 91:14 111:12, 16 178:3, 15 deaths 15:5, 21 27:1 35:2 90:8, 10, 11, 18, 19, 21 181:14 186:2 decade 90:15 179:19 decades 86:19 185:9 decide 156:18 206:9 229:2 decided 211:21 250:21 decision 167:5 168:17 decisions 251:15 declared 207:2 declining 121:7 271:16 decrease 264:1 decreased 263:22 dedicated 10:9 54:18 66:5 85:5 157:15 264:10 deeper 83:12 deeply 83:6 202:6, 13 Defense 83:3	define 18:14, 15 30:22 112:15 161:5, 9 defined 122:4 defines 161:6 definite 223:16 definitely 105:20 121:4 definition 62:10, 13 97:12 111:22 113:6 178:22 DEFOE 2:12 19:9, 10, 11 20:15 50:12, 13 143:12, 13 144:19 145:21 146:5 171:6, 7, 8 172:16 173:6, 20 235:19, 21, 22 240:17 241:19 242:1 244:6, 10 deformation 227:18 degradation 121:6 degree 11:14 12:4 87:3 205:14 220:19 degrees 11:19 43:11 71:19 72:4 85:19 92:2 96:20 118:22 126:9 135:22 136:10 142:19 155:3, 7, 11, 12, 13, 14 167:22 169:8, 9, 10, 22 171:1, 2	183:9 184:6 224:1, 2 dehydrated 120:10, 15, 18 205:16 223:3 dehydrating 227:9 dehydration 114:5 117:2 122:4 Del 226:1 delay 12:20 14:8 16:9 delayed 11:16 Delgado 86:13, 18, 22 deliver 79:6 112:22 delivering 130:10 demand 237:1 244:2 demanding 109:21 demands 112:17 227:7 demographics 91:6 demonstrate 150:22 demonstrated 55:11 denied 14:4 86:8 87:14 denying 34:17 Department 2:6 5:11 38:3 56:20 256:5 270:22 278:6 281:3	departments 91:4 depend 134:15 215:22 dependent 87:13 104:13 134:19 137:18 276:9 Depending 131:8 133:16 204:7 depends 16:1, 2 47:10 201:7 deployed 79:3, 9, 12 depth 196:16 derived 189:4 describe 97:18 268:11 described 129:3 263:12 description 275:22 deserve 207:6 210:19 designated 17:14 58:5 268:5 designed 157:7 designing 101:5 desire 223:13 Despite 6:8 20:22 251:3 detail 79:18 137:11 179:9 185:6 detailed 80:14 90:6 177:22 187:6

details 75:11, 14 77:2 97:3 146:15 276:22 detect 262:10 detected 137:5 determination 148:18 determine 8:7 61:10 70:15 148:16 157:21 158:6 164:6 determined 58:11 157:2 determining 5:17 167:8 189:1 detrimental 137:22 140:5 devastating 11:7 114:6, 8 develop 58:20 61:20 62:2 191:10 241:1 developed 35:12 45:13 189:1 developing 66:5 134:22 Development 55:8, 13 56:4 57:13 67:9 device 32:21 devices 147:5 devil's 77:2 dial 204:5, 7 dialects 95:4 209:9 dichotomy 125:2 dictate 269:16 die 10:22 107:5 174:12 185:22 206:16 207:10	died 11:17, 21 12:1, 3, 4 22:2, 4 31:4, 8, 10, 13 106:21 111:5 184:17 dies 87:20 differ 93:17 difference 30:3 119:11, 20 202:8 262:5 265:7 271:10 differences 198:16 200:11 different 26:13 31:16 34:15, 20 35:3, 7, 13, 15 43:18 54:4 67:11 73:18 74:2 76:14 80:18, 19, 20 100:21 119:7 133:15 135:20 136:15 138:20, 22 140:16 144:6 145:14 154:15 156:14 190:2 192:15 195:1 196:19 209:9 211:7 214:3, 8 219:5 220:11, 12 227:3 231:20 239:6 256:11 264:15 265:1 267:3 269:2 273:5 275:15 276:7 278:15 differentiating 96:5 differently 228:3	difficult 36:5 45:4 58:10 109:16 134:16 139:5 141:14 175:18 257:7 262:12 263:19 difficulties 71:3, 7 131:14 163:10 227:6 difficulty 27:6 50:14 91:2, 9 101:6 141:10 154:10 167:20 dig 83:11 dignity 10:10, 14 207:6 diligent 58:21 162:13 164:12 dinner 28:4 direct 7:19 86:4 100:3 104:5 115:13 150:19 162:11 201:19, 21 246:8 directed 73:8 198:4 direction 32:16 69:18 directly 35:10 164:22 175:21 206:11 Director 171:8 186:12 187:17 189:17 218:20 Directorate 16:13 17:5 19:11 23:6 30:9 40:10 46:18 70:2 73:7 76:1 94:9 97:7 138:8, 13	141:8 143:14 148:13 159:12 162:2 191:7 214:22 216:11 217:1 230:6 232:14 235:22 244:20 254:20 256:16 265:17 267:18 272:7 274:12 dirt 38:21 247:9 dirty 14:1 87:7 122:10 126:21 disadvantage 154:19 disadvantaged 154:22 disagree 274:19 disallowed 173:9 disappointed 157:18 disaster 10:12 179:5 disasters 206:12 229:9 discharge 191:14 disclosure 90:5 discourage 87:9 discouraged 86:16 143:20 173:9, 18 268:8 Discrepancies 157:3 159:19 discriminate 191:15 discuss 43:9 89:11 100:22 272:12

discussed 51:10 64:13 94:1 180:11 190:9 192:6 196:5 263:16 discussion 51:19 52:10 66:13 156:22 disease 27:20 113:19 114:6 disincentive 109:2 disincentivized 188:13 dismiss 212:14 disorientation 184:10 disparate 136:13 displayed 9:13 131:18 disposable 234:17 disrupt 252:11 distance 18:1, 8 19:1 51:13 102:9 126:22 266:18 distances 60:22 distress 21:21 distributed 255:14 distributing 254:5 distribution 259:6 diverse 58:18 113:4 153:5 154:8, 14 206:18 diversity 154:17 261:9	dizziness 121:1 122:22 dizzy 13:18 48:1 205:15 docket 6:18, 21 9:8 25:17 159:4 188:20 doctor 253:8 doctor's 137:4 document 67:5 87:17 documentation 188:18 documented 173:10 documents 6:4, 20 7:3 105:1 166:11 239:19 doing 9:6 37:13 42:8 74:3 109:20 136:1 138:1 146:18 147:19 150:16 151:11 152:2 213:5 216:4 219:6 243:16 247:3 250:17 267:11 273:3 dollars 161:9 domestic 85:8 Dominique 3:11 84:18 85:1 94:20 96:12 98:1 99:11 100:8 103:13 105:10 106:17 107:21 109:4 door 209:4 234:20	doors 221:21 225:2, 3 dotted 119:21 double 90:15 222:9 229:3 doubled 179:19 downhill 72:3 DOWNS 2:17 23:4, 5 46:17, 18 49:18 69:22 70:1, 2 71:1, 11 72:8 73:1 141:7, 8 142:4, 11, 17 143:8 162:1, 2, 18 163:6 235:14, 15, 18 dozens 251:18 Dr 54:8 55:13 125:8, 13 129:2 draft 83:16 153:17 155:2, 5 dramatically 15:5 drank 205:19 drastic 66:8 draw 113:17 drink 44:9, 10, 12, 17 120:19 122:12 135:14 145:9 207:12 208:10 212:13 215:21 216:2, 6 221:6 222:21 224:7 227:10 229:21 266:8, 11 drinking 40:11 205:22 208:15 221:7 251:19 265:19	drinks 74:7 135:15 drive 103:19 driver 114:5 drivers 263:4 drooling 48:6 drop 33:1 135:22 203:4 224:15 drop-down 130:7 drying 133:10 due 10:17 21:4 22:2, 6 93:7 108:13 112:11 114:11 135:2 141:11 178:21 206:12, 16 208:9 221:3, 5, 7 226:9 227:18 251:1, 9 263:21 dump 14:2 duration 30:18 63:11, 12 120:2 156:10 270:9, 11 dust 38:21 39:1 146:19 248:22 249:3 duty 57:17 168:8 178:13, 17, 19 179:1, 2 dying 88:5 251:2, 9 dynamic 196:2 dynamics 182:19 < E > e)(2)(i 166:17 e)(3 166:17 earlier 29:4 35:18 82:9

84:4 102:4 104:15 164:11 166:10 175:12 190:9 199:7 200:13 272:10 early 14:2 96:22 168:8 237:12 247:19 261:18 271:22 272:2 earn 104:18 Earth 85:1 89:15 easier 32:19 82:10 127:22 easily 66:18 102:3 189:22 227:8 276:1 East 57:2 Eastern 129:8, 11 281:9 easy 43:16 127:13 echo 52:18 182:11 185:10 246:2 echoed 236:5 economic 51:17 75:9, 10 76:16 93:9 114:16 123:16 147:3 204:18 economically 54:17 economics 41:15 Economos 3:5 25:6, 8, 9 27:7, 9, 18 30:10 31:2 32:1, 4, 7, 13, 16, 22 33:3, 6, 14, 21 34:3, 6,	10, 12 35:16 36:1, 22 37:2 38:12 40:10, 19 43:15 45:3 47:3 49:1, 4, 9, 10 52:10, 19 Economos's 50:14 economy 88:10 114:13 115:8 210:18 EDUARDO 2:18 138:9, 12 139:10 214:21, 22 217:1 232:10, 13 254:18, 19 272:5, 6 education 55:15 57:11 67:20 85:22 157:15, 20 158:13 270:1 educational 55:10 157:17 effect 136:14 155:15 175:6 effective 17:11 36:2 63:8 76:15 77:13 81:15 94:19 112:18 147:20 148:1 154:1 157:12 180:7, 17 256:2 276:5 effectively 47:1 94:16 168:18 261:17 effectiveness 35:22 157:21 232:21	effects 26:16 40:1 86:21 137:22 157:10 193:22 195:13 efficiently 67:5 effort 43:4 82:11, 12 83:19 84:2, 6, 7 182:9 185:14 198:19 efforts 67:22 147:16 149:14 eight 211:8, 14 222:5 246:21 253:3, 13 eighth 13:19 either 16:17 19:21 20:12 40:17 43:9 87:7 97:15 103:5 107:16 115:9 122:19 145:7 157:2 171:18 205:11 209:20 236:10 239:12 240:4 247:3 252:15, 20 EL 4:11 250:21 255:6 elaborate 38:8 97:2 102:11 141:12 elderly 184:13, 19 elect 259:13 election 168:12 electrolyte 258:15 elements 53:17 eliminate 56:22 eliminating 39:16	Elizabeth 3:14 110:6, 8 207:17 email 6:22 131:15 embodied 135:5 emergencies 207:2 263:21 emergency 61:21 91:4 111:11 213:9 263:15, 18 274:16 275:11 276:10 277:18 Emiliano 12:7, 10 Emory 26:8 116:22 emphasis 56:12 185:12 198:8, 13, 15, 18 employ 60:9 132:22 133:2 employee 35:19 58:15 73:17 90:19 98:9 134:8 150:22 155:4 156:8, 9 157:7 168:18 191:15, 16 261:1 264:8, 10 268:3 275:18, 19 employees 19:18 54:19 58:6 60:12 61:22 62:5, 8 63:11, 13, 15, 18 64:1, 5 73:13, 14 81:4, 7, 8 82:3 94:17 104:7, 9 106:9 134:6, 14, 17

135:11, 13, 17 136:1 137:15 138:17, 22 139:8 140:21 141:1 142:20 143:5, 7 144:15 145:3, 6, 15, 20 149:15, 18 150:2, 3, 14 152:9 153:10 158:5 161:10, 14 162:16 167:15, 21 168:11 178:16 187:19 195:12 212:5 217:22 229:17, 18 241:4 245:8, 11 252:2 256:19, 22 260:18, 22 262:2, 6, 13, 16 263:5 264:11 265:5, 9 271:9, 12 273:21 278:20 employee's 262:10 264:1 employer 14:11 21:15, 21 41:8 46:3 97:12 98:8, 17, 18 103:6 108:12 121:13 123:3 127:11 183:18 188:2 195:10 197:7 213:1, 11 251:12 256:22 257:7 employer- provided 179:15	employers 14:2, 20 17:7 18:9 20:21 21:17 22:7 24:10 29:11 36:4 40:16 43:13 50:17 55:11 57:18 58:20 61:20 66:6 67:10, 21 73:12 86:5 87:10 90:18 92:19 94:16 97:13, 21 98:16 99:22 100:1, 4, 5 108:5 147:4 157:4, 10, 19 160:22 167:11 174:14 178:14 179:16 180:2 182:15 183:20 186:21 187:21 191:11 195:12, 16, 18, 21 196:1 207:8 210:8 211:16 212:5 213:7 218:3 229:17 241:3 253:22 256:19 265:21 270:8, 14 271:21 employer's 168:15 employing 266:4 employment 63:19 97:18 179:18 empower 177:13 empowered 106:3, 10	180:10 196:3 empty 263:1 enable 203:22 enacted 92:7, 10 encounter 46:21 encourage 22:7 57:6 59:3 64:6, 8 68:3 73:13 108:7, 9 121:15 128:2 135:13 168:2, 16 185:2 encouraged 144:2 265:7 268:12 encouraging 63:1 84:2 113:1 ended 208:6 240:9 248:8 253:15 energy 28:3 enforce 84:9 enforceable 15:3 17:19 111:18 114:7 179:10 180:16 185:7, 14, 18 191:10 enforced 99:8, 14 112:4 Enforcement 38:3 63:5 82:10, 12, 14 84:8 86:1 93:6 172:6, 14 175:17 180:8 234:8 241:8 251:6 enforcements 198:10 enforcing 158:12 167:21	engineering 135:6 English 55:21 65:15 95:2 203:20 204:1, 3, 5, 8 enhance 56:5 59:4 196:8 enhanced 184:12, 14 185:1 enhancing 57:17 Enriqueta 4:10 218:16 219:9 226:1 231:2 234:17 246:22 Enrriqueta 220:4 ensure 5:20 6:12 8:19 14:22 16:4 21:9, 10 22:20 57:18 65:8 67:22 80:2 94:16 95:6, 10 96:21 110:18 113:3 114:18 130:11 144:1, 21 155:19 157:6 175:19 178:1 179:6 180:7 183:20 187:10 204:19 229:17 263:7 264:7 268:11 ensuring 10:14 79:8 85:21, 22 95:17 98:18 100:7 110:20 196:8 entailed 255:20 enter 128:15

entered 6:21 7:1 128:17 217:16	ES 4:11 250:21 255:6	evaluate 77:5 157:21 167:6 213:2	106:19 137:21 168:3
entertain 128:17	especially 10:16 17:9 43:16	evaluating 77:19	exceed 85:18 92:2 183:9
entire 5:17 16:2 29:18 43:6 76:3 169:1 170:16	80:16 85:20 87:14 136:5 140:17 167:4 170:22 174:6 175:16 179:14 182:20 183:3 208:5 227:3 239:8 247:22 257:4, 10 259:2 265:22 272:9	evaluation 56:7 evening 28:5 event 90:3 eventually 12:10 273:3	excellent 78:22 270:22 271:1, 8 exception 68:20 150:21 155:17
entities 278:5	essential 72:20 88:7, 8 111:1, 15 154:11 181:22 210:18 213:22	everybody 108:6 256:8 259:14 269:11	exceptionalism 196:21
entitled 15:7	essentially 33:11	evidence 7:8 114:3 149:21 151:13 165:5 169:14 279:17	excess 133:10
entity 65:6	establish 160:5	evidenced 144:16 195:17	excessive 6:15 208:7
environment 54:19 65:12 73:20 74:9 108:7 232:5	established 158:8, 10 227:12	evidentiary 178:20	exchange 141:12
environmental 23:13 25:10 182:10, 12 202:10	establishes 155:3	exacerbate 38:7 113:13	excluded 197:2 206:20
environments 38:6 56:6 67:7 68:1 77:1 135:17 184:7 200:10	establishing 55:12 160:3	exact 163:1	exclusion 199:15
EPA 39:14	establishments 147:12 161:4, 12	exactly 37:3 164:5 168:2	excuse 27:6, 8, 11, 12 32:2 49:2, 12 69:6 110:3 128:13 203:18 218:14
epidemic 113:21 114:8	estimate 90:11 146:13, 16, 20 147:8 161:11	example 15:3 17:12 21:4 22:13 24:12 31:5 34:21 37:4, 10 43:11 61:2 67:4 77:8 91:3, 9 134:8 145:1 148:17 156:4 160:3 167:6 168:5, 19 190:8 212:3 221:11 241:8 255:8 256:4	Executive 218:20
equal 118:19 119:1 126:9	estimated 178:2 264:5	examples 36:13 74:21 75:2 99:6 101:9, 14	exempted 88:2 151:2
equally 159:21 160:8	et 234:15 249:4, 5		exemptions 189:20
equipment 28:13 41:19 43:19 93:4 102:4, 6 133:1, 14, 22 134:12 156:6, 20 157:1 219:5 247:14 248:6 262:21	ethical 110:22		exercise 216:6
equips 56:4	etiology 113:20		exercising 173:18
	evade 97:21		exhaust 48:9
	evading 97:13		exhausted 13:18 28:3 122:15
			exhaustion 13:7 28:8
			exhausts 48:13
			Exhibit 128:22 129:1 217:14
			exhibits 7:2

exist 167:14 191:22 228:18 238:18, 20 existed 237:8 existing 53:15 57:17 74:22 79:22 136:6 147:15 exists 136:11 164:7 236:20 240:14 exit 220:16 expand 8:14 46:22 71:2 76:6 126:15 166:9 268:10 276:19 expanded 77:16 157:14 expanding 100:3 184:2 expansive 97:10 expect 169:18 expected 9:12 131:18 157:4 expects 241:5 expended 75:1 expenditure 75:5 expense 264:7 expenses 264:18 expensive 208:15 experience 17:6 23:15, 21 43:12 72:16 86:4 91:20, 22 106:14 123:7 124:4 162:9 172:9 174:14 187:21 193:20	205:8 215:5, 14 217:20 218:3 233:2 236:9, 14 265:20 272:12 experienced 66:7 86:13, 18 92:4 109:18 110:1 118:1, 9 120:22 208:3 222:6 226:9 236:11 261:4 experiences 89:16 107:20 132:11 174:20 215:20 255:22 experiencing 11:5 21:20 99:20 108:16 121:4 184:9 190:19 221:13 273:13, 16 experimented 221:3 experimenting 213:18 expertise 83:7 experts 55:20 56:16 67:13 199:9 explain 259:12 268:10 274:18 explained 123:8 explaining 244:7 explanations 249:9 explicitly 113:9 165:4 201:21 expose 133:18 exposed 26:14 100:19 112:5 114:1 118:18	206:3 220:14 226:7 229:12 246:8 exposure 10:22 13:2 26:16 48:3 51:13 66:15, 17, 19 90:3 91:2 93:13 112:10, 13 114:20 117:2, 6 118:17 119:5 136:2 206:16 227:18 exposure/rulema king 6:4 exposures 23:19 express 6:13 expressed 100:2 137:19 261:15 274:14 extended 180:1 181:16 extension 271:1 278:9 extensive 112:10 extensively 173:13 extent 172:17 extra 13:12 145:12 163:9 220:21 227:22 269:21 extramural 66:10 extraneous 112:9 extreme 13:5 110:12 113:12, 19 118:12, 17, 20 178:1 205:12 206:10	207:5 208:5, 9 211:8 213:21 214:4 220:14, 21 221:10 226:8 227:16 extremely 49:4 96:6, 21 135:2 192:17 eye 141:2 259:14 eyes 222:9 < F > f)(4)(ii 168:11 face 10:16 19:14 38:19, 20 80:17 92:22 206:19 223:13 249:8 faces 39:1 facilities 132:21 133:4 facility 132:15 133:3 134:5, 18 135:10 157:2, 3 facing 86:9 199:11 204:14 206:13 fact 91:19 92:9 113:13 140:4 145:4 192:2 194:16 199:20 251:2 257:5 factor 61:9 90:2 factors 21:5 31:16 34:12 61:6 63:16 67:14 76:19 167:7 222:11 245:12 factory 140:6

Fahrenheit 142:19 155:11, 12 183:9 failed 157:18 failing 92:12 93:1 fails 153:17 154:17 failure 121:8 faint 205:17 207:10 fainted 205:18 223:19 fainting 13:1 121:1 122:21 206:1 226:12 fair 5:22 6:12 83:17, 20 84:1 fairly 163:2 fairness 274:13 faking 12:1 fall 174:12 194:15 falling 97:20 false 86:20 125:2 familiarity 71:9 families 36:10 60:9 65:9 85:6 125:1 153:4, 10 177:13 181:6 197:13 212:18 233:21 family 28:4 55:18 59:5 81:8 124:21 139:1 208:18 237:6 240:6 260:17 family's 260:14	fan 163:5, 7 258:19 fans 23:14, 20, 22 29:6, 8 48:11, 12, 14, 15 58:14 61:5, 6, 9 70:4, 16 72:7 133:14 135:7 141:21 142:4, 8, 10 162:7, 19 163:1, 10 223:9 far 14:1 22:12 29:6 87:8 102:1, 9 119:13 126:1 166:22 172:13 215:7, 15 FARM 3:18 11:13 12:6 13:14 19:14 27:20 28:11 45:20 48:1 56:10, 19 57:2 58:20 60:5, 7, 8, 10, 11, 20 61:5 62:11 64:5 65:9 68:5 72:7, 15 74:1, 9 79:4 80:12 81:9, 11, 12, 13 107:17 110:22 111:5, 10 113:4 152:17, 19 153:2, 13, 14 154:6, 12 155:19 157:17 159:17 160:7, 19, 20 161:4, 12, 16 162:11, 21 164:10, 22 183:15 198:7, 8 205:10 206:4	247:20, 21 252:8 254:1, 6 256:1 260:15, 16, 20 261:1, 5 264:3 265:3 266:20 267:10 271:2, 5 272:13 farmer 46:2 56:3 60:4 69:11 71:8 260:4, 13 farmers 39:10 56:1, 7 57:22 58:21 65:11 66:22 67:4 72:5 153:22 156:11, 16 157:5 158:3, 6, 17 farming 21:3 23:11 55:2 153:2, 4 154:11, 18 160:21 162:5 203:17 farms 17:16 24:7 55:3, 18, 22 56:2 57:6 58:13 59:5 60:16, 17, 18 62:9, 14, 20 63:1, 10, 22 64:6, 10 65:3, 8, 16, 18, 22 70:5, 10, 14, 18 72:16 73:10, 17 74:17 76:14 77:10, 12 79:3, 10, 13 80:5, 7, 12, 18 81:1, 3, 6, 22 82:1 150:16 185:16 199:3, 6	217:20, 21 218:1 261:9, 17 264:6, 19, 20 265:3 FARMWORKE R 3:4, 22 10:9 15:14 25:11, 13 26:7 29:19 45:9 111:4 117:1 166:6 176:20 177:9, 12, 18 181:6 185:6 188:3 190:5 191:20 195:15 208:3 219:14, 17 220:8 227:5, 20 239:3 Farmworkers 10:19, 21 11:2 12:22 16:2, 4, 6 25:14, 18, 20 26:7, 9, 13, 19, 20 27:1, 22 28:1, 16 29:1, 18 34:14 38:16, 19 53:16, 18 65:3, 10 66:16 68:2 110:15 111:1 112:4 114:10, 14, 18 117:5, 13 124:4 127:13 177:13 178:1, 7 179:7 181:6 188:11 189:22 190:18 196:9 201:18 202:11 204:17, 19 205:3, 9 206:11, 15, 19, 22 207:4, 6

209:8 210:2 214:5 236:3, 19 238:12, 13 239:4 263:18 fasciata 222:17 fast 182:22 faster 82:12 fatal 188:15 fatalities 89:22 90:7, 14, 17 Fatality 12:17 fatigue 96:4 faucet 145:13 fear 73:15 89:7 104:14 105:7, 9 108:10, 22 109:7, 12, 16 182:22 188:6 210:5 212:15 215:22 216:5 242:17, 20 272:18 feasibility 24:5, 12 75:10 feasible 15:13 18:8 22:15 58:3 138:18 158:7 274:20 feature 54:5 Federal 5:8, 9 14:22 16:3 62:21 66:1, 5, 8 67:21 90:15 92:7 103:9, 10 154:4, 5 157:7 177:22 Federation 153:14 154:6 feed 10:15 36:9, 20 114:18	124:20 feedback 27:15 feel 15:16 48:1 76:7 104:14 105:7, 13, 19 106:10 108:5 109:1 144:2 145:12 150:9 182:21 196:3 205:15 212:9, 12 216:1, 3 221:5, 16, 21 225:16, 19, 20 226:15, 18 227:19 235:2 236:3 238:14 242:17, 20 243:7 268:3, 12 269:14, 20 270:2, 3 271:18 273:10 279:2 feeling 12:8 22:6 211:19 213:12 216:5 268:9 273:2 feels 208:22 229:1 feet 141:16, 19, 22 fell 13:19 fellow 209:7 felt 223:2 226:13, 15, 17 231:6 253:5 273:18 fence 150:16 ferneries 37:6 47:13 fernery 47:15 190:8, 11 fertilize 226:6	fertilizing 220:13 fewer 161:14 fiancé 11:17 field 12:10 17:9, 11 18:21 35:14 45:14 46:9 47:17 83:21 93:18 111:9 126:20 211:4, 8, 11 237:4 246:7, 11 252:4, 11, 16, 21 266:19 fields 13:1 14:1 18:11 28:13, 14, 15 31:10 37:15 41:19 43:20 45:22 46:4 167:4 172:8 173:3 175:22 213:4 220:8 231:4 234:2 237:5 246:13 250:10, 12 251:9 252:2 263:18 266:1 275:9 fighting 30:3 figure 67:5 108:6 160:22 276:8 file 131:6 filed 6:5 7:17 136:21 191:16 238:7 fill 141:3 208:12 filled 208:16 229:11 262:15	263:2 filtered 179:22 final 5:18 8:12 51:17, 18 64:15 72:9 89:5 110:13 116:15 148:10 159:4 161:22 191:4 201:14 267:8 276:15 finalize 12:20 14:7 16:8 240:22 finalizing 171:21 219:21 Finally 23:3, 20 92:20 100:14 113:17 147:13 169:2 financial 92:22 find 36:3, 4, 5 45:7, 16 64:8 77:4 101:8 139:5 147:20 148:1 171:11 195:13 237:15 240:11 242:5 243:3 263:19 267:9 finding 43:18 63:21 101:6 139:5 175:10 findings 116:21 fine 210:15 finer 210:10 finish 234:4 237:12 269:10 finished 7:15, 22 132:14 fire 243:12

fired 13:20 108:11 168:22 180:15 239:14 242:21 243:11, 12 firm 167:2 174:22 firmly 209:17 firms 173:1 first 9:19, 20 24:4 31:3, 7 36:11 55:9 57:17 72:10 94:6, 10, 14, 21 106:22 107:5 112:3, 6 125:20 131:22 138:13 153:17 181:15, 17 187:18 193:15 194:5 203:19 204:22 205:22 206:2 213:3, 7 215:4 217:13 220:3 222:5 230:7 231:3 232:8 239:20 240:19 245:1 246:15, 16 265:19 267:22 274:22 firsthand 89:8 174:4 fit 58:18 82:1 fitness 67:12 fits 261:8 five 34:22 117:10 168:6 257:8 five-minute 228:4	fixed 136:13 137:17 flexibility 136:12 137:12 flexible 139:19 167:2 flip 275:14, 16 flooding 207:5 floor 204:2 FLORIDA 3:4 25:11, 12 31:3, 12 37:4, 6 43:17 45:10 85:7 86:19 87:19 88:13 90:14 91:16, 22 92:6, 7, 10, 11, 17 93:7 96:20 103:8, 15 105:6 117:1, 4 220:8 226:2 231:9, 10, 15, 16 234:12 250:11, 14 Florida's 85:14 flower 223:8 fluctuate 96:16 fluid 120:10 264:12 flung 172:14 focus 61:16 78:17 79:8 166:8 255:18 261:15 focused 67:20 255:17 foliage 88:14 folks 135:21 170:10 173:17 follow 7:21 35:17 36:6 98:2 108:1	130:15 157:4 159:22 161:13 170:6 173:16 182:14 186:14 229:17 240:18 followed 166:20 171:12 183:22 following 9:9 102:6 105:4 153:16 169:20 188:17 205:7 268:1 follows 92:3 follow-up 255:21 277:15 food 16:3 88:8 111:2 114:13, 16 154:20, 21 155:2 185:21 197:13 208:17 225:12 268:20 foot 71:18 forbid 251:18 254:7 force 15:19 66:10 81:3 114:9 157:5 261:17 forced 13:4, 22 254:3 forcing 195:11 forego 52:20 foregoes 208:15 foreign 239:6 forgetting 197:17 form 112:21 173:10, 14 250:21 formal 61:12	formalized 98:8 forming 56:14 forms 122:10 forsake 112:10 forth 43:22 94:22 forthcoming 272:11, 18 fortunate 55:18 271:6 forward 64:6 80:3 95:19 171:21 179:12 203:10 found 12:11 68:20 88:17 94:18 166:16, 19 193:20 FOUNDATION 3:2 10:3, 8 11:2 16:5 166:3 founded 55:8 four 13:20 87:20 132:21, 22 134:3 185:9 211:4 246:20 253:19 fragile 206:4 framework 230:11 frankly 200:21 free 108:19 109:1 158:8 178:14 freedom 269:13 frequency 146:2 230:11 270:9, 10 277:1 frequent 77:10 178:2 213:4

frequently
40:14 92:2
170:12 227:14
fresh 142:16
Fresno 165:20
Friday 1:14
front 10:19
16:22
fruit 264:6
fruits 226:3
234:13
fulfill 139:6
158:16 208:12
full 37:10
63:19 74:6
145:13 182:4
262:18 263:2
fully 80:14, 22
204:5, 8
function 121:7
256:4
functionally
18:5, 22 58:15
fundamental
112:4
funding 65:21
66:5, 22
funds 65:19
funerals 11:9
Further 8:12
9:10 50:3
75:17 77:22
82:20 84:11
88:7 89:5
96:12, 13 97:3
98:3 99:18
102:11 128:7
143:22 147:10
165:11 171:17
172:11 197:21
200:14

furthermore
20:1 87:19
future 14:4
66:10 121:8
203:2
FUTURO 4:11
250:21 255:6

< G >
gallon 41:4
267:1
gallons 41:5
Gamino 4:9
218:16 220:7
gap 64:1
garden 88:15
211:4 223:8
224:4
gather 71:9
general 38:9
57:17 140:2
175:15 178:12,
13, 17, 19, 22
179:2 252:11
272:14
generally 6:16
37:12 39:3
43:15 46:3
99:19 132:20
136:8 259:4
generate 142:8
generates 182:9
generation
260:13
generations
234:1
gentleman
199:7 223:18
genuine 113:14
geographic
160:1

geography
22:12 159:14, 15
Georgia 11:2, 4,
21 183:6
getting 81:22
93:12 117:12
119:18 195:2
201:11 223:3
248:8
Gill 193:4
Gin 132:3, 7, 13
140:9, 16
141:16 142:1
145:10 150:18
GINNERS 3:16
132:8, 10
136:19 151:9,
17 152:2
ginning 132:12,
17 133:2, 4, 5, 9
138:19 140:5, 20
girls 219:17
give 33:10 47:9
50:20 77:8
108:12 121:13,
16 140:16
157:18 165:1
219:8, 10 220:2,
3, 19, 21 222:20
223:4, 14, 15, 22
224:3 228:3, 4
258:18 274:2
275:10 276:3
given 22:9
59:10 88:20
111:1 130:5, 15
211:10 213:7
217:20 245:7
gives 229:14
251:5

giving 7:13
131:9 206:22
216:16 269:13,
22
glad 38:12
83:12
glaring 111:14
Global 4:17
129:11
globally 92:5
globe 130:5
189:2 202:9
203:2, 9 204:1
gloves 247:14
Glucksman
258:9, 10, 11, 22
259:4, 16
go 9:7 12:9
18:2 22:7 33:8
39:4 40:5 42:6
43:20, 21 44:2
45:11 46:5, 9
47:9 49:17
72:2 82:14
86:12 87:5
90:21 103:20
106:2 110:4
129:8, 15 143:2
147:18 188:8,
20 200:18
202:21 204:10
207:11, 20
209:5 211:21,
22 212:16
213:16 215:21
216:6, 21
222:16, 18, 19
227:10, 14
228:14 230:21
239:5 242:14
252:16, 18, 20,

21 253:2, 3, 9,
13 257:5
268:21 269:8,
15 270:2
goal 62:4, 7
155:22
goals 72:21
goes 45:18
82:12 98:6
124:19 269:16
275:20
goggles 248:6
going 15:16
23:7 26:10
30:11 31:16
41:10 48:2
49:13 52:20
59:11 71:22
72:17 80:3, 15
82:14 84:9
104:17 110:4
117:7 122:11
124:21 150:12
151:22 152:11
183:13 192:14
197:7, 9, 10
200:19 201:10
202:3, 6 204:13
207:14, 15
216:2, 15 219:8,
21 220:2
221:17 238:18
239:5 242:18
243:8, 9 244:3
252:7 253:12
255:19 266:14,
15 269:8, 15
270:18 273:12,
18 274:1
gold 169:4

golf 221:20
Gonzalez 111:3
Good 10:1
17:4 23:5 25:8
32:8 36:20
40:9 59:19
60:17, 18 73:6
79:18 82:17
84:22 97:6
110:8 138:2
139:3, 4 143:5,
6, 7 145:19
151:11, 21
152:2 165:19
203:15 211:1
218:19 220:7
225:20 235:6
250:18 261:10
267:17 269:20
271:15, 18
275:22 280:8
goodwill 82:11
84:7
gotten 168:1
231:13 248:1
governed 6:9
governing 6:2, 9
Government
10:2 158:8
governments
92:8
gradual 182:1
gradually
181:19 182:6
graduated
169:3 230:11
Grande 132:19
grapefruit
248:17
grapes 208:2

grasp 271:19
grasses 29:7
grassroots
25:13 154:3
grateful 121:14
gratitude 246:2
gravity 122:4
Great 17:2
34:3 39:18
49:18 71:11
73:1 76:20
163:6 181:2
194:3 234:12
259:16 278:14,
20
greater 58:3
154:19
greatest 153:12
greatly 228:2
277:4
greenhouse 47:5,
7, 10, 18 52:13
226:22 228:7
greenhouses
34:16 35:13
37:5 46:20
47:4, 13 48:8
grocery 43:2
grossly 89:20
ground 15:17
172:4 198:21
205:18 252:7
263:10
grounded 12:21
group 56:14
84:17 130:19
131:13 176:20
186:7 202:17,
18, 20 203:10
218:13 221:14
250:20 253:22

groups 65:4
103:6 108:10
195:11 237:16
250:16
grow 153:5
179:19 205:4
226:21 260:21
grower 41:16
46:2 48:10
250:16 251:15,
17 252:9, 14
253:12, 15
257:12 259:10
growers 40:21
41:12, 13 42:10,
12, 19 47:8, 20
55:5 132:13, 16
250:16, 22
251:16, 18, 22
252:3, 4 253:10
256:6
Grower's
251:11, 14
253:1, 11 255:7
GRUPO 4:7
218:14 219:10
Guadalupe 4:9
218:16 219:9
220:3
guarantee 15:6
92:18 213:20
guaranteed 14:9
170:19
guava 226:4
guess 81:20
guest 257:4
Guidance 16:14
17:5 19:11, 17,
22 20:5, 13, 20
23:6 30:9, 14
40:10 46:19

50:16, 20 51:2,
7 67:9 70:3
73:7 74:16
76:1 94:10
97:7 100:17
105:1 115:6
119:9 120:4
123:16 136:10
138:9, 13 141:9
143:14 144:22
146:12 148:13
156:14 158:18
159:12 160:18
162:3 171:8, 19
174:3 186:13
187:17 189:18
191:7 215:1
216:12 217:2
230:6 232:14
236:1 241:2, 16
244:20 254:20
256:16 265:17
267:18 270:7,
13 272:7
274:12 276:17
guide 154:4
guidelines
103:10, 11 120:8
Guild 4:1
176:22 177:5, 7
187:4 188:3
190:5, 22
191:20 195:15
guys 139:1
Guzman 11:20
guzzle 44:15

< H >
H-2A 11:20
63:10 69:12
110:18, 19

111:9 179:16,
17, 18, 20 183:3,
7 192:13
251:12 257:8, 15
habit 272:22
Haitian 20:11
31:5
half 88:19
119:2 181:14
HAMMER 2:14
189:16, 17
190:16 191:2
267:15, 17
270:5 272:3
hand 8:3 44:4
54:4, 7 65:10
131:10 260:20
262:13 268:22
273:21
handful 251:16
handkerchiefs
247:8
handle 37:17
108:19 137:13
266:20
handles 60:10
hands 139:6
222:8
handwashing
45:11, 13, 14
275:13
Hang 216:14
hanging 201:11
haphazardly
196:18
happen 45:15
47:4, 12 181:14
200:4
happened 11:17
22:3 243:14, 17
272:10

happening
12:15 17:16
61:13 170:11,
12 194:9
210:12 231:8, 9
238:21 243:15,
18
happens 47:12
80:11 93:17
107:17 175:5,
21 208:10
237:19 249:2
259:15
happy 16:22
17:20 20:6
30:1 35:9 40:5
65:1 97:2 98:2
115:19 148:20
166:12
harassed 86:17
hard 9:1 37:3,
15, 17 39:12
139:4 157:6
182:22 201:19
238:9 273:7
harder 108:18
227:1
harm 154:21
178:16 261:10
harvest 37:10,
11 63:12
132:17, 18
208:1 248:12
251:9 261:1
harvested
110:19
harvesting 87:1
144:10 205:11
211:5 220:10
248:17 260:20

264:12 268:17
hat 38:19 247:3
hats 247:17
248:9
hazard 87:22
88:21 94:12, 17
96:1 113:14
115:7 164:7
168:11 170:7,
12, 16 178:22
180:1 202:3
hazardous 88:1
91:18 192:12
hazards 56:19,
22 57:4 61:20
62:18 100:19
157:11 164:17
167:7 178:15
199:10
head 9:2 222:8
224:22 248:10
249:8
headache 221:4
headaches 48:5
208:7
headquarters
25:11
HEALTH 1:5
5:4 10:16
25:10 27:19
29:15, 18, 19
35:20 36:8
52:12 55:17
62:7, 15, 17
64:22 65:4, 6, 8
66:1 67:14
68:2 72:19
79:22 91:7
93:13 110:9
113:18 114:9,
16 117:2

134:22 136:15 152:21 177:15 178:18 185:15 188:9 191:14 199:9 206:3, 10 208:4 209:13, 14 214:4 232:18 251:11 254:11 258:17 271:4, 5, 16 healthful 158:11 healthier 268:2 healthiest 67:22 healthy 28:19, 20, 21 72:2 110:22 135:13 153:8 hear 12:21 22:5 27:10 32:3, 4, 7, 9, 15, 16 33:12 34:1 48:22 55:17 59:13, 20 83:12 130:8 160:22 177:4, 5 180:21 203:6 204:2, 6, 7, 10 206:7 218:21 242:14 243:22 255:2 260:7 274:22 heard 21:19 23:10 31:20 32:12 35:18 89:17 102:3 103:19 104:15 105:21 107:6, 20 108:3, 21 122:14 127:2 143:18 159:14 162:3 166:22 167:19 185:11	186:19 198:9 200:8 231:11 250:15 268:7 HEARING 1:9 5:3, 4, 12, 13, 15, 20, 22 6:1, 2, 3, 6, 7, 8, 10, 16 7:7, 9 8:5, 14 9:7, 8, 9 17:21 20:7 25:22 26:4 31:20 32:9 51:9 74:21 76:4 92:9 115:20 128:12 129:6, 13, 16 130:3 152:20 166:7, 13 189:7 202:7 203:20 273:10 276:22 279:16, 18 281:5, 8, 11 hearings 6:9 166:22 heart 90:4 221:4 226:13, 16 HEAT 1:10 5:5 10:5, 17, 20, 22 11:3, 5, 15, 21 12:4, 11, 17, 18 13:2, 5, 10 14:12, 14 15:2, 20 17:13, 15, 16, 19 21:2, 21 22:2, 6, 9 23:13, 19 25:20 26:1, 9, 16, 18, 21 27:1 29:8, 20 30:21 31:1, 15 32:14 34:14 35:1 36:3, 14, 15 38:6, 7, 10,	16 39:19 40:1, 3 41:6 42:2 46:7 48:5, 13 51:12 52:12 53:15 54:22 57:11, 15 58:1, 5, 8, 11 60:2 61:9, 18, 20, 21 62:2 63:8 66:15, 19 67:1 68:5 74:18, 19 76:19, 20 77:15, 19 80:6 83:14 85:10, 15, 22 86:5, 13, 18, 19, 21 87:2, 11, 18, 22 88:5, 21 89:6 90:2, 3, 16 91:15, 18, 20 92:3, 9, 11, 13, 16, 18 93:1, 3, 8, 14, 16, 19, 21 94:14 96:2, 3 97:10, 14 99:7, 13, 22 100:7, 19 106:7 108:16 110:12 111:13 112:10, 12 113:1, 12, 13, 19 114:5, 7, 14, 20 115:7, 12 117:2, 4, 19 118:7, 9, 11, 12, 14, 17, 18, 19 119:3, 4 120:5, 6 121:4, 11 123:18 124:1 126:4, 7, 8 127:3, 18, 20 129:13 133:18 135:3, 4, 5, 11 136:1, 4 137:1,	6, 17, 18 138:14 139:11 142:21 144:16 151:18, 19 152:22 154:7, 13, 14 155:3, 4, 6, 13, 14 157:12, 15 158:18, 19 162:6, 14 164:8, 14, 15 165:2, 7 167:18 168:13, 16 169:2 170:17, 19, 22 173:19 174:5, 10 175:5 177:20, 22 178:2, 4, 6, 12 180:1, 3 181:12, 20, 22 182:4, 8, 9, 10 183:19 184:1, 5, 6, 10, 17 185:3, 18, 22 186:1, 2, 17, 18 187:12 192:4 194:1, 15, 17 195:1, 3, 13 200:6 201:4, 11, 22 202:2, 8 205:12 206:3, 10, 16 207:5 208:5, 9 211:6, 9, 20 212:15 213:3, 13, 21 214:4 219:22 220:15, 21 221:16 222:3, 7, 12 223:12, 13 224:3 225:7, 15 226:8, 10, 17, 21 227:16 228:1, 13, 18, 20 229:1,

4, 6, 10 232:16,
19 241:13
251:10 252:13
253:8 254:5
258:20 261:10
262:1 265:3
278:7
heat-related
89:19, 22 90:8,
14, 20 91:1, 10,
13 121:1 123:2
133:8 137:8
147:14, 21
148:17 154:1
155:22 157:10,
14 158:2, 14
168:9 178:3
179:4, 8 181:9,
14 184:14
187:20 190:19
196:14 261:4
270:12 272:16
heavy 114:2
169:17
heed 86:3
held 55:10
Hello 198:3
203:15 250:5
help 11:22
13:4, 15, 16
19:22 33:12
42:6 47:7
50:21 56:7
67:4 81:10
82:13 122:19
125:1 134:12
138:19 143:4
152:7 171:19
184:9 185:19
209:11 210:18
214:2, 8 217:21

228:19 241:3, 6,
9, 16 259:14
270:14 271:7
275:21
helped 53:16, 18
206:20
helpful 20:2, 5,
8 51:17 52:3
76:13 77:20
101:11, 20
124:14 146:21
163:12 190:20
193:19 230:15
266:21 278:12
279:7
helping 144:21
266:13
helps 42:20
56:22 278:13
HERNANDEZ
2:18 138:10, 11,
12 139:10, 11
141:5 214:21,
22 215:13
216:8, 11, 22
217:1, 7 232:11,
13 235:11
254:18, 19
255:21 256:12
272:5, 6 274:3
hesitant 123:7
hey 98:15
Hi 19:10 20:19
38:2 51:6
53:13 74:15
75:22 83:2
100:16 101:18
107:15 115:5
122:2 123:15
125:18 132:2
138:11 141:8

143:13 146:11
148:12 159:11
160:17 162:2
164:4 171:7
174:2 187:16
189:17 191:6
201:17 214:22
232:13 254:19
256:15 267:17
272:6 274:11
276:16
hierarchy 252:6
high 26:1, 17
41:6 46:7 61:1
63:8 72:4
94:14 96:3
114:1 122:3
124:1 127:14
135:20 141:11
149:18 155:14
169:2 175:1
178:20, 21
179:4 182:4
184:1, 4, 6
186:18 194:15,
17 211:7
212:16, 19
220:19 221:3, 6,
22 222:10
226:7 227:2
228:1
higher 26:19
39:20 72:16
85:18 93:1
96:18 109:19
120:18 136:1
highest 118:10,
15, 21 120:5
high-heat
168:21 170:8

highlight 153:15
179:11
highlighted
256:21
highlighting
181:10
highlights 7:5
111:18
highly 87:13
104:12 178:5
highways 101:7
HIIPP 62:9
89:3 138:17
139:18
HILLEREN-
WILKINS 2:4
5:2, 11 16:10
24:16, 21 25:3
27:5, 8, 11 30:6
31:19 32:2, 5, 8
34:8, 11 44:22
48:21 49:2, 8,
11 50:3, 8 51:3
52:5, 18 53:2, 7,
11, 20 59:7, 15,
21 64:12 68:7
69:6, 10 71:12
75:17 76:9
77:21 78:4, 9
82:6, 19 84:11
94:4 102:16, 22
107:11 110:2
114:22 116:3, 8,
11, 14 121:19
125:10, 14
128:7, 10, 19
129:3, 5 138:4
146:9 149:3, 9
152:11, 18
159:7 163:16,
22 165:11, 14,

22 170:3 176:6,
13, 16 177:3, 6
181:1 186:4
189:11 193:7,
13 195:7
197:15, 20
201:14 202:16
203:18 214:13
216:7, 9, 14, 20
217:9, 17 218:7,
10 219:1, 3
230:2 244:16
245:18 246:2
249:15, 18
250:1 254:15
257:22 258:6
259:17, 20
260:6, 9 265:13
277:12 279:8,
11, 14 280:4, 12,
18, 21 281:2
hired 64:1
109:11 183:16
hiring 55:13
historically
272:17
history 25:14
123:6 137:3
196:20 199:15
hoeing 211:5
hold 6:14 43:19
holder 111:9
holding 92:18
158:19
home 12:9, 12
14:4 16:4
21:15, 22 22:4,
8 28:2 36:19
106:2 120:19
122:13 194:14

225:10 239:10
273:13
homes 150:11
Homestead
31:12
honest 40:20
honestly 141:3
142:22
Honor 9:20
16:12 24:14, 18
25:2 30:8 50:2,
5 52:8 54:1
59:11 68:14
75:19 78:1, 11
94:8 102:13
103:2 107:13
115:2 116:1, 10
121:22 125:9,
12, 16 128:9, 13
138:7 146:7
149:1, 5, 11
159:9 163:15,
18 164:2
165:13 170:5
176:2, 8, 15
186:11 193:5, 9,
15 197:22
202:19 214:19
217:12, 18
218:9 230:4
244:12 245:20
246:5 249:17
254:17 257:20
258:2, 8 259:19
265:16 277:10,
14 279:7, 10
280:3 281:1
hope 30:2 40:4
67:10 240:16
hopefully 32:19
horrible 226:20

Horticultural
55:6
hospital 11:18
12:2
hospitalization
86:15
hosted 57:3
hot 13:15
43:17 44:17
47:5 48:10
61:13 96:5, 6,
21 107:18
117:12 133:17,
19 140:20
150:13 158:4
200:9, 10, 12, 17,
19 201:6, 7
205:18 215:19
216:4 221:7
222:16, 17
223:10, 20
224:6 226:18
227:1 228:12
252:17
hotter 30:17
69:14 86:20
91:16, 17 93:12,
20 135:16
140:17 193:21
194:10, 21 195:6
hottest 38:18
49:6 92:5
117:11 183:5
hour 37:9, 14
61:7 71:16
119:2 120:12
169:17, 21 227:1
hourly 208:12
hours 11:14
12:10 18:20
117:18 118:5,

19, 21, 22 119:4,
14 120:2
133:19 134:5
205:21 211:8
220:18 221:11
228:7 229:12
246:20, 21
261:19 262:11
263:21 264:16
House 92:10
211:21
housekeeping
9:11
houses 222:14
228:8
housing 61:4
122:17 179:15,
16, 21 180:2, 5
254:6
HRI 147:20
148:2
Huerta 3:3
9:21 10:1, 2
16:14, 21 17:5,
10 18:3, 17
20:4 21:7, 18
22:19 23:8
24:2, 14 53:14
huge 109:2
172:7, 14 188:7
human 10:14
55:19 56:7
86:10 91:7
182:19 204:19
210:17 242:10
humid 158:4
humidity 31:17,
21 32:11 34:7
112:6 117:20
135:21 149:19
220:19 222:10

hurricane 229:8, 9	7 38:11 55:1 57:12, 15 58:1 60:2 61:18, 21 62:2 66:4, 19 68:6 74:18 76:20 77:16 80:6 99:22 100:20 114:12 117:3 121:1 127:4 129:13 133:8 135:3, 4, 5 137:1, 6, 8 138:14 144:16 151:19 153:1 155:4 157:11, 14 168:9 178:4, 6, 12 179:8 181:9, 13 184:14 186:1 187:12 188:15 196:14 197:10 206:15 219:22 232:16 261:4 270:13	immediately 111:19 275:19 immigration 175:17 182:20 219:19 239:22 Immokalee 31:10 immune 86:21 93:19 114:7 170:10 impact 66:15, 17 76:19 77:19 155:1 157:22 162:12 260:15 impacted 62:21 impactful 68:4 impacts 87:2 93:16 114:13 115:7 impediment 19:6 imperative 110:13 263:9 Imperial 169:12 impermeable 38:9 implement 56:10 58:10 76:21 81:18 92:22 155:4 157:19 265:3 274:15 276:20 implementable 66:18 implementation 63:9 163:11 169:3 175:11 200:5 implemented 24:6 47:1, 7 72:12 77:11	79:20 80:2 81:11 250:7 261:16 270:19 implementing 71:4 76:17 141:11 importance 19:19 25:19 40:2 42:14, 16 50:17 67:16 72:4 95:16 153:11 180:6 181:11 183:22 184:12 254:10 276:18 important 26:3 27:19 29:10, 20 31:14 38:17 39:22 42:18 43:6 44:5, 12 46:1 65:1 71:22 81:9 84:1 96:19 98:10 118:4 134:21 135:3 137:9 171:1 178:9 179:12, 13 182:7 183:14 185:9, 14 187:5 191:21 192:5, 17, 19 193:1 194:4 195:3 198:19 199:12 202:12 205:8 222:11 231:3 233:17 238:22 254:1 257:15 270:16, 21 271:21
hydrate 216:3 hydrated 28:18, 22 120:17 hydration 67:8 114:3 122:5 135:12 254:5, 8 258:13, 16, 18 < I > ice 43:20 44:2 45:18, 19 46:6, 11, 12 192:14 258:19 266:7 icon 129:20 130:6 Idaho 240:8 idea 84:5 95:13 104:6 237:18 280:9 identified 57:5 159:1 280:7 identifier 276:2 identify 8:2 9:3 16:22 53:8 56:9, 22 58:1 61:20 67:6 identifying 62:17 ignore 182:19 208:13 ill 174:12 251:21 illegal 191:14 ILLNESS 1:10 5:5 10:6 11:6, 22 12:17 14:12, 14 21:21 22:2,	illnesses 89:19 90:17 91:1, 10, 13 123:3 147:15, 21 154:1 156:1 157:13, 16 158:2, 14, 19 187:21 188:1, 5 190:19 272:16 illustrate 11:10 imagine 142:14 263:12 imbalance 105:20 immediate 112:21		

importantly 186:2 261:12 265:6	incentivizing 82:1 84:3, 5 167:21	140:2 143:16 170:21 204:22	79:22
imported 110:16	inception 181:8	incorporation 205:4	indication 60:19
imposed 209:16	inches 248:2	incorrectly 82:9	indigenous 95:4
imposes 57:16	incidents 91:8 180:14	increase 93:8 155:18 169:14 263:21 264:18	Indiscernible 40:6 200:10
imposing 59:5 261:7	include 17:1 30:20 51:2 52:14 85:17 90:16 99:2 100:4 112:1 113:10 147:8 148:21 161:15, 16 182:4 184:5 185:2 230:14	increased 39:19 78:17 85:17 92:21 93:4 154:21 175:17	individual 81:15 118:8, 10, 15 251:15 259:11
impossible 157:9	included 55:9 96:15 147:16 156:7 192:20 222:8 241:16	increases 182:6	individually 129:21
impractical 58:7	includes 10:15 30:16 37:15 54:20 56:6 73:11 85:9 133:9 153:9 184:19 192:11, 12 210:7 258:18 263:14	increasing 127:7 155:1 265:10	individuals 11:10 153:12 158:9 186:6 271:7
imprecise 90:9		increasingly 10:17 114:4 169:10	INDOOR 1:11 5:6 10:6 60:3 61:9 129:14 153:1 156:14, 19 157:3 175:5 190:1, 2, 13 220:1 226:19
impression 151:14		incredible 60:13 64:10	indoors 190:18 226:10
improve 65:4 177:13 272:14		incremental 146:17	induced 158:18
improved 82:2 215:9, 17		incumbent 42:12	industries 21:3 28:12, 19 66:6 95:15 99:1 100:20 136:16 158:19 178:4 185:20 199:18 261:7
improvement 56:10 57:9		incur 147:5	
improvements 56:16 57:7 172:8, 17, 19 173:2		independently 263:3 268:16 269:6	
improving 85:5 261:11 264:19		index 17:15 23:13 31:15 32:14 58:8, 11 61:10 92:3 117:19 118:9, 11, 14, 19 119:1, 3, 4 155:3, 6 162:7 164:8	
inaccurate 161:18		Indiana 231:14	
inaction 12:14		indicate 90:2 131:11	
inadequate 76:8 87:18 111:13		indicated 64:3	
inappropriate 137:16			
inaudible 220:9			
incentive 104:11 112:10			
incentives 42:10			
incentivize 82:9			
incentivized 36:17, 18			
incentivizes 104:16			

136:20 138:20, 22 139:7 144:6, 14 161:7 162:5 198:7, 8, 10, 14 199:17 200:13 205:10 206:17 245:2 248:4 254:2 industry's 28:10 inefficiencies 155:19 inextricably 113:18 infeasible 267:10 inflamed 226:12 influencing 63:1 inform 51:17 99:10 128:21 214:6 259:9 INFORMAL 1:9 5:3 6:8 61:12 98:6 129:12 information 5:14 6:1 8:16 16:17, 21 17:1, 20 20:3, 6 21:10 22:21 51:1 52:1 67:2 71:10 90:6 96:22 132:5 139:14 145:22 158:17 163:9 166:10 173:7, 10 190:15 210:11 214:11 230:18 237:16, 18 238:4, 17 240:18 241:15, 20 245:7 254:7	258:20 272:19 280:10 informed 209:11 213:19 236:7 infrastructure 88:9 initial 63:8 87:3 96:2 106:7 155:13 167:18 168:13 170:8, 17, 19, 22 184:5 186:17 injure 263:8 injured 87:22 90:20 174:12 275:20 injuries 89:11, 19 123:2 133:8 144:16 147:15, 21 187:20 188:1, 5 190:19 221:3 222:12 226:9 262:6 INJURY 1:10 5:6 10:5 14:15 22:9 38:10 54:22 57:15 58:1 60:2 61:18 62:2 66:4 74:18 80:6 100:20 114:4 115:12 129:13 137:6 138:14 148:16 151:19 152:22 168:9 178:7, 12 179:4 184:15 187:12 188:15 206:15 219:22	232:16 261:4 275:17 276:12 injustices 208:4 innovation 45:6, 7 in-person 79:4 input 14:16 76:3 138:16 160:6 inputs 189:4 inside 47:5 48:18 73:22 144:9 150:18 232:3 inspection 198:13 inspections 56:15, 20 57:4 210:1, 6, 12 inspectors 180:9 installation 77:17 installing 77:12 instance 86:13 95:11 109:8 112:21 194:14 instances 107:1 109:22 123:1 187:22 190:17 208:3 253:19 Institute 66:1 instituted 191:16, 17 instruction 252:10 instructions 130:16 insufficient 113:12 179:3 insurance 197:1	insurmountable 44:20 45:4, 5 intake 120:10 intend 7:21 intended 62:7 intense 112:8 intensifies 182:8 intensifying 10:20 intent 57:14 intention 6:6 7:18 intentional 87:9 interaction 279:4 interest 49:16 52:20 110:3 148:14 233:22 281:6 interested 5:13, 21 81:6 163:6 209:13 interesting 25:21 193:19 Interestingly 66:7 interference 100:2 intermittent 145:17, 18 146:2 interpretation 95:7, 10 106:11 130:4, 5, 9 202:22 203:1, 6 215:12 interpreted 178:19 Interpreter 216:17, 18 280:5, 7, 9, 12, 19

interpreters 204:2 280:16, 17	involved 34:13 107:2 137:15 144:18 253:2 260:10	90:5 92:11 105:2 144:14 153:15 155:2 157:14, 21 158:16 180:9 237:10 238:14 239:4 242:16	183:1 210:6 212:11 213:5 219:6 220:13 225:12 226:6, 8 251:10 253:6, 14 260:20
interrupt 32:18 140:14	Iraida 13:14		jobs 73:18 74:2 108:15 109:11 136:1 150:17 201:19 209:15
interrupting 27:12, 13 69:7	iron 224:14		join 54:9 260:20
intersection 276:2	irreplaceable 79:4		joined 54:3 177:9 277:8
intersectional 206:18	Isabel 11:12 184:16	< J > January 140:18 179:9 185:6 206:22	joint 85:21 jointly 166:2 177:19
interviewed 27:22 105:14	isolated 274:18	JASON 2:14 189:16, 17 267:15, 17	Jones 70:1
interviews 25:17 36:14 41:1 44:6 51:10, 16 117:13	isolation 89:18	Jazmin 4:6 203:12 210:22 211:2	Jones-Brimmer 3:7 54:8, 11, 13, 14 70:9 71:6 72:13 73:8, 16 74:20 76:2 78:14, 21, 22 79:13, 16 80:10 81:5, 20, 21
intimidated 221:16 236:4	issuance 159:4	Jeannie 3:5 25:6, 9 32:15	Jordan 78:12, 13 83:11 103:3, 4 106:13 149:13 193:17 195:10 196:11
intimidating 228:9	issue 28:9 29:14 34:17 47:14 77:15 134:13 152:22 155:20 158:1 170:14 172:6 188:7 257:13 261:16 266:2, 3 271:14	JENNIFER 2:21 24:19 52:8 78:6 102:19 116:5 125:12 128:14	Jose 86:13 111:16
intimidation 241:10	issued 6:10 162:15 164:15	jerk 92:20	journal 199:21
intramural 66:9	issues 19:14 27:15 38:8, 15 39:13 46:21 57:6, 21 66:16 68:17 89:11 151:5 153:20 155:9 158:4 206:18 217:3 219:18 227:17 241:9, 14 244:15 255:3	Jesus 15:14	Juanita 82:22 83:2
introduce 9:14 261:20		Jimenez 11:12 184:16	Judge 2:5 5:2, 10, 19 16:10 24:16, 21 25:3 27:5, 8, 11 30:6 31:19 32:2, 5, 8
introduced 56:12		job 10:16 13:9 14:6 60:17, 18 85:16 86:14 88:1, 18, 22 106:22 107:5 109:12, 13 112:8 134:2, 6 138:2 139:6 140:12 148:16 150:17, 18 151:11 152:2 180:4 181:15	
introducing 131:19			
investigate 173:4			
investigations 89:20 106:21 108:8 251:6	issuing 111:21		
investigative 90:13	it'd 59:12		
investigators 242:11	It'll 33:8		
investing 55:12	its 16:3 35:22 77:4 78:16 85:9 88:16		
invite 22:17			
invited 57:11			

34:8, 11 44:22
48:21 49:2, 8,
11 50:3, 8 51:3
52:5, 18 53:7,
11, 20 59:7, 15,
21 64:12 68:7
69:6, 10 71:12
75:17 76:9
77:21 78:4, 9
82:6, 19 84:11
94:4 102:16, 22
107:11 110:2
114:22 116:3, 8,
11, 14 121:19
125:10, 14
128:7, 10, 19
129:3, 5 138:4
146:9 149:3, 9
152:11, 18
159:7 163:16,
22 165:11, 14,
22 170:3 176:6,
13, 16 177:3, 6
181:1 186:4
189:11 193:7,
13 195:7
197:15, 20
201:14 202:16
203:18 204:1
214:13 216:7, 9,
14, 20 217:9, 17
218:7, 10 219:1,
3 230:2 244:16
245:18 246:2
249:15, 18
250:1 254:15
257:22 258:6
259:17, 20
260:6, 9 265:13
277:12 279:8,

11, 14 280:4, 12,
18, 21 281:2
Judges 2:5
jugs 41:5
Julie 3:9 64:16,
21 76:11 79:21
84:4
July 132:18
252:8
June 1:14
48:20 91:3
jurisdiction
257:6
JUSTICE 3:22
29:14 85:1
88:12 89:15
103:22 105:18
176:21 177:9,
12, 18 185:6
187:4 188:3
190:6 191:20
195:15 239:3
justification
88:6
justify 88:6
Justiss 3:19
152:14, 16, 19
159:17 160:7
161:2, 15, 16
162:10, 21
163:14, 20
164:4, 10, 21
165:8

< **K** >
keep 6:16
12:15 15:19
72:17, 21 84:1
124:21 135:13
141:1 143:5
197:17 204:10

224:3 240:10
259:14
Keeping 110:21
144:20 146:13,
21
key 42:8, 9
65:21 67:21
119:8 170:8
172:15 213:22
kicked 254:4, 6
kidney 13:6
27:20 113:19
114:4 121:6, 7, 8
kidneys 86:16
kids 194:14
killing 225:16
Kim 3:8 59:17,
19 60:3 69:9
71:8, 14 82:8
83:22
kind 38:8
50:21 62:11
83:10 84:7
101:21 104:19
108:5, 21
124:19 143:4
160:1 176:10
188:18 235:8
236:20 237:6, 7,
9 238:15
239:11 242:9
247:17 248:3,
12 258:15
270:9, 14
kinds 35:13
37:13 43:18
48:7 247:11
kit 258:17
259:12
knee 92:20

knew 122:11
126:18
know 9:5
18:18, 22 19:20
20:8, 9, 12
21:19, 20 22:2,
6, 21 24:6
31:17 35:8, 12
37:3, 15 38:21
39:1 40:13
41:4, 17, 18
42:20 43:16, 19
44:8 47:22
62:12 69:16
71:18 72:3
77:1, 3 81:19
93:11, 12 98:16
102:4 105:11
108:6, 15 109:2
115:17 123:2
124:17 127:5, 9
140:7 143:5
144:11 145:5,
10 150:4, 5, 7, 8
151:6, 15
161:10 162:18
164:13 170:10,
11 172:13
174:21 188:9
191:21, 22
192:12 194:7,
11 195:5, 16, 18,
21 196:7, 18
197:10 200:14,
22 208:14
210:11 213:8
215:8 224:22
227:13 231:17,
21 232:7, 22
233:1 234:6, 10,
14, 21 235:4, 5,

6 236:21, 22 237:2, 8, 9 238:2 239:4, 5, 13, 18, 20 240:4 241:7 242:13, 15, 18 243:1, 9, 11, 13, 22 246:18 247:1, 10, 21 248:1, 9 249:1, 2, 5, 7, 8 251:16 252:6 255:1 256:18 262:5 266:4 268:14, 22 269:4, 13, 19 270:1 271:15, 19 273:3, 4, 7, 14, 22 274:2 275:6, 19, 22 278:1 279:5 280:9 knowing 188:19 192:8 231:7 240:13 269:17 knowledge 162:12 174:13 238:5 known 109:9 172:13 254:2 knows 225:9 < L > label 268:21 Labor 2:6, 19 5:12 16:2, 3 28:11 55:9 56:21 57:13 60:6 63:21 90:4 110:17, 22 112:7 114:2, 9, 11 139:5	150:14 152:6 154:8 157:5 166:6 180:2 183:16, 18 195:11, 20 219:18 232:17 254:1, 3 270:22 278:6 281:3 laborer 254:6 laborers 85:8 98:7 laboring 86:4 88:5 93:18 184:4, 6 lack 13:9, 10 31:13 89:6 107:18 112:8 144:12 178:7, 8 179:21 187:9 188:11 196:9 241:11 250:22 251:10 ladder 13:16, 17, 19 262:14 263:8, 11 ladders 262:22 263:6, 7 lady 224:15 lag 21:4 laid 98:13 land 235:5, 6 language 85:21 94:14, 19 106:6 113:9 129:22 166:15, 19 203:5 209:22 languages 20:10 79:6 94:18 95:6, 18 111:22 113:3 127:17 laptop 32:22	large 17:9 18:8 24:11 40:13 60:18 62:8 79:17 99:12 105:12 135:9 144:9 162:22 251:1 252:3 262:4, 16 265:22 larger 89:18 160:12 largest 10:8 153:2 251:12 Larry 3:17 131:22 132:2 138:21 141:15 142:22 144:5 148:3 150:2 lasted 205:21 lasting 157:22 lasts 134:3 late 208:14 233:11 237:13 lately 243:16 launch 130:12, 16 launched 130:14 Law 2:4, 5 5:10 14:20 92:7 206:21 253:22 laws 207:8 lawsuits 93:6 lay 15:17 layers 39:3, 5 62:1 87:2 98:11 laying 28:7 lazy 252:15 lead 155:18 211:22	leader 42:7 46:2, 5 98:6 208:19 259:13 leaders 45:21 209:1 234:19 237:1 239:21 243:2, 20 leadership 204:16 leaned 263:6, 9, 11 learn 56:7 learning 163:7 leave 188:12 207:9 216:6 220:17 223:17 228:10 234:21 leaving 208:7 274:1 led 55:12 85:10 173:1 left 12:10 34:6 106:8 269:9 left-hand 129:20 130:6 203:3, 9 LEGAL 3:20 165:20 166:2 173:1 177:17 178:22 192:13 legs 249:7 263:10 lemon 247:16 248:1 lemons 208:2 247:22 248:12, 17 lends 145:19 length 146:2 167:7 230:11

LEP 57:3, 7 185:14, 18 198:16 199:1, 8, 20 200:1 Leticia 4:12 250:3, 5 255:6 258:11 letter 94:1 99:3 105:14 106:19 Lettie 28:1 level 83:19 92:12, 15, 16 105:16 127:14 160:4 175:1 197:9 leveled 83:21 levels 67:11, 12 113:1 135:21 154:5 204:8 LEVIN 2:21 24:18, 19 52:8, 9 78:6 102:19 116:5 125:12 128:13, 14, 21 129:4 liability 57:21 liaison 278:12 Lidara 203:16 LIDERES 4:3 203:10, 16 204:15, 21 206:17 213:21 217:15 231:12 233:7 lie 11:17 Liebman 4:2 176:22 177:10 180:20, 21 181:2, 3 187:3 189:8, 13 192:18 193:4	194:2, 3 195:9 196:15 197:17, 18 198:17 200:15 202:5 lieu 50:1 life 27:22 28:9 55:7 93:16 111:16 112:2 206:4, 11 212:20 233:22 253:6 254:10 lifesaving 85:10 112:14 life-saving 167:16 lighting 264:9 lightning 224:10, 12, 15, 18 225:1 lights 262:12 264:7, 11 likewise 83:6 limit 6:15 156:8 limited 5:19 22:14 232:20 limits 168:5 LINDA 2:20 4:14 149:5 163:18 176:8 193:9 217:12 218:4 246:5 249:11 258:2 260:1, 3 277:14 line 42:15 119:21 186:1 280:10, 13, 15, 17 lines 10:19 linguistic 113:4 linked 113:19 lint 132:14 133:12	LISA 2:10 191:4, 6 244:18, 19 256:14, 15 274:10, 11 list 54:3 listen 212:15 215:11 listening 16:1 127:21 230:1 242:5 273:8 literacy 127:14 literature 76:7 litigated 173:17 little 10:20 13:12 26:12 31:20 33:13 35:3 38:4, 8 47:15, 21 48:17 70:6 71:2 83:12 92:10 119:20 141:13 143:21 179:20 236:9 257:13 269:21 live 15:1 137:9 149:18, 22 150:5 200:9 lived 228:11 lives 11:10 14:20 15:14 77:14 93:13 209:12 livestock 153:6 living 85:5 122:17 150:7 177:14 200:12 238:13 Liz 212:8 Lizabeth 4:5 203:11 207:16,	22 loading 262:19 local 56:12 92:8, 16 132:13, 16 164:16 185:12 188:9, 10 198:8, 13, 18 271:4 277:18 localities 190:12 locally 207:2 located 66:14 165:3 264:15 275:13 location 133:16 211:18 263:11 locations 63:14 101:9 logistical 40:15, 19 202:21 279:22 logistics 41:17 129:15 logo 145:6 LONG 2:10 13:5 27:3, 19 39:7 113:18 114:9 118:3 134:15 140:14 141:17 191:4, 6 193:2 194:14 196:20 199:15 201:3 221:11 223:17 244:18, 19 246:11, 17, 18 248:2, 13, 14, 15 249:9 256:14, 15 257:18 274:10, 11 275:2 276:13

longer 82:12 221:8 242:4, 6 252:18	6, 19 151:7 166:22 192:15 200:11 201:7 206:7 208:11 216:5 223:2 228:13 229:16 233:6 234:5, 7 238:19 240:17 241:2 261:14 266:8	189:12 195:8 197:16 203:19 216:7 259:21 machinery 28:14 mad 209:3 Madam 216:17 280:12 main 98:22 122:4 126:21 251:4 267:12 maintain 49:17 180:5 210:18 maintained 144:21 maintenance 37:13 majority 24:3 60:18 164:14 233:20, 21 235:1 236:19 237:10, 11, 17 238:14 239:4 242:16 246:20 247:5, 14 248:5, 20 253:20 maker 16:1 making 35:10 39:16 57:7 91:17 148:18 238:21 279:20 malfunction 226:5 manage 111:11 132:12 managed 133:7 management 30:15 56:1, 8 manager 132:3, 6 managerial	138:17 managers 56:4 managing 136:17 138:2 151:12 mandarins 208:2 mandate 43:11 112:15, 19 260:15 mandated 89:3 169:1 186:20 268:1 269:11 mandates 264:22 265:8 mandatory 15:4 81:3 156:8 184:3 185:3 186:16, 22 187:5, 12 229:19 254:12 manner 191:15 manually 130:16 March 232:1 Maria 4:6, 9 11:12 184:16 203:12 210:22 211:1 218:15 219:9 220:3, 6, 8 234:17 246:21 MARIAM 4:17 9:18 24:21 25:5 52:22 53:21 59:16 64:14 78:9 84:15 110:5 116:16 129:10 152:13 176:19 203:19 Maria's 231:2 mark 217:14
look 31:7, 16 35:3 42:4 99:9, 18 118:16, 22 120:1 168:2 182:3 189:8 191:1 199:6 207:12 223:12 276:1 looked 26:15 34:15, 21 118:8, 17 looking 26:9 35:6 66:16, 17 76:15 91:15 105:18 172:4 256:8 271:20 looks 87:7 117:20 271:15 lose 12:9 192:10 209:15 210:17 212:11 losing 14:5 109:12 183:1 210:6 loss 13:6 67:17 73:15 83:7 losses 11:9 lost 13:19 15:10 67:18, 21 93:7 lot 21:19 36:7, 11, 16, 17 37:4, 12, 19 39:9 44:9, 17 48:3 69:12 77:6 79:18 108:3 127:19 150:1, 2,	lots 29:7 34:12 35:1 36:3, 4, 12, 14 37:20 201:10 250:16 low 17:11 43:22 44:1 136:4 147:14 151:18 212:20 lower 70:17 129:20 132:19 185:3 lower-left 203:2 low-heat 153:20 lucky 62:19 278:11 lunch 46:11 88:20 119:16 129:9 220:20 223:16 228:4 luxury 15:8 lychee 226:4 < M > ma'am 25:4 27:5, 6 30:6 31:19 32:2 44:22 48:21 49:2 53:12 121:19 142:7 144:5 145:2 148:20 177:3		

marked 128:22 129:1 173:2 268:20 Martin 226:1 Martinez 4:10 218:16 219:9 226:1 Maryland 166:21 169:7 mask 39:11 Mastache 4:5 203:12 207:16, 19, 21, 22 material 133:10 229:6 241:2 258:20 274:4 materials 41:19 78:19 128:16 276:21 277:1 matter 111:16 114:15 145:3 158:15 175:15 200:20 224:6, 10 270:18 281:7 matters 9:11 60:11 279:22 maximize 67:8 maximum 18:1 137:12 266:18 Mayan 95:4 McManamon 3:12 84:19 85:2 89:10, 14 94:11 101:13, 18, 19 107:22 108:2 109:5 mean 14:5 24:5 34:18 47:4 49:6 84:3 139:1 142:7 144:6, 12	145:11 150:4 151:8, 15, 20 173:12 183:11 198:18 235:7 240:2 meaningful 14:16 19:1 means 18:4 19:5 42:11 80:7 101:4 179:5 180:17 200:17 208:16 234:20 237:15 meant 6:11 measure 117:19 196:13 measurement 165:2 measurements 58:12 141:18 164:7, 9, 19 measures 23:18 47:6 83:13 97:22 107:19 121:7 127:6 167:17 213:19 265:4 meat 234:15 mechanical 133:14 mechanically 133:9 medical 11:16 57:22 58:2 65:6, 19 67:15 89:1 91:11 148:18 188:8, 14 197:8 212:21 250:9 251:10 252:11 254:13	medication 271:5 Medicine 55:17 62:17 64:22 65:5 79:22 182:13 meet 18:10 58:18 178:20 meeting 224:21 meetings 57:13 170:21 meets 19:3 melt 15:16 member 84:13 94:5 136:21 147:19 163:2 219:15 233:8, 9, 10 member-based 153:3 members 22:22 23:16, 17 58:13 60:9 71:4, 10 74:4 76:11 80:8, 17 81:8 85:14 86:7 87:6, 8, 11 88:16, 22 89:17 99:13, 19 103:16, 20 104:20 106:20 107:17 108:22 109:6, 17 110:1 143:17, 22 146:3 147:19, 22 148:15 151:11 152:1 153:5, 11 154:3 162:13, 19 163:1 164:6, 11,	14 232:22 236:11 251:18 membership 145:22 160:20 233:7 men 91:6 Mendoza 12:3 111:3 menstruating 228:15 mental 29:18 52:12 251:11 mention 27:21 94:22 mentioned 18:17 19:3 22:1 24:4 30:13 38:5 40:12 46:19 52:12 53:15 68:17 70:4 76:4 78:15 80:4 115:18 122:3, 21 126:13 138:16 139:11 141:10 159:13 170:7 173:7 175:12 188:22 190:7 191:9 197:4 198:7, 8 199:13 200:13 215:20 221:2 228:1 232:18 258:12 267:21 277:16 278:2 mentioning 127:5 204:12 mentions 209:2 menu 130:7

merely 112:14 Mesonet 165:1 message 96:4 271:8 messages 111:21 messaging 112:20 messengers 213:22 metabolic 182:9 methodology 90:5 methods 76:14 94:18 278:15 Mexicans 252:15 Mexico 111:4, 7 183:6 251:13 252:16, 21 253:3, 4, 9, 16 257:6, 14 Miami-Dade 85:11 105:16 Michigan 11:3, 6 250:11 micro 239:2 microclimates 34:13, 15 microphone 33:11 mid-August 49:5 midday 46:8 middle 111:9 204:10 211:11 mid-June 49:6 MIGRANT 3:22 111:4 176:21 177:10, 18 181:4 185:5 migrants 240:7 migrate 112:5 237:14	migratory 179:14, 17 Miguel 11:20 mile 18:6 61:7 71:16 miles 264:16 milk 72:20 234:14 milking 58:12 million 85:15 133:5, 6 millions 88:14 161:8 174:5 Mily 4:8 218:15, 20 230:16 232:7 236:17 242:3 246:14 mind 154:12 163:2 238:11 mindful 80:16 135:16 mine 206:7 261:17 264:19 minimize 100:5 minimum 16:3 160:8 182:3 minor 137:4 257:13 minority 60:17 83:18 250:20 minute 18:6 19:3 126:9 140:8 141:22 220:20 221:19 224:4 225:17 minutes 119:17 126:10 130:19 142:1 168:6 169:17, 21 228:4	miscarried 13:4 missed 44:22 missing 197:1 mission 10:13 65:3 77:4 158:10, 16 204:15 misters 58:15 70:4, 16 71:19 mitigate 93:1 mitigations 48:8 mix 269:2 Mixteco 20:10 mobile 17:13 32:21 mock 56:14 model 82:17 modeling 93:10 module 56:4 moisture 133:10 moment 96:8 139:16 203:18 210:14 216:14 momentum 63:4 Monday 41:10 money 13:12 36:8, 9, 19 41:16 77:15 124:21 156:12 197:12 208:17 252:22 monitor 23:13 66:19 67:10 135:11, 17 141:1 147:12 162:6 Monitoring 58:8 74:19 147:1, 4, 9 234:9 238:20	242:12 monitors 70:14 Montana 136:7 month 253:20 months 13:20 92:1 132:22 134:4 183:8 222:4, 5 232:1 month's 240:12 MOORE 2:11 38:1, 2 40:6 morning 10:1 17:4 23:5 25:8 40:9 59:19 73:6 84:22 85:3 86:3 97:6 110:8 116:15 128:11, 15 129:6 133:19 198:9 203:15 205:20 223:11 237:12 261:18 move 52:21 53:5 64:6, 13 68:8 84:14 94:4 110:4 116:15 135:10 141:21 142:9, 13 152:12 165:15 167:11 176:17 186:5 202:17, 20 203:13 204:4, 7, 9 213:16 218:11 249:20 250:2 259:21 262:13 264:11 275:15 moved 102:3, 4 141:20

movement 204:21 264:13	219:12	26:1 45:6	nearly 85:14
moves 171:21	NAICS 161:7	114:18 154:16	157:9 181:13
179:12	naive 201:5	NATIONAL	necessarily
moving 15:15	name 9:16, 21	3:16 12:15	62:12 98:8
18:21 69:18	10:1 16:12	55:22 65:22	160:11 190:13,
141:21 167:18	25:7 53:13	85:4 91:21	14 194:6 196:2
168:10 170:7,	54:3, 4, 12, 13	92:16 114:16	232:4
16 203:10	59:18, 19 60:3	132:8, 9 133:5	necessary 20:11
221:19 240:10,	64:17, 21 68:10	151:8 154:7	46:6 68:4
13 262:8, 17	69:7 78:12, 13	155:1 162:15	92:17 113:2
263:6	82:7, 22 83:2	164:15 177:12	136:12 173:5
muck 39:1	84:22 89:14	181:5 219:11,	187:1, 13
multi-employer	94:6 103:3, 4	13, 14	229:19 232:4
85:21 97:8, 11	107:14, 15	nationally 18:12	necessity 15:9
99:6	110:7, 8 116:18,	85:9	112:15 208:14
multilingual	19 125:17	nations 155:2	NEDPA 55:4
20:8	131:1, 12, 15	nation's 10:8	73:10
multiple 25:16	132:1, 2 138:12	88:8	need 11:11
27:22 29:20	149:12, 13	nationwide	17:18 19:15
44:16 45:17	152:15 164:3, 4	72:11, 12	26:21 28:21
58:9 60:21	165:18 177:1, 7	135:18 137:10	30:4 34:18, 20
61:1 62:10, 12	181:3 186:8	natural 74:10	36:7 37:11
79:6 92:13	189:11 193:16,	83:3	38:5 44:19
113:3 127:16	17 197:15	naturally	55:11 58:12
192:6 263:1	198:1 201:17	136:14 144:12	64:7 67:2 68:1
264:2 271:3	203:13, 15	149:20, 21	69:2 72:2 76:5
273:2	207:21 211:1	150:12 193:22	79:2, 5, 7 89:2,
multitude 67:14	214:15 216:9,	nature 6:7, 8	5 93:20 96:17
muscle 208:8	15 218:17, 19	22:9 90:7	103:7 104:2
mushroom	220:7 226:1	91:13 256:2	105:3, 7 107:7
37:16	230:5 232:8	nausea 48:6	111:18 127:21,
mute 33:2	250:4, 5 256:15	121:2 122:22	22 128:1 131:7
177:4	258:9, 10 260:2,	226:12 229:14	134:17 140:22
muted 64:19	3 280:7, 14, 16,	nauseous 44:18	144:2 169:16
129:17 207:18	19	navigate 214:2	177:22 182:15
< N >	names 84:19	NCGA 146:12	184:12 189:5
NACIONAL	Nancy 3:15	147:14	196:4 197:7, 8
4:7 218:14, 21	116:17, 19 129:2	near 25:12	200:9, 16, 20
	nasty 122:9, 10	74:4 188:15	201:3 202:10
	nation 10:15	nearby 14:9	203:1, 6 207:7
	16:2 24:10	43:2	209:16 212:17

215:4 216:3 224:17, 19 225:12, 14, 15 227:13, 22 228:14, 17 232:5 234:8 244:2 250:18 254:9, 11 259:13 268:4 269:14, 21 273:14, 15 280:1 needed 14:18 20:1 51:15 56:19 63:5 67:4 73:13 80:2, 20 89:9 102:5 103:7 106:9, 12 108:1 124:20 134:12 155:19 162:16 170:20 186:21 187:2, 11 198:12 226:21 252:18 253:5, 14 264:7 268:13 270:7, 15 needing 68:18 267:13 needs 26:19 35:4 42:9, 11, 18 43:4 48:7 58:18 92:6 136:10 152:7 154:15 182:4 194:8 208:18 209:18 214:3 225:14 242:9, 15, 16 255:15 negatively 83:7 neglecting 152:3 neither 252:12	NETWORK 3:22 43:13 176:21 177:10, 19 181:5 185:5 never 12:12 36:15 102:1, 9 122:11 126:18 225:19 Nevertheless 110:13 NEW 3:6 54:21 55:1, 5, 6, 16, 18 56:13, 20 57:8 59:13 60:4, 5, 6 62:5, 16, 20 63:4, 14 64:5, 10, 21 65:5, 8, 15, 17 68:18 69:11 77:9 79:21 80:16 82:16 109:13 152:22 181:13 182:14, 16, 19 183:6 185:13 194:12 199:8 200:18 201:2 231:14 250:7 251:3 261:13, 21 269:8 night 223:11 263:22 nights 267:13 nighttime 261:18 263:17, 21 nine 11:14 118:5 NIOSH 62:21 66:7, 14 67:17 83:5 118:20	119:10 120:11 169:5 NOAA 117:19 nod 9:2 non 138:16 noncompliance 21:4 36:4 non-compliances 212:7 nonmanagerial 58:6 nonprofit 85:4 173:1 204:22 non-profits 256:9 non-reporting 188:19 nonunion 123:18 non-union 52:2 nonunionized 51:21 noon 46:11 205:13 normal 92:1 133:1 135:20 155:16 205:11 267:11 normalize 19:22 50:21 270:14 normally 136:9 245:2, 3 north 72:7 111:5 132:19 161:7 231:16 250:14 251:8, 11 253:1, 11 255:7, 10 256:4 260:4, 14, 16 270:21 275:6 278:1, 4, 6, 8	Northeast 54:14 75:7 78:15 northern 69:5, 12 notably 178:7 notch 55:19 note 96:19 180:6 182:8 noted 52:9 74:17 75:8 100:1 139:18 143:15 147:14 236:6 notes 244:5 Notice 5:7 6:5 7:17 noticed 22:16 notices 26:1 66:10 notification 130:18 November 140:21 NRDC 83:6 NUESTRO 4:11 250:22 255:7 number 8:5 22:14 33:9, 17 51:11 72:6 76:12 90:10 119:16 120:2 125:21 131:15 147:14 151:20 153:5 161:10, 12, 18 162:22 202:9 213:6, 10 251:1 270:20 numbers 151:18 numerous 105:17 nurse 116:20

nurseries 35:14
37:5, 16 42:22
220:11 222:13
226:2

nursery 29:9
41:3 43:1
88:16 89:1, 8
109:8 190:8, 11
NYCAMH
56:17 62:16, 19
64:9 82:16

< O >

obligate 228:6
obligated 225:2
obligates 57:18
obligations
14:12

observable
175:21

observation

195:13 272:8
observe 184:7
observed 43:13
100:18 122:6
172:17 198:20
209:6

observing 23:17
172:4 173:8

obviously 65:2
198:5 271:17

occupation 11:1

OCCUPATIONA

L 1:5 5:4

62:15 66:1
67:14 114:15,
20 152:21
177:15 178:18
182:12 191:13
232:18

occur 90:19, 21
181:17 264:3
occurs 134:7, 12
276:12

o'clock 129:8,
11 223:15, 16

October 132:20
140:18, 20 232:2

odors 249:3

offer 113:14
250:6 252:20

offered 252:12
253:7

offers 93:15

Office 2:5, 19
24:19 52:7, 9
78:5, 7 102:18,
20 116:4, 6

125:11, 13
128:14 149:4, 6
163:17, 19

176:7, 9 193:8,
10 217:11, 13
218:5 246:4, 6
249:12 258:1, 3
277:13, 15
278:10 280:2, 6

Officer 181:4

official 15:22

offset 76:17

oftentimes
105:22 252:5
255:14

Oh 33:22 42:4
72:8 106:1

162:10 201:1
207:19 225:8, 9
230:21 232:9
241:21 244:16
260:8

Ohio 250:10, 13

Okay 17:2, 22
24:13 32:8, 13,
17 33:1, 6, 14,
15, 16, 22 34:3,
6, 11 35:16

36:21 40:7
43:8 49:1, 2, 18
50:6, 11 51:3, 4
53:11 59:12, 20
69:21 71:1, 11
72:8 73:1

74:12 76:11

79:14 80:4

81:1 82:4

84:10 95:21

97:4, 9 99:4, 21

100:13 124:11,
15 126:12

127:1 128:4, 21

142:4, 11, 17

143:8 146:10

150:14, 20

151:4, 10 152:8

161:3, 19

162:18 163:6

164:18 165:10

171:4 176:2

180:22 187:14

189:15 191:3

193:3 202:15

204:4, 15

215:13 216:22

219:2 220:7

230:19 232:12

235:17 238:19

244:12 259:16

260:8 266:16

267:7, 14

269:11, 22

270:5 272:20

274:7, 8, 9 277:6

OKLAHOMA

3:18 152:16, 19
153:2, 3, 14

154:12, 16

155:10 156:11

157:5, 17

159:17 160:7,

19, 20 161:5, 12,

16 162:11, 21

164:10, 21

Oklahoma's

153:21 158:3

old 11:12, 20

13:14 111:3

184:17 206:5

257:13

older 257:11

once 44:10, 15,

17 130:20

155:6 169:21

203:4 262:15, 18

ones 45:12, 22

155:9 239:20

one-size 261:7

one-size-fits-all

144:8

on-farm 55:20

56:6 57:9

ongoing 157:14

online 217:4

255:3, 16

onsite 148:18

op 136:18

open 76:3

221:21 225:2, 3

234:20

operate 60:8

132:12 134:4

operated 260:17

Operating

134:3, 6 136:2

operation 82:2 132:12 133:3 163:3 operational 58:4 operations 18:8 24:8 70:8 138:19 143:17 154:15, 18 156:16 158:8 267:11 operator 276:4 opinion 6:13 18:1 127:4 270:13 opportunities 64:9 65:8 opportunity 5:22 6:12 7:14, 16 16:7 30:2 44:12 54:22 60:1 68:9 94:2 104:4 114:21 115:17 116:20 121:15 131:8 132:4 152:20 157:19 177:11 181:3 198:21 208:10 220:2 231:1 236:14 254:14 260:12 opposed 86:6 135:14 opposite 99:17 optimal 67:8 option 33:2, 5 36:20 92:15 155:21 169:6 178:11 217:4 255:2, 4 273:11 optional 236:6	options 139:20 233:20 oral 5:14 7:4, 13 78:16 oranges 208:2 248:17 orchard 260:22 262:17 264:14, 17 275:16 orchards 263:19 264:15 275:9, 15 ORDER 3:1 5:3 8:7 9:12 131:18 160:8 187:10, 11 188:8 212:17 254:9 Oregon 21:1 34:21 35:1 136:7 166:21 169:7 180:1 231:15 organization 10:4 25:13 54:15 85:5 137:3 153:3 154:3 173:15 177:12 181:5 205:2 206:17 219:11, 12, 13 233:8, 10 250:21 258:21 271:4 277:19 organizational 7:20 organizations 6:5 10:9 62:15 63:1 64:9 74:17 172:22 174:21 177:16, 17, 18, 21 185:8 219:15 organized 205:1, 3 250:13 organizer 250:13 organizing 56:14 Orlando 25:12 ornamental 29:7 41:2 Oscar 13:8 OSHA 1:5 2:8 5:16 7:13, 15, 21 12:18, 19 14:7 15:22 16:8, 11 19:12, 17 20:19 21:13 22:11 23:10 24:15 25:17 29:22 30:7, 14, 20 35:9, 18 40:9 42:11 43:5 49:22 50:4, 9, 16 51:1, 6, 19 53:15 56:12, 15 57:3, 10 59:8 60:2 65:17 67:18 68:12 74:15 75:18 77:22 78:16 79:14, 19 81:3 84:8 85:13 86:3 92:20 93:21 94:7 100:16 103:6 106:20 108:8 110:11, 20 112:19 114:17, 20 115:1, 5 118:20 121:20 123:15 126:5 138:5 139:16 143:14, 18 146:11, 18 147:3, 7, 18 156:3 157:13, 18, 21 158:1, 15 159:8 160:2, 5, 17 161:22 163:6 166:18 167:5, 10 168:2, 17 169:18 170:4 171:9, 16, 21 174:2 175:8 176:3 177:20 178:19 179:12 180:9 181:13 183:17 185:2, 11, 15 186:10, 16, 19 187:18 191:10 193:6 198:10, 19, 22 201:20 202:2 210:11 214:18 219:21 221:8, 22 223:4 227:2 228:16 229:5 230:3, 13 234:6 236:1 240:21 241:5 245:7, 9, 12, 13, 19 251:5 254:16 255:1 265:14 268:6 270:6 274:11 276:16 278:4 280:1 OSHAevents_dsg @dol.gov 6:22 OSHA'S 1:9 6:2, 9 10:5 57:17 68:8 75:9 90:11

93:14 102:14 123:16 125:9 129:11, 12 149:1 155:22 158:10 159:5 163:15 178:11 191:6 198:12 217:7 241:13 256:15, 18 257:6, 20 277:10 ounces 120:11, 12 ourself 227:22 outcomes 76:15 82:2 261:11 264:20 OUTDOOR 1:10 5:6 10:6 60:3 61:9 85:11, 15 129:14 153:1 156:15, 19 157:2 175:4 190:1, 14 220:1 outdoors 86:19 201:18 outline 76:22 outlined 124:2 182:5 outlines 200:1 outreach 57:10 157:15, 20 158:13 206:6 240:15 outside 47:5, 9, 16, 21 49:10 73:20 90:21 91:11 110:17 150:15, 17 173:15 226:10 232:3 262:11	overall 30:19 58:20 overcome 163:11 overheating 73:14 268:9 overhydrating 227:9 overlap 100:3 overlays 175:16 overly 134:22 overseen 110:20 overshadowed 265:8 overstepping 270:3 overturns 77:11 overview 57:4 overwhelmingly 138:1 151:10 owned 132:15 260:17 owners 56:4 < P > p.m 129:8 220:16, 17 281:11 packaged 133:13 packaging 228:8 packets 254:6, 8 258:13, 15, 16, 18 packs 258:19 Padilla 206:21 page 100:22 paid 13:11 14:5, 10 15:7, 8 16:19 21:17 121:16 137:2 245:2, 3, 4 255:17	pain 221:7 229:14 Paliacate 247:7 palpitated 226:16 palpitations 221:4 226:13 pandemic 251:1 PANEL 2:8 7:12, 15, 18, 22 8:8 16:11, 16 17:3 20:18 30:7 53:21 54:9, 20 55:18 59:9 64:15 68:8, 15 73:5 76:3, 11 77:22 78:2, 5, 7 84:13, 15 94:6, 7 100:15 102:15, 17 115:1 121:21 138:6, 10 159:8 160:16 161:22 170:4 186:10 214:18 218:11, 12 230:3, 7 245:21 246:3 249:19 260:11 265:15 panelist 107:16 130:19, 21 131:13 panelists 9:15 61:15 102:21 110:3 pants 39:7 246:12, 18 Panuelos 247:7 Paolo 280:16	paper 29:18 167:15 261:19 papers 52:11 224:3 239:22 paperwork 255:12 paramount 112:18 parked 111:8 parlors 58:12 part 6:18 7:4 26:4 57:9 73:22 89:18 118:1, 4 119:8, 10 123:5 134:2 171:21 183:10 194:7, 9 199:22 232:6 247:19 250:19 255:17 257:6 260:11 262:4 263:14 274:22 275:18 partially 142:5 participant 24:22 53:3, 9 78:10 82:20 84:12 102:22 107:12 116:9 125:15 128:8 165:12 197:21 201:15 249:16 258:7 259:18 279:8 PARTICIPANTS 2:1 3:1 7:7, 19 8:1, 6, 7 9:5 52:21 117:22 149:10 164:1 176:14 193:14

198:6 218:8 279:16 281:6 participate 152:20 participation 267:19 particular 8:8 28:1 53:17 59:8 76:13, 18 98:7 168:4 183:2, 15 192:1 199:13 202:11 261:15 particularly 74:22 91:17 95:3 98:4, 10 101:14 103:16, 21 189:4 196:17, 21 201:8 parties 5:14, 22 19:16 partner 57:2 264:2 partnering 172:22 partners 54:16 67:18, 22 173:4 180:14 parts 79:14 153:16 party 56:6 pass 15:18 69:17 92:13 107:22 207:14, 15 210:21 267:15 passed 213:14 252:9 253:6 passing 126:14 pathway 92:18	121:8 patient's 91:6 PATRICIA 2:17 Patti 23:3, 5 46:17, 18 69:22 70:2 71:1 72:8 73:3 141:7, 8 142:17 162:1, 2 235:14 pause 124:5 129:22 174:17 202:20 pay 73:15 112:11 207:4 208:17 212:21 225:12 245:5 paying 93:4 255:14, 18 payment 207:3 peaches 208:2 peak 17:13 87:14 103:21 pears 13:17 peer 199:21 penalized 143:20 268:8 Pennsylvania 250:11 people 6:5 10:14 11:8 26:2 27:21 31:4 36:14, 17 41:13 47:7 58:22 60:13, 14 70:21 79:5 83:18 88:4 91:4 110:17 118:12 120:13, 18 128:1 132:22 133:2 140:15 149:21	151:14, 20 201:1 211:7 212:14 221:15 222:13 227:13 228:19 238:5 239:13, 21 240:3 242:11, 12 243:6 252:6 260:19 262:21, 22 269:22 270:19 271:2 273:10 281:4 percent 11:4, 6, 7 30:18 66:9 88:18 118:4 119:14 120:14, 17, 22 121:2 122:8 127:10 137:2 151:21 155:10, 12 181:17 percentage 16:18 37:3, 18 51:12, 14 174:14 perfect 174:9 177:7 251:4 perform 28:22 58:2 133:17 190:18 260:20 performance- based 167:1, 2 performed 263:13 264:8 performing 93:14 112:7 period 5:16 7:8 8:16 18:21 19:2 64:2 73:21 90:12 91:5 127:19	156:10 182:1 periodically 46:7 permanent 257:9 permission 239:19 240:1 permits 7:17 permitted 168:19 person 16:1 42:5 60:10 140:9, 17 203:21 225:8 243:12 269:5 271:15 275:20 278:22 279:1 personal 265:11 269:17 personally 174:19 211:6 273:15 personnel 30:15 60:10 142:10 185:15 persons 7:17 perspective 175:18 perspectives 256:11 pertaining 146:1 pertains 192:1 pertinent 5:15 pervasive 180:12 192:7 Pesticide 25:9 36:13, 15 38:14 39:13, 18 48:3 127:11 227:18 255:8, 9 pesticides 26:14, 16, 18 36:3

38:16, 22 39:7,
15 40:1 48:6
127:19 219:18
229:13 249:1

PETROPOULOS

2:15 75:21, 22
122:1, 2, 20
123:10 148:11,
12 159:10, 11,
22 160:13
187:15, 16
188:17 189:14
phased 112:12
phenomena
213:18
phenomenon
188:19
phone 33:9, 16,
20, 21 34:1
131:15
phones 8:4
131:3
physical 112:9
114:2 133:18
178:16 182:8
227:7 271:18
275:8, 10 276:3
physically
109:21 112:7
physician 148:17
physiological
66:20 112:17
physiologically
27:3
pick 34:9
262:14 268:18
picked 262:13
pickers 269:2
picking 13:17

205:11 262:17
pickup 102:2
picture 24:11
pictures 247:2
piece 13:12
14:5, 11 15:7
16:19 37:2, 3, 7,
8, 12, 18 52:1, 2
104:16 112:11
123:18, 20
124:6, 13, 16
125:2 194:22
piece-rate 245:8,
11
piecework 51:19
piece-work
245:2
pioneer 233:10
place 64:4, 7
72:17 74:8
80:13 81:14
83:14 90:9
91:18 92:9
105:3 166:15
178:10 179:8
194:11, 12
206:22 211:9
236:8 237:14
241:12 255:13
262:1 266:5
placed 167:8
262:19
places 23:22
35:3, 15 60:21
102:5 154:18
183:12 231:17
238:14 267:3
Plains 132:3, 6
133:7 136:17
plan 14:15
38:11 44:1

61:18 63:7, 10
73:11 80:5, 13,
14, 21 81:2
84:4 135:18
138:15 155:5
213:11 232:16
263:14 278:2, 4
planned 46:10
67:16
plans 62:3, 9
74:18, 22 75:2,
3, 4, 6 144:20
213:2
plant 41:2
88:16, 22 89:7
109:8 133:10
141:20 142:9
222:16 224:15
225:20 226:6, 7
229:13
planting 63:12
88:12 103:22
105:18 220:10,
13
plants 29:7, 11
37:16 41:14
48:12 88:13
220:11 222:20
223:1 224:2, 13
225:5, 15 226:4,
5, 20 229:3
plastic 222:14,
15, 18 223:5, 10
229:3, 7
play 28:4 61:6
62:13 111:2
167:3 182:19
255:12
playing 83:21
plays 110:20

please 8:21 9:3,
15, 19, 21 21:6
25:5, 7 27:13,
16 31:21 32:10
37:19 45:2
50:12, 20 52:22
53:11, 21 54:4,
6, 11 59:16, 17
64:14, 17 68:10
69:7 78:12
82:6, 22 84:15,
19 86:12 87:5,
16 88:4, 11, 21
89:5 101:16
103:3 107:14
110:5, 7 115:15
116:18 117:9,
21 118:3, 8, 16
119:6, 8, 19
120:5, 9 121:9
124:5 125:17
128:18 130:15
131:6, 15, 20, 22
141:12 143:21
146:9, 21 148:7
149:12 152:13,
15 161:14
164:3 165:18
175:14 176:19,
22 186:8
189:11 193:16
197:15 198:1
203:2, 8, 12
204:14, 20
205:6 213:16
214:10, 15
216:9, 17
218:17 221:8
230:21 250:4
258:9 260:2
280:13, 19

Plus 122:16 145:16 261:3 pneumatic 142:6 pneumatically 141:20 point 7:10 24:12 48:22 72:1 81:22 95:8 109:15 174:22 182:18 183:14 279:20 points 26:5 114:4 166:8 183:22 policies 100:5 138:2 154:4 236:8, 12, 13, 15 241:11 256:7 policy 16:1, 4 154:7, 12 251:14 political 204:18 ponchos 229:9, 10 pool 114:11 poor 225:8 pop 17:13 popsicles 145:9 popularity 55:9 population 112:20 populations 154:22 181:7 portable 101:21 275:12 Portacool 135:7 142:13 Portacools 143:3 portion 45:1 280:5 portions 133:21	poses 58:4 position 141:4 positioned 158:6 positions 73:19 139:6 140:16 positive 63:3 possibility 98:19 possible 8:11 22:9 79:10 96:22 100:2 118:13 146:6 166:4 250:7 270:12 possibly 95:13 160:10 168:22 post 17:20 20:6 51:8 74:20 76:3 115:19 161:17 165:6, 9 174:16 175:13 189:6 202:6 276:21 post-hearing 5:16 8:15 16:18 17:1 18:13 19:21 21:8, 10 22:17, 20 23:9 24:3 43:9 49:15, 19 50:10 51:22 52:15 76:6 96:10, 14 97:3, 16 98:3 99:5 100:10 102:11 115:9 124:12 139:13 146:8, 14 147:10 148:5, 11, 15, 21 161:10 163:8 173:11 189:9 190:7, 15, 21	196:16 199:22 202:14 215:3 230:14 233:3, 5 236:10 244:22 274:5 276:19 potato 111:5 211:5 potatoes 87:2 potential 66:20 100:5 114:10 157:15 potentially 67:3 88:1 95:15 101:13 186:7 192:14 poured 226:14 power 105:20 196:1 200:2 powerful 167:14 199:11 PowerPoint 128:22 129:2 217:14 PPE 38:5, 9 39:17, 20 49:21 50:1 86:22 246:12 practicable 101:1, 4, 9 166:19 167:2, 9, 12 practical 138:19 261:20 268:2 practice 104:19 112:14 163:3 276:4 practices 17:11 56:8, 9 64:8 66:6 76:21, 22 81:11 135:6	147:20 148:1 274:14 275:4 pre-acclimated 106:16 pre-acclimatized 194:1 precautions 113:2 152:3 212:1, 18 262:1 predictable 12:14 predicts 91:22 preemption 89:12 92:6, 11 preemptively 179:3 prefer 21:9 59:9, 12 62:22 148:5 231:2 239:16 265:5 266:6, 7 preference 266:11 269:17 preferences 265:11 pregnancies 222:4 227:20 pregnancy 222:5, 6, 7 pregnant 11:16 13:5, 18 184:13, 17 222:1 225:7, 8, 10, 11 227:4, 6, 13, 21 preliminary 75:9 123:16 147:3 prematurely 158:1 premises 18:19 premiums 93:5

preparation 213:20 prepare 56:19 preparedness 275:4 preparing 172:2 prerecorded 95:13 prescriptive 106:8 135:1, 18 137:10, 17, 21 140:5 presence 54:6 PRESENT 4:16 57:11 121:15 132:4 157:11 175:13 219:15, 16 presentation 119:19 128:22 129:2 131:5 217:14 presentations 123:9 presented 103:12 119:7 127:12, 15 128:16 146:12 217:15 presenting 7:5 204:13 presently 93:9 presents 156:1 pre-shift 170:21 preside 5:12 President 60:5 132:7, 8 136:18 151:16 177:8 PRESIDING 2:3 5:19	press 131:10 210:16 pressing 8:2, 3 pressure 182:21 212:12 223:20 228:8 236:4 241:10 pre-submitted 7:3 presumably 246:8 pretty 26:3 72:11 142:15 232:2 prevalent 21:16 95:12 prevent 15:21 73:14 97:13 127:3 158:18 179:8 181:9 187:12 212:1 267:10 preventable 15:5 111:12 178:5 186:1, 2 preventative 167:22 168:16 170:20 preventing 262:5 PREVENTION 1:10 5:6 10:6 12:17 14:15 38:11 55:1 57:12 60:2 61:18 62:3 66:3 67:16 80:6 100:1 129:14 135:3, 4, 5 137:8 138:14 153:1 155:5	219:22 232:16 272:1 preventions 74:18 preventive 270:10 previous 53:4 57:5 120:16 122:14 123:8 156:10 previously 25:16 60:19 68:22 pride 145:2 primary 114:5 178:11 principle 112:3 principles 135:5 prior 69:14 136:2 prioritize 93:21 228:16 priority 60:11 65:17 182:16 238:11 263:18 PRIVATE 3:13 4:13 110:10 proactive 178:17 179:6 213:19 Probably 29:8 63:15 72:7 73:21 103:17 120:18 143:17 197:8 240:20 243:10 problem 34:5 44:20 45:4, 5 209:6 244:16 269:15 279:2	problems 103:12 121:4 139:8 144:7 209:15 217:6 procedures 6:2, 10 61:21, 22 62:18 64:4 256:7 proceed 9:11 53:11 146:9 152:18 165:22 244:17 proceeding 8:18 191:17 279:18 proceedings 9:18 131:21 process 7:21 83:9 111:11 133:9 137:20 140:6 148:19 195:1 260:11 267:20 processed 255:13 processes 62:5 64:3 132:13 processing 133:1, 14 153:7 156:17 pro-dairy 56:17 produce 47:22 48:1 72:20 103:20 241:17 264:12 produced 87:1 134:7 producer 24:10 88:13 Producers 54:15, 16 75:8 78:15 154:18

156:2, 19 158:20 162:12 185:15 198:21 199:1, 9 produces 132:14 producing 140:7 product 28:19 42:15 140:7 141:19 237:2 244:2 production 154:21 156:18 253:17 productive 72:2 174:7 productivity 28:21 42:15 93:7 109:19 156:12 products 135:10 153:7 professional 148:18 professionals 57:22 58:2 185:16 profit 254:11 profitable 252:4 profound 114:19 program 30:15 55:13 56:1, 12, 17 63:11 77:11, 13, 16, 19 110:19 111:21 135:4 137:21 138:15 139:12, 21 179:18 181:4 185:12 198:15, 18 200:1, 2 232:18 257:5 274:13	275:4 276:22 278:7 programing 79:7 Programs 38:3 64:5 78:19 79:4 80:8 137:13 177:8 198:9, 13, 14 237:7 276:20 program's 56:3 progress 82:15 prohibiting 92:8 prohibits 191:11 Project 25:10 45:10 projected 93:8 promote 9:14 64:6 promoted 56:20 130:18, 20 131:13 promulgated 166:4 177:20 promulgates 240:21 proof 178:21 179:5 proper 112:1, 3, 8 113:6, 9 212:1 properly 107:4, 19 183:20 270:19 properties 190:4 property 242:14 proposal 23:11 68:21 79:15 124:2 139:15 155:20 159:13 162:4 201:20 propose 160:2	proposed 5:5, 7, 15 6:13 10:5 12:19 18:6 55:1 57:14, 21 58:4 59:2 61:19 62:10 85:13 87:4 92:13 93:15 94:13 97:10 114:17 136:4 146:14 147:17, 18 152:22 153:16 154:16 155:5, 8, 14, 21 156:1, 4, 13, 22 157:8 158:1 166:3, 17 171:16 177:20 179:13 182:5 183:22 184:22 189:20 200:5 219:22 240:22 241:13 245:6, 13 256:18 257:3 274:16 protect 28:15 29:13 38:5, 16, 19, 20 39:6, 11, 18, 19 42:19 53:16 57:14 60:20 62:4, 7 64:4 68:2 81:4 83:14 85:14 91:14 97:1 142:20 179:3 180:3 185:19 195:12 198:19 200:6 229:2 248:14 249:6, 7 254:9 262:2 265:9	protected 15:1, 8 26:21 28:20 114:19 protecting 10:15 15:14 38:15 40:2 58:21 67:13 68:5 81:7 88:4 110:12 114:14 172:15 180:4, 17 protection 10:21 30:4 42:3 77:18 84:4 92:11, 13, 15, 16, 17 93:22 97:14 100:7 111:14 114:7 174:10 207:6 211:12 256:18 257:3 protections 11:4 14:17 15:20 25:20 85:11 86:1 87:11, 18 91:19 93:15 99:20 104:21 121:11 179:7 180:2, 7, 17, 19 181:9, 22 184:12 185:1, 2, 9, 17 191:9 192:3, 9, 16 196:9 199:16 210:20 236:20 239:2 247:11 249:2 256:20 257:16, 17 protective 86:22 97:22 248:6

protocols 30:17 89:3 99:7, 13 112:16 183:21 proud 261:2 prove 178:20 182:21 proven 14:18 112:20 provide 6:20, 21 8:20, 22 16:7 17:20 19:17 20:6, 12 23:14 40:17 41:5, 16 50:16 51:22 55:20 58:14 60:22 65:12, 22 74:21 75:1, 11 77:18 86:7 97:2 99:6 101:2, 3, 10, 13 107:22 114:21 115:19 124:1, 11 130:20 135:6, 12 136:12 140:21 142:6 145:6 146:1, 15 156:20 161:18 165:5 172:18 178:14 179:16 180:5 184:22 186:21 190:14 212:17 234:13 238:4, 16 244:8 251:17 253:18 254:14 256:10 264:2 266:2, 3, 13 267:4 270:7 278:13 provided 8:15 40:13 55:16	65:14, 20 87:6 104:21 123:19, 21 166:10 169:4 171:14 185:17 189:5 233:19 236:3 237:2 247:12 258:12 278:3 provider 197:9 provides 22:8 65:6 68:4 providing 17:8 21:15, 17 62:22 85:3 87:11 95:7 97:21 110:10 158:13, 16 162:7, 16 168:4 169:20 177:11 232:4 237:16 242:15 244:1, 3 265:4, 21 provision 30:21 94:13 100:22 168:14 191:10, 18 provisions 14:14 20:22 21:3 75:14 171:12 267:9 274:17 proximity 167:13 262:20 Pryor 4:14 260:1, 3, 8, 10 266:2, 22 267:12 268:14 270:16 272:17 274:7, 22 275:5 277:3, 7, 9, 17,	21 278:6 279:6, 11, 13 public 5:4 9:12 25:17 60:1 110:9 114:16 129:16 131:17 public_hearing@ abtassoc.com 131:16 publicly 281:3 published 5:7 pull 48:9, 13 punished 14:4 227:15 punishment 210:8 punishments 209:20 purchase 88:15 purpose 5:13 168:14 push 124:22 182:22 208:11 212:14 253:17 264:20 pushed 247:19 248:8 pushing 104:17 105:1 124:22 238:19 put 33:9, 15, 16 79:18 83:17 94:22 95:19 102:5 144:15 145:11 178:10 185:21 197:13 207:8 208:4 212:19 223:5 224:15 239:14, 17 242:7	254:11 255:9 273:17 puts 58:3 putting 83:13, 19 140:9 165:8 182:1 268:18 < Q > quadrants 101:22 qualify 196:19 quality 27:22 28:9 quantify 51:8, 9, 15 105:12 quantity 40:13 quarter 18:6 183:7 269:9 Que 85:9 105:15 question 7:18 8:7, 13 9:2, 5 15:12, 13 16:15, 17 23:17 35:17 37:2 38:13 50:12 51:5 53:4, 7, 14 68:11, 16 70:10 71:2 72:9 75:7, 20 79:17 82:21 83:4 94:7 95:22 100:9 104:22 106:14 122:21 127:2 131:11, 14 138:14 139:17 145:21 148:10 149:16 159:22 161:22 164:5 170:15 172:1 173:6 174:13,

18 175:8 186:9 188:22 189:2 190:16 191:4, 7 194:3 196:11 198:4 201:14, 18 214:14, 16 215:4, 11 217:2, 19 230:9 232:15 240:16, 19 245:1, 6 246:6 254:21 256:17 258:11 266:17 267:8 270:6 272:8 275:1 276:15 277:16 questioning 8:9 questions 7:14, 16, 19, 22 8:1, 6, 10, 11, 21, 22 16:11, 16 17:6 22:18 23:7 24:15, 17, 20, 22 29:4 30:1, 7, 10, 12 32:20 37:20, 22 40:11 46:17 49:14 50:3, 7, 9 51:19 52:6, 21 59:8, 14 64:14 68:8, 12, 15 70:1 75:18 77:22 78:2, 4, 7, 10, 14 80:1 82:20 84:12 94:5, 7, 9, 12 97:8 102:14, 17, 20 103:1 107:12 115:1 116:1, 3, 6, 9 117:15, 18 121:20 122:1, 3	123:11 124:3 125:6, 9, 11, 13, 15, 20 128:8 131:9 138:5, 8 143:9, 12 146:7, 22 147:13 148:5 149:2, 4, 7, 9 159:6, 8, 10 160:18 163:15, 16, 20, 22 165:12 170:2, 4, 6 176:3, 6, 10, 14 186:5, 8, 9, 12 187:18 189:19 193:6, 7, 10, 13, 20 197:21 214:15, 18, 20 216:13 217:8, 10 218:8 230:3, 5 232:7, 11 235:15, 20 236:2, 17 244:13, 17, 21 245:16, 19 246:3 249:16 254:16, 18 256:14 257:21 258:1, 3, 7 259:18 265:14, 18 267:15, 21 274:9 277:11, 13 279:9 quick 127:2 quickly 72:3 96:16 118:13 166:4 quiet 239:16 quite 141:3 168:1 200:21 quota 226:22 quotas 109:19	quote 174:4, 9, 13 227:1 268:1 < R > R-A-B 103:5 radiant 201:22 radiation 113:15 rain 224:11 229:10 rains 224:22 rainy 224:9 raise 8:2 54:4, 7 70:17 75:10 131:10 153:5 raised 19:13 222:17 241:10 ramp-up 182:1 ranchers 153:22 156:12, 17 157:5 158:3, 6, 17 ranching 153:3, 4 154:18 160:22 range 100:18, 20 rapport 278:20 rare 6:19 rate 14:11 16:19 37:2, 4, 8, 12, 18 51:19 52:1, 2 104:16 112:11 123:18, 20 124:6, 13, 16 125:3 196:13 245:3, 10 rates 113:21 122:3 141:12 reach 63:3 112:20 142:18 143:1 262:14 reaches 155:6 169:22	reaching 63:8 263:17 react 213:8 reactive 178:17 read 23:7 49:14 50:6, 9, 12 52:6 53:3, 7 75:20 146:7 244:12, 21 readily 18:15 19:4 166:16 reading 146:22 readings 147:2, 12 readjust 201:3 ready 14:10 208:21 213:11 225:5 real 11:8, 9 43:4 47:6 66:20 101:14 192:7 realistic 18:11 reality 225:21 228:20 229:22 261:20 realize 269:1 really 27:19 29:9 31:14, 15 37:15, 17 38:12, 13, 17 39:22 40:20 44:4, 11, 17, 18 46:1 47:10 51:16 69:16 71:21 72:4, 5 73:22 74:8 77:3, 20 80:11 83:12 98:18 99:12, 15 103:19 104:2, 6, 18 117:5

124:10, 17 128:2 172:19 183:14 194:4 195:3 197:12 198:19, 22 199:2, 5 200:16, 20 201:19, 21 202:3, 12 212:4, 5 225:17 226:13 233:18 252:6 259:1 273:8 274:5 realm 77:7 reason 26:20 104:8 106:5 121:14 170:17 187:5 251:4 267:12 279:3 reasonable 18:1 126:22 266:18 267:2 reasons 29:20 40:15, 19 59:1 72:6 96:14 123:8 172:18 178:5 188:6 196:4 227:19 229:18 259:8 Rebecca 125:18 rebuilding 88:9 receive 5:13, 22 88:18 92:17 130:17 210:2 211:14 received 19:16 50:15 143:18 187:18 268:6 receiving 66:9 89:1 103:18 104:1 recess 129:7	recognize 27:19 29:5 136:11 153:11 169:8 recognized 31:9 85:9 134:2 178:14 recognizes 180:1 265:2 recommend 30:22 42:2 51:1 75:13 170:16 184:2 recommendation 99:2 102:8 127:16 151:9 recommendations 30:16 35:11 39:17 58:17 66:3 85:16 93:22 101:3, 10 103:10 179:10 182:11 185:7 230:12 251:5 256:1 257:2 recommended 19:17 119:10, 13 120:3, 8 126:2, 5, 7 169:5, 6 recommending 30:20 recommends 120:11 reconvene 129:7 281:9 record 5:2, 17, 21 6:18 7:2, 4, 10 8:20 9:16, 18, 22 19:10 23:8 25:7	27:17 49:15, 17 50:7, 10 52:6 53:4, 8, 18 54:12 59:18 64:17 68:11 69:19 75:11, 20 78:12 83:1 84:20 90:3 91:4 103:3 107:14 110:7 116:18 117:11 125:17 128:17 129:8 131:21 132:1 143:15 146:1, 7, 13, 20, 22 149:12 152:15 164:3 165:6, 18 166:12 171:7 173:11 193:16 197:16 198:2 203:13 214:16 216:10, 15 217:16 218:18 244:13, 21 250:4 258:9 260:2 261:3 279:20 280:7, 14, 19 record-breaking 92:3 recorded 8:18 92:5 recordkeeping 62:1 147:6, 8 records 173:13 recover 28:5, 7 220:22 recovered 211:21	recovering 168:8 recovery 113:12 recruited 110:17 257:13 recurrent 114:4 red 223:12 reduce 15:5 23:19 56:19 95:15 272:15 reduced 93:2 reducing 30:17 66:18 155:22 reduction 66:9 67:1 113:16 114:11 redundancy 57:19 refer 214:7 274:13 reference 166:10 references 136:5 referred 52:10 189:21 271:2 referring 171:10 275:2, 3 refers 168:11 refill 267:4 refills 271:5 reform 219:19 refresh 220:22 223:6 227:22 refreshing 226:18 refrigerator 74:6 145:8 refuge 113:13 refused 13:17 regarding 29:6 31:2 49:20 75:10

regardless 14:22 194:10, 16 region 93:20 174:7 regional 136:11 160:4 261:8 265:2 regions 86:20 160:12 183:5 Register 5:8, 9 regular 163:3 245:10 regularly 180:14 183:8 220:15 226:8 regulation 57:16 59:2 64:7 137:14 154:5, 13 155:16 158:8 177:20 178:9 179:14 183:19 184:22 242:9 regulations 42:13 111:15 154:8 155:8 157:7 166:20 175:2 180:10 192:16 195:19 209:18 213:6 236:20 250:18 254:9 regulations.gov 9:8 regulators 90:16 regulatory 153:21 171:16 rehab 122:18 rehydrate 28:8 121:17 122:16, 19	rehydrated 120:16 Reindel 125:17, 18 126:3, 12 127:1 128:4 reinforcing 192:2 reiterate 25:19 26:10 reiterated 192:22 reject 92:20 rejoining 129:12 relate 221:2 related 22:10 90:17 91:9 94:12 117:3 137:1 154:8, 13 157:13, 16 189:19 191:17 192:4 209:6 233:16 265:19 267:22 relation 62:8 relationship 22:12, 16 98:9 relationships 97:19 271:8, 14 relative 22:15 relevant 66:13 279:17 reliance 155:1 relief 10:12 113:14 relieved 168:7 reluctant 197:11 rely 55:15 160:5 180:9 Relying 113:11 174:20	remain 156:3 172:6 remainder 49:14 50:9 remained 57:9 remaining 203:7 remains 24:9 175:3 remarks 59:10 84:14 110:10 remedial 168:14 remedied 238:7 remedy 155:9 178:11 179:5 remember 8:21 9:3 31:6 248:7 remind 8:17 9:6 68:9 94:5 186:5 279:15 reminded 236:22 reminder 111:14 129:17 171:3 215:1 272:20 remiss 184:11 remote 41:20 101:8 239:9 265:22 274:18 remove 186:19 removed 133:11 252:10 renewed 57:8 repair 133:1 repairs 133:22 repeat 27:13, 16 31:21 45:1 49:3 repeated 181:11 repeatedly 28:2 255:10 repetition 6:15	repetitive 134:6 272:20 repetitively 216:4 replace 253:13 replaced 106:7 replenish 44:2 45:19 46:12 replenished 40:14, 18 87:8 report 90:13, 19 93:10 123:8 187:20 197:7 209:17 212:7 215:21 reported 11:5 20:21 21:14 51:12 88:18, 22 89:1, 7 90:16, 18 104:1 123:5 253:20 reporter 8:19 9:1, 17 131:21 280:11 reporting 123:1 188:1, 4, 14 197:5 reports 111:10 173:4 196:13 represent 105:6 219:15 REPRESENTATIVES 3:6 7:13 54:20 59:13 68:13 268:7 represented 84:18 146:20 176:21 203:11 218:15

representing 153:4 231:19 242:13 represents 146:17 reprimanded 206:9 reproductive 29:19 request 128:16 256:17 requested 128:20 173:8 217:17 236:13 270:11 requesting 19:15 143:21 require 21:2 49:22 61:20 62:14 67:13 153:8 155:4 178:19 186:16, 21 221:8 229:4, 5 required 14:14 21:15 42:3 45:15 50:1 56:2 66:22 121:16 128:2, 3 129:22 156:14 168:20 179:16 183:7 184:3 187:8 193:1 199:3 212:10 213:2, 10 232:21 236:7 requirement 58:5 96:1 138:16 167:19 168:10, 15 186:20 254:21	requirements 23:12 58:17 62:6 137:18 138:18 139:18, 22 140:3 147:18 150:21 151:2 154:9 155:8 156:14 162:6 171:20 175:20 182:5 217:5 250:8 255:4 274:19 requires 90:6 155:5 156:4 178:13 256:19 requiring 85:17 86:14 111:20 156:8 167:11 research 52:11 59:4 65:21 66:3, 11, 21 67:4, 9, 17 76:5, 18, 21 77:3 78:18 80:1 81:12 169:12 189:3 researcher 110:9 116:21 researching 76:16 reserve 100:10 residence 275:8 resistant 193:22 resolve 29:22 resolved 34:19 resource 55:19 62:20, 22 64:10 238:15 resources 55:11 56:8 63:2, 4 79:1, 3, 8, 12	82:11, 13, 16 83:3 84:6, 8 139:14 173:3 188:10 214:2 234:8 237:7, 9 239:11 240:14 242:10, 11 264:1, 2 270:22 271:1 278:2, 5, 8 respect 207:6 210:20 225:14 respectfully 159:2 respond 14:12 23:9 49:15 50:10 51:8 71:13 73:9 97:15 189:9 190:6 196:16 202:6, 13 214:2 responded 56:13 respondents 11:5 responders 277:19 responding 93:5 199:14 201:8 response 9:2 21:13 50:13 61:21 76:2 77:15 83:11 236:18 242:4 249:10 250:22 263:20 274:16 276:10 responses 8:21, 22 215:3 242:6 244:4 responsibilities 63:20 97:21	responsibility 97:13 100:3, 6 208:20 259:8 Responsible 56:1 58:8 98:21 180:3, 4 183:19 259:14 rest 15:5, 8, 10 17:14 19:15 50:15, 18, 22 51:21 52:2, 3 73:11 74:10 85:17 86:8 87:13 88:20 101:5 113:11 114:3 117:2 123:19, 21 124:2 143:15 168:12 169:3, 17, 21 171:12 173:8 185:3 186:15, 17, 20, 21, 22 187:1, 5, 7, 8, 11, 13 196:4 206:10 210:5, 13, 19 211:9, 10, 16 212:10, 13 220:22 221:9 222:1 223:4, 6, 17 225:18 227:22 228:5, 12, 17 229:16, 19, 20, 21 230:9, 12, 13 236:2, 8, 12, 13 245:8 267:22 270:10, 15 restart 134:18 204:11

restate 68:10 restore 28:8 restrictions 8:9 restrictive 154:10 155:21 rests 168:16 221:8 result 108:13 115:12 134:1 137:13 174:12 184:10 185:17, 22 resulted 111:12 resulting 86:15 137:4 results 20:20 51:9 88:12 103:22 134:10 retain 229:4, 6, 10 retaliated 108:5 168:22 192:11 273:19 retaliating 191:11 retaliation 73:15 86:2, 10 87:19 89:7 104:14 105:7, 9 108:11, 22 109:22 175:16 180:6, 12 187:9 188:6 192:6 215:22 221:13 256:18, 20, 22 257:3, 17 return 16:4 63:19 140:12 145:15 253:21 returned 12:12	returning 182:13, 17, 19 253:10 reusable 258:19 revenue 161:6, 9 review 5:17 178:18 reviewed 199:21 Richard 54:2, 9 55:13 Right 17:10 18:17 25:3 37:11 49:5 59:22 60:14 69:4 78:20 79:11 84:12 103:9 116:11, 14 128:10 129:5 130:8 137:5 141:18 145:4 152:11 168:2, 12 170:18 171:3 176:16 197:19, 20 200:17 202:11 204:9, 15 208:6 220:2 222:15 245:18 257:10 258:22 259:20 260:9 270:4 271:20 273:20, 22 280:4 right-hand 130:13 rights 10:10 86:11 109:10 167:14 173:18 174:11 180:11, 16, 18 191:12 192:4, 8 196:3 204:19 207:1	210:4 211:15 214:7, 8 216:6 219:18 256:20 rigid 58:17 261:10 265:8 Rio 132:19 rise 117:8 risk 58:3 66:18 93:13 114:8 127:4 138:2 178:3 181:12 182:2, 8 201:21 202:1, 2 207:8 208:5 212:20 213:3 227:8, 16 265:10 268:9 272:15 risks 17:17 151:12 183:2 228:17 road 55:9 roadshows 57:13 roam 140:15 robust 85:22 111:18 robustly 112:4 Rojo 3:14 110:6, 8, 9 115:6, 16 116:1, 12, 13 123:12 role 5:19 110:20 111:1 130:21 232:19 roll 77:12, 17 Rolling 132:3, 6 133:7 136:17 rollover 84:3 room 20:18 74:5 160:16 191:4 244:15 rooms 61:3	rooted 10:14 11:8 Roscoe 132:3, 7 rotate 73:19 roughly 65:15 66:8 round 108:5 224:21 route 12:1 255:10 routine 210:1, 7 272:22 routinely 86:8 87:14 row 247:4, 11 264:13 rows 167:7 262:17 Rudner 3:15 116:17, 19 122:7 123:4 124:6, 15 125:8, 13, 20 126:1, 6, 17 127:9 128:6 129:2 rule 5:5, 15, 18 6:13 10:5 11:11 12:19 14:8, 22 15:6, 13 16:8 24:5 30:21 36:6 42:3 55:1 57:14, 21 58:4 60:3 61:16, 19 63:17 79:19 85:13, 19 86:6 87:4 88:3, 6 89:4, 6, 9 92:22 93:22 94:1, 13 97:17 98:15 106:6 110:13

112:15 114:17 139:22 144:7 146:14 153:14, 16, 17, 20, 22 154:14, 17 155:2, 5, 14, 21 156:1, 4, 13 157:1, 8, 12 158:1 159:4, 6, 20 160:9 166:3, 17 169:19 171:18, 22 175:19 179:13 182:5 183:22 191:12, 19 192:21, 22 200:5 240:21, 22 241:1, 5 245:6, 14 256:19 261:8, 10, 17 262:3 264:18, 20 267:9 279:20 RULEMAKING 1:9 5:7 6:11, 19 7:10 129:13 152:22 220:1 rules 6:9, 11 57:19 61:19 123:18 172:10 174:5 210:9 211:17 212:3 213:1 236:19 238:18, 20 250:7 251:3 run 41:7 227:8 runs 140:18 RURAL 3:20 165:20 166:2 172:14 274:20 275:5 276:7	rush 223:22 224:5 rushing 222:22 224:1 225:15 < S > safe 56:5 65:12, 16 144:2 154:20 158:11 232:5 233:19 243:7 268:12 safely 16:4 178:1 182:7 safer 137:14 185:16 199:3 safest 67:22 SAFETY 1:5 5:4 10:10, 16 25:9 55:3, 15, 19 56:8, 15 57:8, 17, 19 58:6, 16, 21 59:5 60:11, 20 62:4, 7 64:4 65:4, 9 66:1 67:14 85:22 89:6 110:21 114:15 134:22 139:11, 21 140:2 152:21 155:20 157:7, 22 177:15 178:18 185:16 191:13 199:9 206:11 209:13 213:20 225:4 232:18, 19 254:11 258:17 261:2, 11, 13 262:2, 4 263:14 264:8, 19, 22	265:4 268:20 274:13 275:3, 13 salary 212:20 sale 225:6 San 205:5 sap 87:1 Sauceda 230:17 sauna 229:1 save 209:12 saved 14:20 77:14 112:2 saw 103:21 198:16, 22 205:17 225:10 saying 32:10 44:7 131:7 168:5 201:1 234:17 238:17 243:4 says 33:5 36:16 221:20 224:22 SB 206:21 SBREFA 137:20 260:11 267:20 268:1, 10 274:12 275:2 276:18 277:8 scaffold 93:17 scale 18:8 scaling 30:19 scared 206:1 207:12 215:20 221:13 scenarios 276:4 SCHAYER 2:9 16:12, 13 17:2 19:8 20:16, 17 23:2, 3 24:13 30:8, 9 35:16 36:21 37:1, 21,	22 40:7, 8 46:16 50:5, 6, 11 51:4 59:11 68:14 69:21 73:3, 4 74:12, 13 75:19 78:1 94:8, 9 95:21 96:9 97:4 100:13, 14 102:13 115:2, 3, 22 121:22 123:13 125:7 138:7, 8 141:6 143:11 146:6, 10 148:10, 22 159:9 160:14 161:21 163:13 170:5 171:4 173:22 176:2, 15 186:11, 12 187:14 189:15, 16 191:3 193:3 214:19, 20 230:4, 5, 19, 21 232:9 235:12, 17, 19 244:11, 18 245:20 254:17 256:13 257:19 265:16, 17 266:16 267:7, 14 272:4 274:8 276:14 277:6, 10 schedule 6:1, 16 8:5 135:1 182:6, 14 scheduled 17:14 145:18 236:12 279:15 schedules 67:8

169:4 scheduling 101:4 Schneider 164:3, 4, 5, 18 165:5, 10 201:16, 17 202:15 science 59:4 78:18 79:15, 20 80:3 Sciences 55:7 scientific 114:3 169:14 scissors 224:14 scope 147:17 189:20 Scott 164:4 201:17 screamed 224:16 screen 9:13 54:5 130:13, 16, 18 131:19 scrupulous 254:2 season 87:14 103:21 132:17, 18, 21, 22 133:2, 15, 22 134:3 135:8 136:3 140:18 150:6 224:10 237:13 261:1 273:6 seasonal 136:1 139:2 145:16 149:17 187:19 260:17 271:12 seasons 80:17 208:1 240:11 seat 140:13 secluded 237:10 second 23:17 56:6 95:21	112:18 122:20 139:17 153:22 157:9 167:18 188:22 222:5 245:6 252:13 266:16 270:5 seconds 140:11, 12 142:15 section 168:13 170:18 171:3 191:13 sector 95:3 98:5 101:15 secure 227:19 263:11 security 114:17 155:1 sedentary 190:18 see 32:18 33:1, 4, 14, 15, 16, 22 53:17 54:2 68:16 71:7 76:15 79:7 86:22 95:1 117:7 119:22 121:6 130:14 136:21 139:22 144:7 145:5 159:15, 19 175:4 200:11 203:3, 4 238:10 256:3 257:10 260:6 263:4, 5, 7, 10 271:16, 17, 22 seed 132:13 133:11 142:9 seeing 9:1 99:1, 12, 15 103:15 104:12, 20	205:16 209:4 273:7 278:21 seek 138:16 155:9 180:18 seeking 166:9 188:14 seen 14:20 17:10 24:5 47:3, 6 82:15 98:4 101:20 110:1 121:5 124:6 130:13 151:18 167:3 172:7 173:16 211:6 225:7 227:5 234:16 243:15 247:2 251:4 segue 267:17 seizures 13:2 seldom 252:4 select 129:21 203:5 selection 203:8 self-managed 35:19 self-paced 50:19 self-protect 36:18 Senator 206:21 send 21:9, 22 44:2 131:15 230:17 253:15 sense 28:18 35:7 83:13 93:15 135:19 150:20 sensible 137:14 sensors 23:14 70:14 162:7 165:3, 7	sent 6:4 14:4 21:15 22:4 44:6 257:14 273:12 sentence 27:14 45:1 49:3, 13 149:16 sentiment 137:19 September 7:9 140:20 279:19 serious 120:22 158:15 178:16 188:15 206:2 207:7 seriously 17:17 208:20 212:4 261:2 serve 10:2 16:6 65:3 132:6 service 41:3, 9 56:21 91:21 162:15 164:16 Services 91:8 177:18 263:15 276:10 serving 10:9 181:6 266:9 session 116:15 128:12, 15 129:7 set 67:7 71:17 72:5 73:17 91:19 140:4 154:3 168:3 225:4 setting 18:16 70:12 83:9 155:13 156:19 158:12 194:17 195:3

SETTINGS 1:11 5:6 10:7 60:3 129:14 153:2 156:15 171:13 190:2 220:1 274:21 setup 70:14 seven 61:7 71:16 222:4 248:2 severe 86:15 210:7 shade 11:15 14:10 15:4 17:13 23:14 58:14 67:8 74:7, 10 77:18 86:9 87:15 101:1 102:1, 5, 9 111:8 112:1 113:6, 8, 9, 14 135:7 150:18 156:6 162:7 166:14, 15, 17 167:9, 11 206:8 207:12 210:5, 13 211:9, 12, 15, 20 228:19 229:5 250:9 252:14 254:12 265:5 shaded 156:6, 9, 20 shady 228:22 229:5 shake 9:2 205:15 shaking 222:8 226:16 share 21:6 57:3 60:1 62:4	71:10 77:6 98:3 116:21 130:1 131:6 139:12 147:11, 22 161:11 173:15 180:14 188:20 189:6 190:20 204:16 231:1 232:6 233:6 235:10 242:8 261:14 266:20 274:5 276:21 shared 13:15 99:8 160:21 sharing 205:7 219:20 230:8 239:3 260:15 shed 157:1 163:4 sheds 156:20 190:12 shift 133:20 134:13 244:14 261:17 Shifting 262:11 shifts 17:13 58:7 shoes 39:9 shop 163:4 short 63:11 73:21 113:20 127:19 134:10, 14 139:9 shortage 152:6 195:20 shortages 195:11 shortly 13:21 130:1	show 42:14 55:9 89:8 175:2 210:14 showed 77:14 122:17 showing 11:21 149:21 shown 26:17 77:13 95:14 121:10 shows 15:3 91:9 104:2, 6 117:21 119:20 200:1 212:4 239:15 Shrestha 198:1, 3 200:7, 8 201:13 shut 13:9 sick 12:10 31:9 88:5 90:20 188:11, 13 205:15 207:1, 10 222:7 225:17 226:14, 15 227:6 229:14 251:2 259:10 sickness 207:3, 4 222:12 side 58:22 59:1 130:13 144:17 203:9 222:18 224:8, 9 252:10 260:22 sides 157:1 222:15 sidewalls 70:17 141:17 sign 270:12 signal 167:14	significant 57:16 114:11 119:5, 11 181:12 264:9 Significantly 120:20 134:16 261:22 signs 11:21 51:12 168:9 184:8 271:22 272:2, 8 275:13 silence 209:16 similar 14:19 69:1 108:4 151:1 194:13 200:4 233:1 simple 169:7 simply 60:12 113:7 182:22 197:2 simultaneously 26:13 263:3 single 72:14 80:11 137:16 267:5 sir 64:12 69:6 82:7 138:4 148:3 151:3, 15 152:4, 18 165:16, 22 176:17 216:14, 21 sit 74:8 140:10 211:11 229:21 site 20:14 56:21 62:2, 9 87:8 97:11, 17 98:16, 19 99:7 101:1, 22 148:16 271:11

sites 23:18 62:6, 10, 12 67:7 85:21 97:9 100:18 101:5, 7 172:5 sitting 145:8 situation 81:16 134:15, 19 146:4 212:2 253:20 269:12 273:18 situations 22:13 47:1 109:3 127:8 137:12 142:20 208:4 six 61:7 71:16 133:5 205:21 248:2 sixteen 133:6 sixty 43:11 size 161:7 217:21 Skellie 3:8 59:17, 19, 20, 22 60:4 68:17 69:4, 9, 11 71:12, 14, 15 73:9 82:5, 8 83:10, 22 skilled 79:6 skin 226:13 227:17 skip 15:10 slashes 248:18 sleepy 223:3 sleeve 248:15 sleeves 246:11, 17 248:14 slide 86:12 87:5, 16 88:4, 11, 21 89:5	117:9, 21 118:3, 8, 16 119:6, 8, 19 120:5, 9 121:9 130:1 131:7 204:14, 20 205:6 213:16 214:10 slides 131:6 slim 92:14 slowly 9:17 131:20 small 42:21 44:12 60:22 137:19, 22 144:16 161:4, 5, 12 218:1 252:3 social 204:18 Society 55:6 88:10 115:8 socks 39:9 soft 135:15 soil 211:12 solar 113:15 solely 180:9 soliciting 64:14 SOLICITOR 2:19 24:17, 18, 19 52:9 Solicitor's 52:7 78:5, 7 102:17, 19 116:4, 5 125:11, 13 128:14 149:4, 6 163:17, 19 176:7, 9 193:8, 10 217:11, 13 218:4 246:4, 6 249:11 258:1, 3 277:13, 15 280:2, 6	solution 42:1 48:15 261:20 solutions 59:4 66:5, 18 67:10 76:14 77:5 78:18 solve 103:12 154:1 157:12 somebody 45:18 127:20 206:1 213:12 269:19 273:17, 21 someone's 22:6 163:3 somewhat 70:11 soon 250:7 Sorensen 3:9 64:16, 18, 20, 21 73:9 76:10, 11 79:21 84:4 sorry 32:13, 18 34:3, 10 41:9 49:6 64:20 69:6, 9 96:7, 12 150:2 171:10 189:13 197:17 207:19, 21 215:10 232:8 235:18 241:21 255:6 259:3 260:8 sort 104:7 124:17 144:20 170:10 241:2 sorts 163:7 sought 91:11 227:20 sounds 83:14 100:17 south 69:13 85:6 165:7	194:20 231:15, 16 Southeast 113:22 southern 118:2 136:5 165:1 183:10 231:21 233:13 space 221:14 255:16 spaces 226:19 Spanish 55:21 65:14 95:2, 5 130:1, 4, 7, 8 204:6, 10 209:8, 10 278:14 speak 6:12 9:17 14:3 68:20 72:14 80:11 94:2, 17 95:4, 5, 17 105:17 106:10 108:4, 17, 19 109:1, 2 115:9 124:9, 10 131:20 164:22 172:3 177:11 181:3 196:3 198:14 204:3 209:8 251:2 260:12 273:4, 11, 12, 13 278:14 speaker 7:12, 15 9:14, 19, 20 25:6 49:15 50:10 52:22 53:1, 4, 6 54:2, 11 59:8, 16, 17 64:13, 15, 16 84:16, 17 110:5, 6 115:1 116:4,

9, 15, 17 121:20 125:15 131:19, 22 138:5 152:12, 14 165:15, 17 176:18, 20 202:16, 18, 20 218:13 250:2, 3 254:16 259:22 260:1 265:14 speakers 7:12 53:22 68:9, 10 83:5 131:2, 9 180:12 187:7 196:6 218:11 speaking 9:12 61:15 64:18 68:12 89:15 108:13 130:17 131:18 132:9 169:2 186:7 207:17 214:17 242:21 260:14 263:16 speaks 170:18 special 80:20 248:15 species 153:5 specific 6:11 20:2 26:6 43:10 51:1 62:2, 9 71:7 75:11 76:7 97:18 99:14 106:19 112:16 122:3 136:15 137:11 158:7 168:4 171:14 191:19 220:13 251:19 263:20 specific 226:6	specifically 55:22 105:11 106:20 132:10 154:7 192:4 194:7 211:4 250:8 264:18 specified 245:13 specify 185:2 257:15 speed 253:17 spend 28:7 41:16 264:16 spending 150:11 spent 12:16 118:22 119:2, 4 120:16 155:10 252:22 spoke 115:6 190:10 253:21 spoken 107:18 sports 26:3 194:13, 15 spot 273:20 spreading 84:2 square 71:18 141:19 stability 114:16 stable 263:10 staff 57:11 66:9 79:5 171:9, 11 173:8 staggered 17:12 stakeholders 65:11 stand 42:11 104:8 140:10 166:4 standard 12:15, 18 17:19 18:6 19:3 35:5, 11 78:17 81:3	83:8, 16 91:14 92:7, 16 93:15, 20 97:10 103:7 105:3 127:16 137:10 147:17, 18 152:22 156:16 158:20 167:3 169:4 174:15 175:4, 5, 9, 12 177:22 179:4, 10 185:7, 19 192:1, 3 201:20 230:13 232:20 241:13 257:3 standards 14:19 15:4 16:13 17:5 19:11 20:20 21:2 23:6 29:21 30:9 40:10 43:7 46:19 51:7 53:16 67:1 70:3 73:7 74:16 76:1 92:9 94:10 97:7 100:17 111:19 114:8 115:6 123:16 136:6 138:9, 13 141:9 143:14 146:12, 18, 19 148:13 156:2, 3 157:4 158:12 159:12 160:18 162:3 164:20 167:1 168:17 171:8 173:19 174:3 175:3 186:13 187:17 189:18 191:7	198:11 199:19 215:1 216:12 217:1 230:6 232:14 234:7 236:1 244:20 254:20 256:16 265:17 267:18 272:7 274:12 276:17 standing 48:16 127:20 star 8:3 54:7 stark 10:21 start 30:11 131:2 150:13 194:15 237:12 260:5 269:8 started 117:12 120:15 205:15 233:11 278:19 starting 232:1 starts 132:17, 18, 20 state 9:16, 21 15:1 21:2, 14 25:7 54:12, 21 55:5, 6, 10 56:18, 20 59:17 64:17 65:13, 20 67:19 69:5, 7, 12 77:9, 14, 16 78:12 80:16 82:7, 22 84:19 91:17 92:12, 15 94:6 97:16 103:3, 17 105:16 107:14 110:7 113:7 116:18 125:17 131:22 132:11 133:4, 16

149:12 151:10 152:15 154:4, 5 157:6 160:4, 10 161:4 164:3 165:3, 18 168:1 173:2 174:6, 15 175:9, 11 176:22 186:8 189:11 193:16 197:15 198:1 203:12 206:21 214:15 216:9, 15 218:17 234:11 240:6, 7, 8 250:4 258:9 260:2 278:2, 4, 9 280:13, 19 stated 71:20 73:10 109:5, 17 150:17 151:16 164:11 171:9 245:9 277:17 statement 202:21 225:21 statements 7:8 279:17 States 2:6 5:11 10:11, 13 11:3 14:18 21:1 22:15 90:9 91:19 110:18 113:9 114:6 123:17 136:7 150:22 153:19 154:7, 20 158:19 159:19, 21 160:9, 11, 12 165:1 169:20 183:5, 7 195:6, 19 196:19 197:3 219:16	231:7, 20, 21 234:10, 13 235:9 238:8 239:7, 20 240:1 275:6 statewide 25:13 136:19 204:21 207:2 station 45:11, 14 253:7 275:13 stationed 101:21 stations 45:14 164:16 267:3 statistics 11:7 90:5 175:1 206:15 status 182:21 192:13 stay 74:4 225:10 235:2 238:3 275:19 step 13:19 47:21 110:11 272:1 STEPHEN 2:9 16:12 20:17 23:2 30:8 37:22 40:7 46:16 50:5 73:3 74:12 94:9 100:13 123:13 125:7 138:8 141:6 160:14 161:21 163:13 173:22 186:12 189:15 191:3 193:3 214:19 230:5 235:12, 16 244:11 256:13 265:16 272:4	274:8 276:14 277:6 stepped 252:14 steps 70:19 Steve 73:2 143:10 191:2 206:21 272:3 Steven 115:3 stifling 48:18 stomach 221:6 stones 13:6 stop 21:17 221:18 224:17 225:11, 17 229:18 stopping 22:13 store 43:2 147:2 156:20 stores 88:15 stories 22:1 99:17 108:4 206:7 230:8 256:21 story 111:17 253:5 strategies 73:12 143:22 144:3 171:17 243:19 268:11 Strategy 177:8 strengthen 14:8 16:8 114:17 204:16 strengthening 94:1 strenuous 93:14 108:13, 15 109:21 stress 22:9 25:20 26:9, 21 29:20 38:7	39:19 42:2 51:13 79:19 85:15 93:1, 3 108:16 113:13 114:5 142:21 182:10 222:3 261:10 stressed 39:21 221:17 stressful 222:19 strict 207:7 stricter 209:18 stringent 113:7 stripping 265:11 stroke 86:14, 18 184:17 211:6 253:9 strong 10:5 14:13, 21 42:11 86:1 108:22 114:7 179:10 180:6, 16 185:7 192:16 196:9 221:5 224:11 249:3 stronger 48:4 185:17 257:2 strongly 12:19 16:7 113:8 169:3 structure 102:1, 10 230:13 252:5 structured 100:5 structures 102:6 229:4 student 29:17 studies 26:15, 17 28:17 90:9 115:13, 17 121:5 122:16

study 34:13 116:22 studying 66:15 stuff 37:13 259:1 Stup 54:2, 9 55:14 subcontracted 97:14 subcontractors 98:12 subject 85:16 106:11 submission 7:6 submit 6:1 7:7 8:16 163:9 166:11 199:21 279:16 submitted 6:17 21:13 25:16 26:10, 11 40:22 51:10 52:14 74:16 131:5 166:1 173:11 177:19 179:9 185:6 232:17 267:22 submitting 10:3 subtropical 91:16 success 99:17 successful 81:12 99:6 199:21 sudden 112:5 257:12 Suddenly 205:17 suffer 209:15 suffered 222:3 suffering 13:2	sufficient 101:2 103:15 127:3 187:2 sufficiently 40:12 sugary 135:15 suggest 49:13 59:12 89:20 171:19 191:19 221:22 227:2 280:6 suggested 96:1 170:17 184:1 230:10 270:6 suggesting 187:19 suggestions 96:4 170:13 171:14 241:12 suggests 38:14 suitably 17:8 265:21 266:3 summer 13:15 92:1 117:4, 11, 14 118:6, 7 119:11, 21 120:17, 21 125:22 175:6 194:14 214:4 summers 121:3 sun 38:20 39:6 40:3 47:17 144:10 211:13 246:19 247:1, 9 248:22 sunburn 40:4 247:10 sunlight 101:2 201:19, 22 246:8 sunshine 150:19	supervise 45:22 135:10 supervisor 11:16, 22 13:17 42:7 87:13 98:21 99:14 104:13 106:11 134:13 213:11 supervisors 14:13 62:1 135:16 138:18 144:20 210:15 213:5, 8 224:17 234:19 237:1 239:21 supplement 166:9 172:12 174:16 supplementary 171:18 supply 14:1 16:3 60:21 154:19, 20 155:2 support 10:5 12:19 14:8 18:5 64:9 65:22 67:20 68:4 166:3, 5 169:3, 19 171:19 197:13 219:21 250:6, 8 251:3 278:3 supported 17:18 97:9 136:15 206:18 supporting 59:3 158:13 167:9 supposed 36:11 113:13 248:16 sure 19:18 27:18 37:1	45:3 61:5 70:20 84:9 95:19 96:9 102:8 137:5 167:13 192:20 208:20 213:5 219:2, 5 234:1 238:21 241:3, 16 243:12 246:16 247:21 248:21 262:6 270:8 278:17 surprise 210:1, 6 surprising 120:9 surrounding 90:6 192:21 surroundings 208:22 survey 20:20 21:13 88:12, 16 103:22 105:18 233:16 surveyed 11:2 surveys 151:13 233:12 survive 125:1 207:13 sustain 237:15 sustainable 153:8 sweat 39:5 sweating 208:8 sweet 87:1 111:5 211:5 swell 13:9 swipe 130:7 Switch 33:5, 22 204:1 switched 32:19 switching 33:19,

21 swollen 222:9 symbolic 210:10 symptoms 11:5 14:12 21:20 48:7 122:21 123:1 168:9 184:8 208:9, 13 215:22 221:2 222:6 226:9, 11 253:8 272:8, 12 system 42:1, 3, 4 45:18 46:2, 5 88:8 104:16 111:2 112:11 114:13 142:6 161:8 184:1, 2, 3 215:6, 14, 19 239:6 systematic 272:15 systems 70:5, 7 71:5, 22 147:1, 4, 5, 9 165:1 < T > table 197:13 tables 185:22 tackle 76:10 tactics 87:9 243:18, 19 tag 45:18 46:5 140:9 tagging 134:8 take 13:11 17:16 42:11 51:15 63:1, 18 68:9 70:19 73:13, 18 86:12 87:12 104:8, 15 105:6, 9, 13	106:3, 9, 10 113:1 121:12 124:7, 19 125:3 134:18 139:3, 4, 8, 15 140:22 141:2, 17 144:2 145:2 153:18 156:8 164:7 167:21 168:12, 20 170:19 179:11 187:7, 8 188:12 189:8 194:2 196:15 208:20 210:4 211:22 212:6, 12 213:19 215:21 222:20 224:1, 7 225:5, 20 236:4 257:1 259:10 264:9 268:3, 12 269:8, 10, 12, 13, 15 taken 34:18 35:4 50:19 58:13 92:12 208:19 212:4 takes 21:5 84:6 140:11 144:14 159:18 194:11 234:4 261:1 talk 38:4 47:14 65:1 143:21 186:22 190:1 236:9 250:16 254:5 258:14 259:8, 11 talked 199:7 talking 39:14 53:15 118:12 151:14 233:13, 17 238:8	242:10 243:2, 7 246:22 279:3 Tampa 90:13 target 60:16 targeted 59:3 198:13 task 58:2 134:9, 13 tasks 133:18, 19 134:1, 11, 16 154:11 263:12 tastes 87:7 taught 211:17 team 45:18 46:5 58:13 60:9 74:4 80:17 technical 65:7, 20 67:20 131:14 technically 18:4, 18 technology 95:11 telephone 131:3 tell 13:1 29:10 36:12 39:4 40:15, 22 41:13 42:7, 21 44:7, 16 70:6 71:3 107:16 162:8 221:20 225:3 237:3 243:14 266:5 telling 40:16 224:4 253:4 270:2 temperate 22:21 temperature 11:18 38:18 39:21 43:10 44:1 72:18 96:15 112:6	113:15 117:20 118:11 134:2 136:13 147:1, 2, 4, 9, 12 164:7 169:22 189:2 202:9 205:14 221:4 227:2 265:4 266:5, 12, 14 temperatures 67:5 72:16 85:18 92:1, 4 93:11 96:15 111:7 114:2 117:8 118:21 133:15 135:2, 20, 22 136:8, 9 137:11 140:19 142:19 149:18, 20 153:19 169:14 183:8 211:7 212:16, 19 220:14, 18 221:6, 10 222:1, 10 226:8 228:1 229:15 266:7 temporary 63:10 97:14 183:2 187:20 ten 161:14 168:6 217:22 246:21 257:8 tend 22:7 266:7 tends 47:12 term 13:5 27:3, 19 97:12 113:18 114:9 terms 23:18 25:19 27:4 29:4 31:15 135:20 144:20

159:19 161:6, 8, 9 238:11 239:1 240:3, 11 242:11 243:18 247:11 terrible 12:8 territories 10:13 test 77:5 tested 120:20 testified 103:6 166:6 195:11 276:17 testify 9:15 131:4 231:11 250:15 testifying 268:7 testimonials 272:10 testimonies 25:18 177:2 203:2, 8 219:20 231:13, 18 TESTIMONY 3:1 5:14 7:1, 4, 13 8:12, 20 9:4, 12 10:4 16:7, 9, 15 19:12, 13 24:14 25:4 27:14 30:11 35:18 52:17, 19 60:1 68:6, 16, 17 76:5 78:3, 8, 16 80:5 84:21 85:3 94:3, 11 105:22 114:21 116:2 122:14 125:8 128:11 129:6 130:5, 10, 20 131:2, 9, 17 138:12 143:15 149:1, 14, 17	159:5 161:17 163:14, 21 164:11 165:9 176:4, 11, 17 186:3, 19 189:19 193:5, 11, 18 202:17 203:14, 20 219:8, 10 220:3 230:8 231:2, 5 236:5 245:22 249:13, 20 254:14 257:20 258:5, 12 259:21 265:18 267:19 268:15 273:8 274:6 277:7, 17 279:12 280:6 281:4 Texas 91:3 132:7, 11, 18, 20 133:4 136:9, 18 140:21 150:6 151:17 183:6 201:1 255:10 text 111:21 112:20 171:15, 16, 18 textile 132:14 thank 16:6, 10, 14 17:2, 22 19:7, 8, 12 20:16 21:12 22:11 23:1, 2 24:1, 2, 13, 16, 21 25:3 27:17 30:2, 4, 6, 10 34:4 35:16 36:21 37:21 38:12 40:5, 7	43:8 46:15, 16 49:18 50:2, 11 51:2, 3, 4 52:4, 5, 16, 18 53:19, 20 54:1, 10, 13, 21 59:6, 7, 22 60:1 64:10, 12 68:7, 15 69:10, 21 70:10 71:1, 14 73:1, 3 74:11, 12 75:6, 16, 17 76:8, 9 77:21 78:2, 8, 9 82:4, 17, 19 84:10, 13 89:12 94:1, 4, 10, 20 95:20, 21 97:4 100:8, 11, 12, 13 101:11, 12, 17, 18 102:12, 13, 14, 16, 20 103:13 106:13 107:10, 11, 20 109:3 110:2 114:20, 22 115:16, 21 116:1, 6, 11, 13, 19 119:6 121:9, 17, 19 122:20 123:10, 12 124:14 125:5, 8, 10, 14 126:3, 12 128:4, 6 129:4, 5 138:3, 4, 11 139:10 141:5, 6 142:17 143:9, 11 144:19 145:21 146:5, 6, 10 148:2, 8, 9, 19, 22 149:3, 5, 7, 8, 13 152:8,	12 159:7 160:13, 14 161:19, 20, 21 162:18 163:12, 13, 18, 20 165:15 166:1 170:1, 3 171:4 172:1, 16 173:20, 22 174:18 175:7 176:1, 3, 5, 8, 10, 12, 16 177:10 180:21 181:2 186:4, 9, 13 187:14 188:17 189:9, 14, 15, 18 190:16 191:2 193:2, 4, 6, 9, 11 195:8 196:11 197:14, 19 200:7 201:13 202:15, 16, 19 204:12 207:14 210:20 213:13, 15 214:12, 13 216:20, 22 217:9, 18 218:5, 7, 12 219:4 220:5 225:21 229:22 230:1, 2, 7, 18 232:9 235:11, 12, 17, 18 236:16 237:18 240:18 244:5, 6, 9, 11, 19 245:15, 17, 20 246:1 249:12, 14, 15, 19, 21, 22 254:15 255:21 256:12, 13

257:18, 19, 22 258:2, 4, 10, 22 259:16, 20 265:13, 18 266:16 267:7, 14, 18 270:5 272:3, 4 274:3, 6 276:13, 14 277:4, 7, 9, 12, 14 279:6, 11, 13 280:21 281:1, 3, 6, 10 thankful 270:21 273:16 Thanks 120:9 152:10 159:22 165:10 193:18 195:4 theme 175:9 theoretical 14:17 thereof 107:19 thermoses 43:18 thin 63:2 thing 29:3 32:11 36:22 42:2, 8, 9 77:20 101:19 169:7 246:16 259:11 268:20 things 9:6 26:11 37:17 38:18 44:19 45:8 46:14 72:17 76:12 77:8 82:1 95:9 101:21 102:2 139:15 142:13 143:4 145:11, 14, 16 151:7 186:14 192:9 201:10 217:13	226:7 249:5, 9 255:2 256:2, 3 265:6 271:17 273:5 275:14 278:17 think 20:2, 3 21:3 22:17 24:5 27:15 31:15 33:12 34:1, 6, 20, 21 36:1, 2, 9, 16, 20 38:10 41:12 60:15, 16 62:11 63:3 69:1, 4, 11 70:10 72:10, 11 76:12, 13, 18 77:2, 6 78:18, 21 79:17, 18 80:7 81:9, 22 82:8, 13, 15, 16 83:17, 20 84:1, 6 95:11, 16 96:11, 13, 14, 19 98:9, 13, 22 99:9, 11 100:9 101:19 102:3, 7, 10 103:11, 16 104:2, 5, 7, 10 105:4, 5 106:22 107:2, 6, 21 108:3, 10, 20 109:5, 15, 16 117:5 123:4 124:9, 16 125:2 127:15 135:21 143:2, 8 144:6, 15 145:14 151:4, 22 152:1 159:20 160:5, 8, 21 170:9 172:7 173:14 175:16	186:22 187:1 188:5 191:21 192:2, 5, 15, 21 193:19 194:3, 4 196:7, 8, 12 199:10, 20 200:3, 16 201:5 202:5, 7, 12 223:3 228:19 235:15 241:15, 18 242:3 253:22 255:5, 15 256:8 257:4, 7, 14 261:12 266:4, 6, 9, 17 269:16 270:3, 16 271:20 272:17, 21 276:7 280:8 thinking 183:15 273:9 third 88:17 113:6 260:13 thorns 248:2, 10, 13, 19 thorough 71:18 thoroughly 190:6 thought 79:18 80:18 126:13 242:2 278:18 thoughts 35:21 50:20 94:15 thousands 16:6 87:21 threat 91:15 175:15 242:21 threatened 180:15 237:21 239:17 240:3 242:19	threatening 93:16 threatens 214:4 threats 66:21 86:9 234:5 three 8:3 10:13 11:3 39:5 54:7 107:1, 2 111:19 117:14 120:21 121:3, 6 132:21 134:3 157:1 166:8 213:10 246:20 threshold 18:10 19:4 thresholds 63:9 85:18 threw 222:22 thrive 14:21 24:9 thriving 56:5 throat 13:9 throttle 37:11 throw 72:6 226:12 throwing 221:5 225:16 thunder 224:10 Thursday 253:1 TIFFANY 2:12 19:9, 10 50:11 143:12, 13 171:5, 7 235:19, 22 time 7:16 8:8, 10 9:1 15:8 19:1, 5 21:5 28:4 39:12 44:13 49:7, 16 52:20 53:5 56:11 64:11

66:17, 20 75:1,
4, 5 76:8 78:8
79:5 86:7 94:2
110:4 112:7, 13
127:20 129:7, 8,
12 130:11, 15,
20 131:12
134:4 137:7
139:5 144:10
148:14 156:12
163:20 168:4,
20 179:11
182:7 188:12
193:11 194:11
201:2 203:7
205:14, 22
206:2, 5 213:13
214:15 215:4
220:15, 16, 17,
21 224:13
226:13, 20
227:12 234:7,
16 235:1 237:5,
12, 17 242:16,
20 243:10
245:3, 4 246:20
247:6, 18 248:5,
14 258:4 264:9
267:1 268:5
281:4, 9
timely 6:5 7:17
timer 130:11, 12
204:11
times 6:15
10:22 21:19, 22
36:4, 7, 11, 17
37:8, 12 48:4
61:1 80:20
86:14 90:13
92:13 133:21
151:7 169:16

175:17 178:3
192:6 213:20
221:9 232:20
234:3 242:22
247:13 251:19
263:20 268:2
271:3 273:2
275:9 276:11
timing 131:8
261:9
tired 44:18
122:13, 14
title 38:14
175:2
today 5:12
7:12 8:10 10:4
16:1, 15 25:4,
22 43:9 52:17,
19 54:9, 20
60:2 61:15
65:1 66:13
80:2 84:14
89:16 94:2
98:4 105:22
130:17 143:15
163:21 166:8
171:15 176:17
177:11 181:3
192:6 193:12
195:17 196:5
200:11 219:20
236:5 249:13,
20 254:14
258:5 260:13
261:15 267:19
268:7 272:10
279:12, 15
280:17 281:5, 8
today's 8:14
66:13 129:16

152:20 166:12
toilet 275:12
told 11:16 12:7,
8, 9 13:8 15:15
44:5 47:22
48:11 106:1
181:13 209:3
234:18 237:21
252:17 273:12
tomato 226:5
tomatoes 220:10,
12
tomorrow
228:10 281:9
tool 199:12
tools 56:5, 7
67:1 94:18
top 24:9 55:19
60:11 88:13, 21
222:15 223:5,
10 263:10, 18
topic 65:2 97:8
181:10 190:17
topics 115:18
total 119:15
136:22 141:21
142:14
totally 140:22
touch 63:6
115:17
touched 224:16
towels 49:21
258:19 259:2, 5
towers 101:7
town 46:10
Trace 3:19
152:14, 16
159:17 160:7
161:16 162:10,
21 164:10, 21

traceability
268:19
tracing 91:2
track 46:6
56:10
tracking 91:9
tractor 77:11,
17 263:4
tractors 61:3
262:17 263:1
trafficking 254:3
tragic 12:13
111:13
trailer 223:1
224:14, 16, 19
225:5 275:12
trailers 18:9
train 14:13
208:21 253:14
256:7, 19
trained 13:3
183:21 199:4
209:2 270:20
training 20:22
35:20 36:10, 12,
13, 14, 15 55:15,
21 59:3 61:22
62:14, 18, 22
65:7, 14, 19
78:17, 19 79:1,
4, 8 81:18 89:7
103:7, 11, 14, 18
104:1 127:2, 3,
7, 9, 10, 12, 18,
22 138:17
139:17, 18, 20,
22 140:2 145:1
158:13 175:20
192:21 193:1
198:12 209:22
210:2 211:14

217:3, 4, 5 254:21 255:3, 4, 9, 18, 19, 22 259:7, 8 262:4, 6 265:6 270:1, 13, 16, 17, 20 271:21 274:4, 16 275:18 276:18, 20 277:2 278:13 trainings 61:11 81:10 95:18 104:20 105:2 209:9 255:1, 8 256:5, 10 transcribed 8:18 transcript 9:7 transfer 262:15 transition 84:20 177:1 267:13 transitions 74:2 translate 216:17 translated 129:19 278:18 translation 20:13 94:15, 19 95:7, 10 129:22 130:3 203:20 278:16 translations 95:1 transportation 188:11 253:7 transporting 251:20 trap 228:20 travel 194:12 201:2 traveling 255:11 treat 60:14 treated 91:4	243:1 treating 149:15 tree 35:14 37:16 248:1 263:1, 9 264:11, 12, 13 trees 247:16, 17 248:19 262:22 263:6 trend 89:18 137:6 169:20 Trevino 230:16 232:8 Trevino-Sauceda 4:8 218:15, 19, 20 219:2, 4 230:16, 20, 22 232:12, 15 233:4 236:16, 17 241:18, 21 242:2, 3 244:9 246:1, 14 249:14, 21 trialing 76:13 trigger 87:3 94:14 96:2, 3 106:7 124:1 136:13 137:17, 19 155:3, 13, 14 167:18 168:13 169:2 170:8, 9, 17, 19, 22 182:5 184:1, 5 185:3 186:17, 18 triggered 90:3 triggers 136:4 153:20 159:13, 16 160:3 202:8 trimming 224:13 tripping 167:6	tropical 88:13 trouble 31:20 truck 46:11 102:3 trucks 262:19 truly 67:12 114:19 trust 122:10 136:19, 21 151:17 213:22 271:10 trusts 173:3 try 8:21 61:6 64:20 70:12 71:15 108:6 143:4 197:11 224:6 243:3 248:13, 20 249:6, 7 trying 28:7 33:15 61:10 69:16 124:20 139:9 197:12 240:10, 15 247:4 248:12 254:4 265:9 Tuesday 252:9 turn 9:14 17:3 19:8 20:17 23:3 38:1 40:8 69:22 70:16 73:1, 4 74:13 75:21 89:9 97:5 100:14 101:12 115:3 122:1 123:14 130:21, 22 131:20 138:9 141:7 160:15 171:5 174:1 180:20 187:15	189:16 192:14 214:21 232:10 235:14 254:18 272:5 turning 113:13 141:22 142:15 turnover 60:14, 15 93:2 115:10 twice 86:14 208:6 two 9:9 12:11 27:14 38:17 39:4 60:9 63:18 85:14 91:5 107:2 111:6, 20 117:13 119:14 160:18 186:6 189:19 197:22 213:6 216:12 217:13 219:5 220:20 222:3 231:18 254:3 267:21 274:9 280:17 two-hour 156:7, 10 two-tenths 137:2 151:21 type 134:17 137:17, 21 145:16 181:22 191:18 212:1 246:9 274:17, 20 276:2 types 50:1 71:5 72:10 97:18 109:22 137:22 175:10 189:21 190:3 236:14

typical 75:4 133:5 146:2 typically 127:10, 11 134:4 < U > U.S 136:12 155:1 179:17 183:3 UCLA's 232:17 UFW 3:2 10:3, 8 11:2 16:5 ultimately 183:18 264:20 unable 8:13 177:4 221:21 227:8 229:20 unacclimatized 181:18 184:4 unaware 205:17 uncertain 66:11 113:20 122:10 157:4 182:20 unconditioned 113:11 uncovered 90:13 undercuts 104:6 underestimate 90:12 underestimated 75:9, 12 91:1 underfunded 79:2 underlying 22:3 underreported 89:21, 22 underreporting 89:11 underscore 184:11 194:18	underscoring 89:2, 5 underserved 181:7 understand 29:10 38:17 39:22 43:5 46:1 49:12 56:18 63:7 67:13, 15 81:10 95:5 127:13 138:20 157:10 158:3, 9 168:19 199:2 209:10 210:1, 3 233:18 238:16 241:5 254:10 270:8 understanding 42:18 194:9 241:7 understands 19:19 understood 95:20 206:2, 4 undocumented 11:13 Undoubtedly 67:12 undue 6:15 59:5 unemployment 206:19 237:8 unfortunately 27:1 28:17 43:16 49:8 54:2, 8 111:17 126:6 169:10 195:22 uniform 93:20 104:19 105:3 uniformly 101:2	unintelligible 210:16 unintended 261:12 265:10 union 52:1 unionized 51:20 123:20 unique 58:18 65:6 70:11 81:15 110:14 261:6 unit 75:1, 4, 5, 13, 15 254:7 United 2:5 5:11 10:11 90:9 91:19 110:17 114:6 153:19 154:20 159:19, 21 160:9 235:9 239:7, 20 240:1 247:20, 21 University 26:8 30:14 45:10 117:1 unmute 130:21, 22 131:3, 13 unnecessary 57:20 153:21 154:10 unpack 88:11 unpaid 124:8 125:4 unprecedented 35:1 unrealistic 23:11 162:4 unreported 90:22 unsafe 87:21	unsanitary 88:19 unwell 22:6 unworkable 156:1 264:22 update 57:3 uploaded 9:8 upper 273:21 ups 17:13 upstate 231:14 urge 12:19 14:7 16:8 59:1 85:13 112:19 114:17 urgent 11:11 111:18 177:22 208:6 209:20 212:21 urgently 14:18 89:9 92:6 urine 117:16 120:20 122:3 usable 18:5, 22 use 8:15 18:9 19:18 20:1 33:11 34:14 45:6 49:20 50:17, 21 54:4, 7 70:4 95:11 104:4 144:1 162:14 163:7, 9 164:6, 8 203:8, 9 207:1, 4 247:3, 4, 6, 12, 17, 18 259:1, 5 267:5 270:15 278:15 useful 56:9 81:15 usefully 144:3

user 189:5 uses 18:7 usual 30:18 270:9 usually 132:18 134:3 utilize 63:10 147:5 156:19 271:7 278:8 utilized 156:5 < V > vague 58:9 Valdivia 12:17 valid 209:19 validating 189:3 Valley 11:14 132:19 167:5 174:8 205:2 233:14 Valleys 169:13 valuable 240:17 260:19 value 157:5 value-added 153:7 valued 62:20 225:14 values 189:4 vapor 38:8 variability 265:2 variances 265:2 varies 227:16 255:5 varieties 100:21 220:12 variety 20:10 47:11 73:18 74:2 80:18 115:7	various 62:6 67:1 75:3 76:22 77:1 90:9 95:15 122:9 189:21 196:5 226:2, 3 228:2 vary 133:20 146:4 169:15 255:5 varying 135:2 153:18 Vasquez 11:12 184:16 vast 24:2 217:20 Vegetable 55:5 vegetables 144:11 220:12 226:4 234:13 vehicle 113:10 vehicles 112:1 113:11 ventilated 135:9 ventilation 70:7 190:3 Ventura 206:6 verbal 8:22 verbally 131:7 195:7 version 153:17 169:19 versus 52:2 63:5 84:7 270:2 viable 54:17 72:22 Vice 60:5 177:8 video 255:9 260:4 videos 95:13	127:16 viewers 130:2 vigilance 207:7 Villacana 203:12 Villicana 4:6 211:1, 2 vineyards 184:18 violated 214:9 violation 178:20 violations 174:10 179:1 violence 219:19 virtual 55:20 255:1 visa 63:10 110:18 111:9 visas 183:4, 11 visibility 262:3, 6, 8, 9, 12 263:22 271:14 visible 11:21 262:7 vision 13:6 222:9 visit 137:4 197:8 263:15 277:18 visits 213:4 264:3 278:21 visual 20:12 119:19 vital 110:11 vitality 81:9 viz 61:1 voice 279:5 volume 5:8 142:15 volumes 135:9 voluntary 50:15, 18, 21 119:9	120:4, 8 121:11 277:20, 22 volunteers 205:1 276:9, 11 vomit 44:11 vomiting 13:2 48:6 121:2 122:22 vulnerabilities 110:14 184:14 vulnerable 154:22 178:6 181:21 207:10 < W > wage 104:16 wages 15:10, 11 wait 59:9, 12 134:9 269:10 waiting 96:18 268:4 walk 18:2, 6 19:3 43:1 163:3 266:19 walking 262:21 263:5 walls 157:1 WANGDAHL 2:13 17:3, 4, 22 18:13 19:7 40:8, 9 43:8 46:15 73:4, 6 74:11 97:5, 6 99:4, 21 100:12 want 12:9 25:15 32:18 33:7 40:21 41:16 44:11 61:16 63:6 72:14 83:4, 22 86:17 95:6

96:21 106:1 116:21 118:13 121:10 125:3 139:7 141:3 145:15 148:4 180:5 181:10 182:11 185:10 186:5 192:19 194:18 195:16 204:4, 5, 6, 7, 8, 9 207:11 219:2 225:4, 6 243:22 246:16 251:2 259:4, 9, 10 261:15 267:5 269:7, 10, 14 273:17 wanted 30:19 38:3, 7 53:3 83:11 99:2 170:6 179:11 186:14 199:2 200:13 221:8 226:12 230:22 232:6 235:10 242:8 250:15 253:2, 3, 13 255:2 278:17, 19 wanting 273:4 wants 153:15 222:19 warm 44:8 106:15 149:22 226:14 warmer 22:15 63:14 106:15 107:9 136:14 warning 111:21 112:18 170:11	warnings 112:22 162:15 164:15 warrant 91:14 warranting 87:3 Washington 13:14 14:19 21:1, 14 22:13 136:7 168:3, 8 169:7 240:6, 8 watching 224:9 262:8 water 11:15 13:10, 22 14:9 15:4 17:8, 14 18:2, 9, 19 28:15 40:11, 12, 17 41:3, 6, 8, 17, 21 42:5, 6 43:1, 3, 11, 21, 22 44:2, 7, 10, 15 45:16, 19 46:12, 13 60:21 86:8 87:5, 7 88:17, 19 122:7, 8 126:14, 18, 21 128:3 135:13, 14 145:4, 5, 7, 9, 13 166:14, 15, 18 167:8, 12 205:12, 19, 22 206:8 207:12 208:10, 16 210:4, 13 211:15 212:13 215:21 216:2, 6 221:6, 7 222:21 223:21, 22 224:7 226:14 227:10 229:11, 21 251:19	254:12 257:1 265:4, 19, 21 266:2, 3, 6, 13, 19 267:3, 4, 5 wave 31:1 35:1 91:20 waves 30:21 way 31:8 46:10 69:2 71:17 83:15 102:7 119:7 127:12 130:8 140:13 142:2, 8 144:15 154:1 157:12 194:5 204:9 232:1 238:10 240:3 243:1, 2 248:18 266:9 269:9 270:3 272:15, 19 275:17 278:15, 18 Wayne 60:4 ways 45:7, 16, 17 46:13 66:19 67:7 82:12 139:21 192:10, 15 196:7 227:3 235:3 WBGT 164:8 weakness 222:9 223:2 wear 38:19 39:2, 3, 7, 9, 11 61:1 248:9 wearing 61:2 86:22 246:10, 11, 12 weather 61:14 72:1, 3 91:21 118:2 134:20	162:15 164:12, 14, 16 weatherproof 275:16 Webex 8:3 33:2, 10 54:5 129:18 130:3, 10, 14 131:11 203:3 website 6:3 WECOUNT 3:10 84:17 85:3, 4, 14 88:7 89:16, 17 94:21, 22 96:13 98:2 99:10, 12, 19 100:9 101:19 103:14, 16, 20 105:11 106:18, 20 107:17 108:3, 9, 21 109:6, 17 110:1 129:1 190:9 WeCount!'s 86:6 87:6, 11 88:12, 16, 22 104:5, 20 105:15 weed 226:6 weeding 37:13 220:13 week 31:7 35:18 41:7 61:13, 14 91:5 111:20 134:5 159:15 181:17 271:3 278:21 weekends 28:6 weekly 41:6 weeks 9:9 63:18 111:6

243:13	well-documented	wet 189:1	218:4 246:5
week's 166:7	180:13	wet-bulb 202:8	249:11 258:2
WEISMAN	well-informed	we've 14:20	277:14 278:1
280:20	209:11	17:10 20:9	279:6 280:3, 5,
welcome 8:15	well-trained	21:19 24:5	8 281:1
115:14 170:1	65:13	25:16 29:10	willing 13:3
198:5 215:2	went 117:15	30:3 39:3, 10	29:22 99:18
250:1	118:11 120:19	40:21 41:13	139:12 199:4, 5
welfare 68:2	122:13 175:5	42:20 45:7	231:11 274:4
well 5:14 18:14	201:2 205:14	50:15 63:3	willingness
19:1 26:20	223:20	65:10 67:18	158:21 159:5
28:16, 18, 22	We're 5:2	77:9, 13, 14	win 13:12
29:17 36:1	13:11 23:14	82:15 98:4	Wind 32:16
37:16 40:19	25:22 27:5	103:19 107:6	window 90:21
43:15 44:6	31:3 32:9	144:17 151:19	130:15 203:4
47:3 52:3	48:21 52:20	162:3 166:22	windy 38:22
54:10 58:22	57:20 61:10	167:19 172:7	winter 119:12,
67:19 72:5, 10	62:18 69:16	186:19 200:8	21, 22 125:21
82:15 83:15	76:2 98:2 99:1,	223:10 224:11	winters 117:13
96:10 97:11	11, 15, 18	238:19 240:21	Wisconsin
105:17 107:7	103:15 104:12,	whatnot 244:14	56:18 185:13
122:7 124:11	19 110:4 117:7	whatsoever	199:1
127:9 135:8	118:12 140:6,	103:18 239:1	wish 6:19 8:1,
140:4 143:16	19 141:22	243:5 247:12	6 113:17 161:5
145:3 149:15	144:9, 10, 12	whistleblower	withdraw 78:16
150:1, 3, 4	151:20 152:11	191:8 192:3, 9,	withdrawal 59:2
172:13 178:21	177:4 181:5	16 256:17	witness 6:22
181:7 182:16	182:1 183:15	257:16	7:18, 22 8:2, 8
184:20 191:21	197:1 202:6	who've 8:4	16:11 24:20
195:16, 21	219:17 221:13	wide 47:11	25:1, 5 206:1
209:11 211:19	222:22 224:1	97:12 100:18	witnessed
213:8, 12	237:11, 21	141:16	113:21 174:4,
214:11 215:19	238:17 240:7	widely 112:21	19 211:6
225:10 226:10	244:3, 4 268:16	widespread	witnesses 6:14,
235:4 236:5	269:4 271:6	89:6 91:13	19 7:19 8:13
263:7 264:10	273:10, 13, 20	95:10, 12	103:5 128:16
267:19	275:7, 17	104:19 114:12	159:14 217:19
wellbeing 54:18	West 132:20	WILES 2:20	279:15
well-being 81:7	174:10	149:5 163:18	witness's 8:12
262:10	Western 260:13	176:8 193:9	woman 225:11
		217:12, 18	

women 29:19 205:2 219:14, 17, 19 225:7 227:4, 5 228:14 231:18, 19 233:13, 16 247:6	61:14 62:6, 10, 19, 20 65:12 67:7, 8 69:1 70:21 73:20 77:6 80:17, 19 81:9 85:8, 21 86:18 87:8 89:2 91:8 93:14 97:8, 11, 17 98:5, 15, 19 99:6, 20 100:18, 21 101:1, 5, 6, 22 104:17 106:1 108:7, 13, 18 109:14, 16, 21 112:17 117:15, 17 119:9 120:17 129:14 133:17 134:7, 18 135:6, 17 137:9 142:18 144:8 145:15 149:19 153:1, 12 156:15, 21 157:6 158:7, 22 162:20 169:8, 9, 17 171:1 172:5 177:16 178:1 183:8 184:20 189:21 190:4, 11, 18 192:12 194:12 197:12 200:17 201:7, 12 205:10, 12 206:6 207:11 208:7 209:14 210:17 211:8 212:17 213:21 214:5 215:6, 14 216:1 217:22	219:18 220:1, 17, 19 221:14 222:13 223:13, 18 224:11 225:9, 21 226:2, 3 227:7, 21 228:3, 6, 8 229:8, 11 233:11 234:2 235:6, 7 237:22 240:4, 11, 12 243:3, 21 251:6 255:12 261:18, 22 262:11 263:17 264:8, 10, 11 265:3, 22 269:12	41:1 48:11, 19 85:10 87:20 90:7 93:2, 3, 17, 19 98:15 102:8 107:8 108:10 109:8 113:5 115:10 118:10 126:17 134:22 155:20 157:22 173:8 181:9 183:9 185:21 187:4 194:8 195:1 201:6, 8 206:6 209:2, 13 251:21 252:9 253:4, 6 256:21 257:5 259:13 264:22 266:18 268:21 270:11 272:10
wonder 74:20 101:3 115:8 146:15			
wondering 35:21 46:22 50:19 68:19 70:6 83:16 96:3 126:15 162:8 201:20 202:1 258:13 267:8			
wood 223:5 229:7		workarounds 43:18	
word 31:20 82:8 109:10 144:13 207:14, 15 210:21 213:14		workday 17:9 43:14 119:12, 17 120:11 126:1 162:17 167:12 251:19 252:11	workers 10:10, 12 11:1 13:22 14:3, 11, 13, 22 15:6, 10, 13 16:19 19:5, 14, 17 20:8, 9, 14, 21 21:19 22:7 26:2 27:21 28:19, 20, 21 29:9, 10, 12, 13, 21 30:4 35:2 36:7 37:5 38:5 39:4, 18 40:2, 21 41:14 42:16, 17, 19, 21, 22 44:5, 6, 16 45:20, 22 46:9, 20 47:2, 9, 21 48:1, 14, 16 50:17, 19 51:12, 14, 21 52:1, 2,
words 6:7 32:9 118:9		workdays 118:3	
WORK 1:11 5:6 10:6 12:12 13:5, 12 14:4, 18 18:20, 21 21:17 22:2, 13 23:18, 20 28:2, 6 29:22 30:17 31:7 35:9, 14 36:19 37:5, 7, 8 38:14 39:13 42:9 45:21 47:22 48:10 51:13 56:5 57:10 58:9, 13, 16 60:3, 13		worked 20:9 31:8 41:2 65:10 67:19 68:22 111:10 117:18 118:5 169:17, 21 208:1 220:9, 10 222:4 226:5, 19 228:2 237:4, 5 250:10	
		worker 11:13, 20 12:6 13:8, 14 14:16 18:2 19:2 21:14 22:1 31:6, 13	

13 57:15 60:20 65:11, 15 67:6, 10, 13 68:1, 5, 18, 22 69:5, 13 72:19 74:20 77:1 83:14 85:6, 7, 8, 11, 15, 20 86:4, 16, 20 87:17 88:7, 16 89:1, 8 91:14, 18 92:4, 17 93:5, 13, 21 95:3, 17 97:1, 11, 14, 17 100:7, 19 101:5, 8, 22 103:18 104:1, 5, 10, 14 105:5, 14, 17, 19, 22 106:14, 19, 21 107:3, 17 108:4, 8, 9, 16 110:12, 21 112:13 113:1 114:1 115:8, 11 117:3, 7, 14 118:1, 4, 18 119:2, 3, 14 120:10, 14, 22 121:12, 17 122:5 123:1, 5, 6, 7, 18, 20 124:7, 13, 17 125:3 126:4, 7, 17 127:13 133:20 135:14 139:2 143:19 144:1, 22 158:11 167:9, 13 168:7 169:16 171:1 172:3, 9, 15 174:6, 10, 11	179:3, 14, 17, 20 180:3, 4, 10, 14, 18 181:13, 18, 19 182:1, 13, 15, 16, 20 183:3, 4, 7, 15, 16, 20 184:4, 6, 7, 13, 19 185:1, 15, 17, 19, 21 187:6, 7, 9, 10, 20, 22 188:4, 13 190:8, 9, 11 191:11, 22 192:4, 7, 10 193:21 194:5, 18 195:5, 17, 22 196:2, 12, 17, 18, 19, 20, 21, 22 197:2, 3, 6, 10, 11 198:20, 22 199:4, 11, 16, 17 200:6, 8 204:13 206:8, 20 208:11 209:21 210:18 212:9 213:19 214:3 222:2 225:13, 19 227:3 228:6 231:10, 14, 17, 20 232:5 233:21 234:16 235:1 236:7 237:3, 17 238:5 239:15, 17 240:3, 16 242:17, 22 243:4, 7, 15, 20 245:1 246:7, 16 247:2, 14, 20, 21 248:13, 20 249:6 250:20 251:1, 9, 13, 20	252:1, 14, 17 253:3, 13, 17, 18, 21 254:5, 7, 9 255:14, 16, 17 256:1, 6 257:8, 10, 11, 16 259:1, 4, 9, 13 268:6, 12 270:8, 14 272:11 273:11 worker's 109:10 136:19 144:17 151:17 181:14, 15 Workforce 55:8, 13 56:3 57:12 63:22 65:13 70:11 110:16, 22 111:16 117:8 153:9 196:8 252:5 working 10:20 11:14 12:4 15:19 25:14 26:8 33:18 37:9, 14 42:5 44:13 56:14, 15 58:22 61:8 85:6 86:19 93:17 100:18 107:18 111:4 118:2 121:11 126:7 133:21 136:2 150:10, 13, 15, 16 151:1, 20 152:9 155:16 158:5, 11 164:13 177:14 178:8 181:5 184:18 187:10 196:10 200:12, 18, 19	201:3, 11, 18 207:22 211:3 212:10 215:8, 16 217:20 220:15 221:18 224:14 225:4, 7, 12 226:10, 20 227:19 228:7 229:18 231:4 232:2 234:22 235:9 246:7, 10, 13 247:1, 3, 16 248:11, 16 261:21 262:20 263:3, 22 268:15, 17 269:4, 5 workload 30:19 74:1 181:20 182:6, 8 194:22 195:2, 3 201:9, 22 workplace 57:1, 18 59:1 91:3, 10, 12 143:6 154:2 157:13, 16 158:15, 18 178:12, 14 213:3 237:19, 20 243:6 workplaces 58:19 163:8 work-related 66:4 works 18:10 195:1 239:7 256:8 276:6, 8 workshops 55:10 worksite 14:15

worksites 189:2 274:17, 20 workspace 221:14 world 101:14 world's 174:7 worried 49:5 108:17 232:4 worry 9:5 worse 87:3 229:16 worth 15:14 wow 72:8 wrap 213:17 writing 242:7 written 6:17 7:6 20:13 30:13 38:4 70:3 80:5, 14, 21 85:16 93:11 94:22 95:22 135:4 141:9 149:17 157:8 166:1 171:10, 15 172:2, 12 173:7 174:3 186:13, 15 188:22 189:20 230:10 231:6 236:2 241:2 244:4 261:16 wrong 148:4 www.osha.gov/he at 6:3 < X > XXX 33:16 XXX-XXXX 33:16 < Y >	Yeah 18:3 20:4 34:2 45:20 96:11 124:10 138:21 149:13 170:15 189:8 193:17 198:17 200:15 207:21 223:22 230:20 256:2 267:21 year 11:12, 20 13:14 31:6 57:2, 5 61:11 80:21 90:10, 12 91:17 92:5, 10, 14 93:12 111:3 136:9, 10 150:3 155:10, 12, 16 169:16 179:20 208:6 251:14 253:21 264:5 271:9 273:6 277:20, 22 year-round 260:18 271:12 years 12:16 25:14 26:8 30:4 31:12 32:1 34:22 42:9 45:9 118:2 121:6 133:6 136:22 139:3 144:17 172:5 184:17 206:5 207:22 211:4 226:3 227:5 237:5 243:16, 17 257:8, 9, 12 261:3 yelled 227:15	yells 15:18 yield 159:6 Yolanda 12:6, 8 YORK 3:6 54:21 55:5, 6, 16, 18 56:20 57:8 59:13 60:5, 6 62:16, 20 63:4, 14 64:5, 10, 21 65:5, 8, 16, 17 69:11 77:9 79:21 80:16 82:16 185:13 199:8 201:2 231:15 York's 55:1 56:13 young 184:19, 20 225:11 youth 205:3 YouTube 130:2 Yuma 12:3 Yuridiana 4:4 203:11 213:14 216:19 < Z > Zapotec 20:10 Zavala 4:12 250:3, 5 255:5, 6 256:3 257:4 258:17 259:3, 6 Zenaida 3:3 9:21 10:1 25:16 53:14 ZOE 2:15 75:21, 22 122:1 148:11, 12 159:10, 11	187:15, 16 zone 126:4, 7, 8