

**WORKPLACE SAFETY AND HEALTH FOR  
IMMIGRANTS AND LOW WAGE WORKERS**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON EMPLOYMENT, SAFETY, AND  
TRAINING

OF THE

COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS

UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

EXAMINING WORKPLACE SAFETY AND HEALTH ISSUES WITH RESPECT  
TO IMMIGRANTS AND LOW-WAGE WORKERS

—————  
FEBRUARY 27, 2002  
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Printed for the use of the Committee on Health, Education, Labor, and Pensions



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## **WORKPLACE SAFETY AND HEALTH FOR IMMIGRANTS AND LOW WAGE WORKERS**

**WEDNESDAY, FEBRUARY 27, 2002**

U.S. SENATE,  
SUBCOMMITTEE ON EMPLOYMENT, SAFETY, AND TRAINING, OF  
THE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND  
PENSIONS,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:08 p.m., in room SD-430, Dirksen Senate Office Building, Hon. Paul D. Wellstone (chairman of the subcommittee) presiding.

Present: Senators Clinton, Wellstone, and Enzi.

### **OPENING STATEMENT OF SENATOR CLINTON**

Senator CLINTON. [presiding]. The subcommittee will come to order.

Senator Wellstone, who is chairing the hearing, is concerned, as am I and Senator Enzi, that there are so many people out in the hallway. We are going to try to get a few more people in. You can tell that the size of the room is only so big, but we are going to try to expand a little bit so that some of the people who have traveled so far to be here can get into the room to be part of the hearing.

If we cannot, we are also going to ask you to rotate people in and out because we want everybody to have a chance to get in.

I want to thank Senator Wellstone for working with Senator Kennedy and the entire committee to hold this hearing on low wage workers and immigrant workers through the Subcommittee on Employment, Safety and Training. I want to thank him very much for putting it together, and I want to thank all of the witnesses who are testifying. I am particularly proud to welcome three New York witnesses and a large number of New Yorkers in the audience, as well as a large number of New Yorkers out in the hallway who cannot get into the room.

I want to start by recognizing Thomas Maier, whose straightforward reporting has served as a call to action for those of us alarmed by the horrendous conditions facing so many immigrant workers. I also want to salute Omar Henriquez of the New York Committee for Occupational Safety and Health for his work on behalf of immigrant workers and Ms. You Di Liao for sharing her experience as an injured worker with us.

As I am very proud to State and as many of you know, New York has a long and proud history of extending a warm welcome to im-

migrants from around the world. In fact, immigrants built New York, and New York has certainly contributed mightily to the building of America.

Yet too often, immigrant workers are struggling to make ends meet under unsafe working conditions. We know that immigrants are consistently hired in the lowest-paid occupations that demand the longest work hours. The stories and statistics that were reported in the Newsday series are just heartbreaking. In New York State alone, more than 500 immigrant workers have lost their lives in senseless, preventable workplace tragedies from 1994 to 1999. In 5 years, 500 deaths have occurred.

As recently as last October in Manhattan, five immigrant workers were killed and 10 injured due to the collapse of scaffolding at a construction site.

I want to recognize and thank the Department of Labor for taking some initial steps to protect unsafe workplace conditions. They knew that we were going to be holding this hearing, and I appreciate greatly their responding.

This is a positive beginning but only a beginning. In the coming weeks and months, I believe we should explore ways to better track workplace injuries and fatalities and to assure that every instance is thoroughly investigated. In New York, I plan to continue working to make sure that that does happen in our State, and I am particularly concerned about the health issues involving the immigrant workers who are involved in the cleanup around the World Trade Center.

So I want to thank you, Senator Wellstone, for holding this hearing. I am delighted that Senator Enzi is here with us, and I look forward to hearing from all the witnesses and working with you. And I thank our colleague from the House of Representatives, Representative Gutierrez, for coming across the Capitol to be here as our first witness today.

Before we continue, I would like to submit a prepared statement from Senator Kennedy to be included in the record.

[The prepared statement of Senator Kennedy follows:]

#### PREPARED STATEMENT OF SENATOR KENNEDY

Immigrant workers are vital to our nation as never before. In my home state of Massachusetts and across the country, the energy and dedication of immigrant workers has helped to reinvigorate communities and served as an engine of economic growth. In recognition of the important contributions of immigrant workers, we must do more to protect their health and safety on the job.

It is simply unacceptable that fatalities for Latino workers increased by more than 11 percent in the year 2000. It is not right that more than one-quarter of workers in the meatpacking industry, primarily immigrants, experience a serious injury or illness on the job. It is outrageous that child farmworkers, who make up only 8 percent of working minors, account for 40 percent of work-related fatalities among minors.

The workers who toil long hours in the fields each day to bring us the food we eat are overwhelmingly immigrant workers. The wages they earn are not enough to live on. Yet, the dangers they face on the job are enormous. The Environmental Protection Agen-

cy estimates that as many as 300,000 farmworkers suffer pesticide poisoning each year.

Sadly, our health and safety laws offer little in the way of protections to farmworkers. Even the minimal guarantee of adequate drinking water and toilet facilities, is only offered to workers on larger farms. In agriculture, unlike in other occupations, children are allowed to perform hazardous work. Farmworkers are not protected by our safety standards when it comes to dangerous machinery or the threat of electrocution.

Immigrant workers face extreme hazards in many other areas of work, from construction to meatpacking to retail work. In addition, many of the heroes involved in the clean-up of Ground Zero were also immigrant workers. According to a recent report by the Natural Resources Defense Council, these workers were not provided nor required to wear the proper respiratory equipment to keep them safe. As late as October, the National Institute of Environmental Health Sciences found "very few workers wearing even the most basic equipment." Nearly every one of the 350 mostly immigrant day laborers who worked at ground zero examined by the New York Committee on Safety and Health, suffered from respiratory problems.

Ground Zero workers should have been told about the U.S. Geological Survey's findings that the air around Ground Zero was as caustic as liquid drain cleaner. These workers stepped up for our nation and we in Congress must now strengthen the protections for the safety and health of immigrant workers.

Recently, the Administration proposed new initiatives to protect immigrant workers. While I am pleased that the Department of Labor will expand the range of bilingual services available to workers, I am struck that the Administration is slashing the budget for proven immigrant worker safety training programs at the same time.

The Administration's budget cuts the Susan Harwood Training Grant program, which has been critical to training immigrant workers to protect themselves in my home state and around the country. The Administration proposes cutting these vital grants by nearly 65 percent. This is no way to show our commitment to protecting immigrant workers.

It has been a year now that America's workers have been waiting for the Department of Labor to adopt a new ergonomics standard. We must act boldly to protect immigrant workers from the nation's leading cause of workplace injury. I look forward to hearing from the Secretary of Labor on this issue at the Committee's hearing on March 14th.

It is time to end the double standard that endangers our nation's farmworkers. All farmworkers should have access to clean drinking water and toilets on the job. Child farmworkers should be protected against workplace hazards that we don't tolerate for other children and our approach to pesticides must put their health first.

We must also do more to protect immigrant workers from unfair retaliation when they come forward to report unsafe working conditions. Effective enforcement of our safety and health laws depends on workers who bravely speak up, and we must insure that these voices are heard.

The time is long overdue for strengthening the health and safety protections for immigrant workers who contribute so much to our nation. I look forward to the ideas of today's witnesses on the steps we must take to protect these important workers.

Senator CLINTON. Senator Enzi?

#### OPENING STATEMENT OF SENATOR ENZI

Senator ENZI. Thank you, Madam Chairman, and I do appreciate the chairman's efforts here to get as many people into the room as possible.

Senator WELLSTONE. Excuse me, Mike.

Why don't some of you who are standing in the back come up here and take some of these seats? We have seats up here.

Is that okay with you?

Senator CLINTON. It is fine with me.

Senator ENZI. It is fine with me.

Senator WELLSTONE. We will just do this a little differently.

Senator ENZI. I do want to thank you for calling this hearing today. The Occupational Safety and Health Act was enacted in 1970 to assure as far as possible every man and woman in the Nation safe and healthful working conditions.

The stated purpose of the OSH Act makes no distinction between foreign-born and native-born workers or between low-wage and high-wage workers. It is neither a worker's country of birth or pay grade that triggers the protections of the OSH Act.

However, this hearing will examine the role that these factors play in workplace safety and health. As always, our inquiry must begin with a review of the data regarding occupational safety and health for immigrant workers. As is too often the case with workplace safety and health statistics, the available data do not provide a complete and accurate picture.

This hearing focuses on safety and health concerns for immigrant workers; however, neither the Bureau of Labor Statistics nor the Occupational Safety and Health Administration used the term "immigrant" for data collection. No statistics collected by either BLS or OSHA clearly get at the heart of the issue—the role of language and cultural barriers in workplace deaths and injuries.

If language and cultural barriers are at the heart of the problem, they are also at the heart of the solution. And I know from a previous job where I taught some first aid that it is really easy to slip into the practice of thinking that everybody will understand and be able to read the documents. I discovered that there was a Hispanic oil field crew that looked like they knew what was happening, it looked like they were reading the documents, but when it came to test time, they did not do very well. Once we got some Spanish instruction and Spanish manuals, which the Red Cross provides, they did marvelously, and they worked together and were able to overcome some of the difficulties. But it was an up close and firsthand experience with how cultural and language barriers can affect safety.

Secretary Chao recently announced initiatives to improve the safety and health of Hispanic workers in this country by breaking through those language and cultural barriers.



These initiatives reflect the commitment voiced by both Secretary Chao and Assistant Secretary Henshaw to improve workplace safety and health through outreach, education, training, and public-private partnerships. Enforcement alone cannot ensure the safety and health of this country's work force, nor can the Government ensure the safety of all workers on its own. The need for compliance assistance and coalitions to prevent injuries and death before they occur is particularly appropriate with regard to immigrant workers.

Safety and health training and education should be developed and delivered in culturally sensitive and linguistically appropriate ways to be effective. Partnering with employers and community-based organizations to reach immigrant workers is critical.

We must also bear in mind the unique needs and resources of small businesses. I call upon OSHA to ensure that small businesses are included in the development and delivery of immigrant safety initiatives. Later today, we will hear from Bobby Jackson with the National Safety Council. The National Safety Council is partnering with Government agencies, the private sector, and the Hispanic Latino community-based organizations to improve the safety and health of Hispanic workers. The National Safety Council activities should serve as a model for outreach and training programs to improve workplace safety for immigrant workers.

In light of the importance of outreach and compliance assistance to protect immigrant workers—indeed, all workers—it is with great concern that I note the proposed fiscal year 2003 budget. Of OSHA's proposed fiscal year 2003 budget of \$449 million, 36 percent is directed to Federal enforcement activities, and only 13 percent to compliance assistance. If OSHA is to effectively use its resources to significantly improve workplace safety and health, funding should be evenly allocated between enforcement and compliance assistance activities. That is where the prevention is.

I also note with concern that OSHA training grants have been reduced from \$11 million for fiscal year 2004 to \$4 million.

Furthermore, the Migrant and Seasonal Farmworker Training Program has been eliminated in the Department of Labor's fiscal year 2003's budget.

These are issues that I will be looking at closely and will work with my colleagues and the administration to address those concerns.

Some might suggest that new legislation or increased administrative penalties are called for to improve the safety and health of immigrant workers. However, I believe that refocusing resources and procedures to break through cultural and language barriers is instead the key to protecting immigrant workers.

I want to thank all the witnesses for appearing today. I particularly want to thank Bobby Jackson for agreeing to appear as my witness on the third panel.

Thank you, Mr. Chairman.

[The prepared statement of Senator Enzi follows:]

#### PREPARED STATEMENT OF SENATOR ENZI

Mr. Chairman, thank you for calling this hearing today. The Occupational Safety and Health Act was enacted in 1970 to "assure so far as possible every man and woman in the Nation safe and

healthful working conditions.” This stated purpose of the OSH Act makes no distinction between foreign-born and native-born workers—or between low wage and high wage workers. It is neither a worker’s country of birth or pay grade that trigger the protections of the OSH Act. However, this hearing will examine the role these factors play in workplace safety and health. If the risk of workplace injury or death is greater for immigrant workers than for other workers, we must ask why this is and what should be done about it.

As always, our inquiry must begin with a review of the data regarding occupational safety and health for immigrant workers. As is too often the case with workplace safety and health statistics, the available data does not provide a complete and accurate picture.

This hearing focuses on safety and health concerns for “immigrant” workers. However, neither the Bureau of Labor Statistics (BLS) or the Occupational Safety and Health Administration (OSHA) use the term “immigrant” for data collection. BLS compiles data on the number of workplace fatalities for Hispanic/Latino as well as foreign-born workers. In 2000, the last year for which data is available, the total number of workforce fatalities declined by 2% from the previous year. During this same time period, fatalities for Hispanic workers increased by 12% and fatalities for foreign-born workers increased by 4%.

These statistics are very troubling. Unfortunately, the statistics do not give us a full picture of the problem. The data for Hispanic or Latino workers includes those who are foreign-born as well as native-born. The term “foreign-born” workers includes children born to U.S. citizens while overseas, who, presumably, do not face the same language and cultural barriers that other immigrants do. Furthermore, since BLS does not collect overall data on the birthplace of workers, BLS does not have a fatality rate for foreign-born workers. In addition, the data for occupational injuries of immigrant workers is much sparser than for fatalities.

No statistics collected by either BLS or OSHA clearly get at the heart of the issue—the role of language and cultural barriers in workplace deaths and injuries. If language and cultural barriers are at the heart of the problem, they are also at the heart of the solution.

Secretary Chao recently announced initiatives to improve the safety and health of Hispanic workers in this country by breaking through these language and cultural barriers. I am looking forward to hearing Assistant Secretary Henshaw discuss these initiatives in greater detail. These initiatives reflect the commitment voiced by both Secretary Chao and Assistant Secretary Henshaw to improve workplace safety and health through outreach, education, training and public-private partnerships.

Enforcement alone cannot ensure the safety and health of this country’s workforce. Nor can the government ensure the safety of all workers on its own. We must focus our efforts on preventing injuries and deaths from occurring in the workplace. To do so, the government must tap into the resources of the private sector and of non-governmental organizations who are committed to improving workplace safety and health.

The need for compliance assistance and coalitions to prevent injuries and deaths before they occur is particularly appropriate with regard to immigrant workers. Safety and health training and education should be developed and delivered in culturally sensitive and linguistically appropriate ways to be effective. Partnering with employers and community-based organizations to reach immigrant workers is critical.

We must also bear in mind the unique needs and resources of small businesses. I call upon OSHA to ensure that small businesses are included in the development and delivery of immigrant safety initiatives.

Later today, we will hear from Bobby Jackson with the National Safety Council (NSC). The NSC has undertaken a number of projects focused on improving the safety and health of Hispanic workers in this country. The NSC is the recipient of a Fiscal Year 2002 OSHA grant to develop and deliver safety and health training to hard-to-reach immigrant, Hispanic workers in the highway construction sector at the chapter and community level. The NSC is partnering with government agencies, the private sector and Hispanic/Latino community-based organizations to effectively reach these workers. The NSC's activities should serve as a model for outreach and training programs to improve workplace safety for immigrant workers.

In light of the importance of outreach and compliance assistance to protect immigrant workers, indeed all workers, it is with great concern that I note the proposed Fiscal Year 2003 budget. Of OSHA's proposed Fiscal Year 2003 budget of \$449 million, 36% is directed to federal enforcement activities, and only 13% is for compliance assistance. If OSHA is to effectively use its resources to significantly improve workplace safety and health, funding should be evenly allocated between enforcement and compliance assistance activities.

I also note with concern that OSHA training grants have been reduced from \$11 million for Fiscal Year 2002 to \$4 million for Fiscal Year 2003. Furthermore, the Migrant and Seasonal Farmworker Training Program has been eliminated in the Department of Labor's Fiscal Year 2003 budget. These are issues that I will be looking at closely and will work with my colleagues and the Administration to address my concerns.

Some might suggest that new legislation or increased administrative penalties are called for to improve the safety and health of immigrant workers. However, I believe that refocusing resources and procedures to break through cultural and language barriers is, instead, the key to protecting immigrant workers. Thank you, Mr. Chairman.

#### OPENING STATEMENT OF SENATOR WELLSTONE

Senator WELLSTONE. Thank you, Senator Enzi. Senator Enzi is a good person to work with. Whether we agree or disagree on the issues, he is always civil and always well-prepared to talk about the issues.

Congressman Gutierrez, we are really delighted that you could be here.

I will be very brief and ask unanimous consent that my full statement be included in the record.

Is everybody in the room now? We have such a large number of people—do we have more people out there yet? Are we okay? Good. I am glad everybody is in the room. We are doing it a little differently—we have people everywhere—but it feels like a good community meeting to me, and we all thank you for coming.

This hearing continues this Subcommittee on Employment, Safety and Training investigation into the challenges facing our nation's working poor. Two weeks ago, Senator Clinton chaired this subcommittee hearing with me, and it was extremely important. Senator Reed came, and we were talking about the working poor, Congressman Gutierrez, and the fact that for so many people it is extremely difficult when you think about affordable housing and child care, much less health care, for families to be able to cash flow from month to month. And frankly, with so many families making under \$10 an hour, much less \$5.50 or \$6 an hour, it is just impossible. What can we do to make sure that families can do well? What can we do when people are working hard to make sure that the parent or the parents and their children do well?

It was an extremely important hearing, and I think this hearing is extremely important as well.

It is hard to get the precise data, but the reported number of fatal injuries has been declining over the past 8 to 10 years, but for farm workers, there has been an increase in such fatalities, and this trend is perhaps most prominent with respect to Latino workers but with all the other workers as well.

We are going to hear more detail today about the kinds of workplace hazards that these vulnerable workers face—falls from heights not protected by guardrails; transportation injuries and fatalities because contractors' vehicles do not have seats let alone seatbelts; workers with broken bones left for hours without medical treatment; workers putting their hands in toxic chemicals with no warning of the risks they face; day laborers at Ground Zero suffering symptoms of respiratory distress that indicate a lack of adequate safety and health training and protections at the site; workers suffering crippling repetitive stress injuries.

Let me quote from the very eloquent testimony of one of our witnesses today that I think speaks volumes, and I think it captures the essence of our inquiry. Quote: "As workers, immigrants have a disproportionate rate of accidents and fatalities in the workplace. We are hired to do the most undesirable and dangerous jobs at the lowest wages. We often do not know what rights we have or what laws protect us, and we receive no training in safety and health. Language and cultural barriers make it difficult to learn of our rights and particularly those who lack immigration status are fearful to speak out. We are considered"—and this is the word that really gets to me—"disposable and therefore easy to exploit."

Disposable—I cannot tell you how many times I have heard this sentiment expressed. This is truly unacceptable. As another one of our witnesses will point out, this is a fundamental moral question. When the clothes we wear, the food we eat, and the buildings we work in come from the exploitation of vulnerable workers, we have some moral choices to make.

We are going to talk about policies that could make a difference. We need better data and better analysis of that data to define the problem. We need immigration reform to deal with the fundamental vulnerability of these workers. We need meaningful outreach and training by community-based organizations that have the trust and respect of the workers who are most vulnerable. We need stronger enforcement, higher penalties as a deterrent to the creation of hazardous conditions and inadequate protections, more resources for enforcement, and the use of creative new approaches, for example, greater reliance on the Fair Labor Standards Act's "hot goods" provisions. And finally, we need stronger standards—immediate action on a repetitive stress injury standard; stronger child labor protections, updated exposure limits, updated hazardous orders for child labor—the list unfortunately goes on and on.

I want to thank the witnesses. I want to thank my colleagues for being here. I want to thank all of you for attending. This is an extremely important subcommittee hearing, and we are very lucky to start out with Congressman Luis Gutierrez from the 4th District of Illinois.

Since 1992, Representative Gutierrez has championed the causes of Latino and immigrant communities. As the first Latino to be elected to Congress from the Midwest, Mr. Gutierrez has sought opportunities to address longstanding needs facing the immigrant community in his diverse congressional district, home to Chicago's large, established communities of immigrants from Eastern Europe and Latin America. He is a passionate and effective Congressman.

Congressman Gutierrez?

[The prepared statement of Senator Wellstone follows:]

#### PREPARED STATEMENT OF SENATOR WELLSTONE

I would like to call this hearing to order and begin by thanking each of the witnesses for joining us today as well as the members of the audience. This hearing today continues the Subcommittee's investigation into the challenges facing this nation's working poor.

Two weeks ago Senator Clinton joined me in what I thought were exceptional hearings that shed light on the basic message that many families in this country—too many families—simply are not earning enough to make ends meet. It's not that they don't want to work, and in fact, most of them are. But it is simply a fact of this "new" economy that we are in that there are a number of jobs that do not, and probably cannot, pay a family supporting wage.

Families, stretched to the breaking point, face untenable choices. They can work more than one job, but at what cost to their families? They can try and juggle competing costs—the rent this month, the electricity next month, a trip to the doctor the month after that—but it's ridiculous to suggest that families should be forced to choose between heat and food or between rent and a trip to the doctor's office when their kids are sick as a matter of course.

Our responsibility as public officials to grapple with these issues cannot be clearer. The "morality" of an economy whose foundation rests on the backs of working families not able to earn enough to meet their basic human needs will be central to the upcoming de-

bate on TANF and Child Care Development Block Grant reauthorization.

At today's hearing we want to examine more closely a particularly troubling aspect of this larger issue: the workplace safety and health problems facing immigrant and low wage workers. Although accurate data collection on this subject is difficult to come by, what we do know is troubling. While the reported number of fatal injuries has been declining over the past 8 to 10 years, foreign born workers have experienced an increase in such fatalities. This trend is perhaps most prominent with respect to Hispanic workers. In crop agriculture, where workers are predominantly foreign-born, the fatality rate is eight times the rate for all workers. Children in agriculture appear to be particularly at risk.

We will hear more detail today about the kinds of workplace hazards these vulnerable workers face: falls from heights not protected by guard rails; transportation injuries and fatalities because contractor's vehicles do not have seats—let alone seat belts; workers with broken bones left for hours without medical treatment; workers putting their hands in toxic chemicals with no warning of the risks they face; day laborers at Ground Zero suffering symptoms of respiratory distress that indicate a lack of adequate safety and health training and protections at the site; workers suffering crippling repetitive stress injuries.

We will want to shed light on these facts—and examine both the underlying causes and the policy issues that must be addressed. It is imperative that we understand the broader structural context in which these injuries and fatalities are taking place. Let me quote, if I may from the eloquent testimony of one of our witnesses today. I think it captures the essence of our inquiry:

“As workers, immigrants have a disproportionate rate of accidents and fatalities in the workplace. We are hired to do the most undesirable and dangerous jobs at the lowest wages. We often do not know what rights we have or what laws protect us and we receive no training in safety and health. Language and cultural barriers make it difficult to learn of our rights and particularly those who lack immigration status are fearful to speak out. We are considered disposable and therefore easy to exploit.”

“Disposable”—I can't tell you how many times I have heard this sentiment expressed. This is truly unacceptable. As another of our witnesses will point out—this is a fundamental, moral question. When the clothes we wear, the food we eat, the buildings we work in come from the exploitation of vulnerable workers—we have some moral choices to make.

We will today talk about the policies that could make a difference. We need better data and better analysis of that data to clearly define the problem. We need immigration reform to deal with the fundamental vulnerability of these workers. We need meaningful outreach and training by community-based organizations that have the trust and respect of the workers who are most vulnerable. We need stronger enforcement: higher penalties as a deterrent to the creation of hazardous conditions and inadequate protections, more resources for enforcement, and the use of creative, new approaches, for example, greater reliance on the Fair

Labor Standards Act's "hot goods" provisions. And finally, we need stronger standards: immediate action on a repetitive stress injury standard, stronger child labor protections, updated exposure limits, updated "hazardous orders" for child labor—the list, unfortunately, is long.

Again, I want to thank the witnesses and the members of the audience for being here today. I look forward to the testimony. And I look forward to working with you on tackling some of the difficult and troubling issues we will be focusing on today.

**STATEMENT OF HON. LUIS GUTIERREZ, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF ILLINOIS**

Mr. GUTIERREZ. Thank you and good afternoon, Chairman Wellstone, Senator Enzi, and Senator Clinton, for whom everyone in Illinois has a special place in their hearts.

I am pleased to speak with you today about an issue of great importance to me and the community I serve, as well as to a large number of low-wage workers around the Nation, most of whom are immigrants to the United States.

I am here to discuss the many challenges in the areas of workplace safety, wages, and benefits which confront the category of workers called "day laborers." These are workers who seek and secure temporary employment either through placement agencies or waiting each day outside factories, warehouses, construction sites, even on street corners, often taking jobs that others are unwilling to accept. Their day-to-day role might change. One day, they are pouring concrete for the foundation of a building; the next day, they are mopping a kitchen floor; the day after that, it is an assembly line, and then, maybe picking grapes or oranges or apples.

But unfortunately for many day laborers, some things remain constant—the ongoing struggle for a few dollars' pay, the endless fear of debilitating and costly workplace accidents and the perpetual fight for dignity.

Approximately 3 million people work as temporary day workers in the United States. Most are blue collar workers, although a large number are agricultural workers. The vast majority receive low wages, no benefits, and work under unsafe conditions. Most day laborers earn less than the minimum wage. The average yearly salary is \$8,800—a figure which does not reflect significant reductions resulting from the cost of transportation, meals, and safety equipment, which often must be paid out of the worker's own pocket. Additional deductions of a far more dubious nature are often reported as well, such as workers who are charged for taking a restroom break.

Taking such costs into account, the National Coalition for the Homeless estimates that the average daily take-home pay for a day laborer is \$28. Please note, Mr. Chairman and members of the committee, that that figure is based on a 16-hour rather than the standard 8-hour work day.

For a typical day laborer, the day begins at dawn, as he or she gets in line to wait for the day's work assignment, a wait which is made much longer as prospective workers are forced to ensure the elements while lacking water, food, or a place to sit. It is a wait for which the worker will not be compensated. Typically, such a

wait may eat up to 4 hours or more of time. Then, it is another wait for a van to drive them to the work location. This is not a free ride, however. The worker will likely be stuck with a transportation fee which may amount to 20 percent of his or her daily pay. Not only is the ride often costly, it is often risky and dangerous when workers are at the mercy of uninsured and unlicensed, unsafe drivers. Frequently, a dozen or more people will be stuffed into the back of an overcrowded and unsafe vehicle, placed there by their supervisors with far less care than is shown to the cargo, equipment, or raw material which the workers will use while on the job site.

As you know, Mr. Chairman, I have introduced legislation in the House designed to offer much needed protections to these workers. The Day Laborers Fairness and Protection Act, H.R. 2755, has earned the cosponsorship of 30 House Members and has been strongly supported by groups around the country, including the National Coalition for the Homeless, the National Training and Information Center, the Chicago Coalition, and the Day Labor Organizing Project.

Let me explain a few key provisions of my bill. First, my bill requires day labor agencies to pay a wage rate equal to the wage rate received by the permanent employees engaged in comparable work at the site where the day laborer is sent. Without adequate wages and benefits, such workers remain trapped in a vicious cycle of poverty, frustration, and fear.

A steady place to live is often out of reach for such workers. Approximately 40 percent of day laborers are homeless. My legislation establishes a cap of 3 percent of the total daily salary of the worker for transportation expenses.

The bill also outlines other unscrupulous practices, some firms' selfish attempts to reap extra money from their workers. After paying meager wages, some companies amazingly stoop to charging a fee to the workers for cashing the very paycheck they are given. Last year, one firm reaped an additional \$7 million through this despicable practice.

The bill also assigns liability to agencies and firms for injuries occurring while workers are being transported to and from a work-site and requires employers to cover health care costs resulting from work-related accidents.

I think you will agree, Mr. Chairman, that the current predicament faced by day laborers who must pay their own doctor bills after being hurt at work is a literal incarnation of adding insult to injury.

Typically, these workers perform the most difficult, dirty, dangerous work. In fact, last week, The New York Times reported that "hundreds of day laborers, often without proper instruction or gear," are employed cleaning the remains of the World Trade Center. A study by Western Illinois University found that 39 percent of interviewed workers have suffered a work site injury.

I am hopeful that further data on this point will be made available later this year upon completion of a study being conducted at my request by the General Accounting Office.

Such unsafe circumstances coupled with an exploitive wage structure frequently create frictions among permanent and tem-



porary workers, and within this group, between skilled and unskilled workers. Often, temporary workers fill skilled jobs at \$6 an hour compared to the \$20 that it would cost for a skilled, trained worker.

Mr. Chairman, it is bad enough when some unscrupulous employers exploit day laborers; it is worse when they are treated as pawns to diminish the power of other working men and women, quite often of the unions who represent them.

This is especially sad since both groups share many concerns and experiences in common.

Additional problems may arise from language barriers. The room for misunderstanding is quite broad, increasing the chances of a mishap. Insufficient training in any language contributes to hazards.

We should demonstrate that this is a nation of laws designed to help all individuals, including those who lack power, who lack a voice, who speak a language which is not English, who may lack a familiarity with the basic wage and safety standards that are commonly enjoyed by other workers.

Mr. Chairman, thank you again for giving me the opportunity to share my views with the subcommittee. I am hopeful that you and I can build on the successful partnership that we have enjoyed in similar areas such as our combined efforts to restore legal immigrants access to key public services through the Fairness for Immigrants Act that we jointly sponsored in the 105th Congress.

I look forward to working with you now to assist people who may earn low wages but who, through their work, have certainly earned some measure of protection from the abuse and have earned a measure of respect. I think that as a Nation, we cannot continue to benefit from the millions and millions of immigrants as we eat from the plates that they clean, sleep in the hotel rooms that they clean, eat the delicious fruit that they pick. Every day, we hand them our most cherished possession—our children—so they can raise and nurture those children; yet, at the end of the day, they often cannot go home to raise and nurture their own children because of the exploitive situation.

I figure if they are good enough to raise our American citizens, they are good enough to live in this country with some dignity and some respect and be able to raise their own children.

I thank you, Mr. Chairman, and I thank Senator Enzi and Senator Clinton for allowing me to speak before your very distinguished subcommittee this afternoon.

Senator WELLSTONE. Thank you very much, Congressman. Congressman, because of the House work, we will excuse you, but I think you have sounded the right note for us, and we much appreciate your work.

Mr. GUTIERREZ. Thank you all very much.

Senator WELLSTONE. We are now going to go to our second panel. We have many distinguished panelists today.

We welcome John Henshaw and Dr. Rosemary Sokas. Mr. Henshaw is Assistant Secretary for Occupational Safety and Health at the United States Department of Labor. Senator Clinton and I spoke with Mr. Henshaw at his nomination hearing about the topic of immigrant worker safety and health, and he indicated

his interest in working on these issues with us. Your appearance here today, Mr. Henshaw, is much appreciated.

Last week—and I know that Mr. Henshaw will talk about this—the Department of Labor announced initiatives with respect to protecting Hispanic workers' safety and health, and we look forward to hearing from Mr. Henshaw and others.

Dr. Sokas is the associate director of science at the National Institute for Occupational Safety and Health, which is located within the Centers for Disease Control. NIOSH, as the only source of Federal research into workplace safety and health issues, plays a very critical role in doing the research, providing the data and providing the technical assistance. Dr. Sokas is a distinguished researcher on workplace safety and health, and we welcome her as well.

We will start with Mr. Henshaw, and if I could, I am going to ask unanimous consent that additional testimony be included in the record, and this written testimony includes affidavits from injured workers, some of whom are actually here today as well.

I also submit a statement from Senator Harkin to be included in the record.

[The prepared statement of Senator Harkin follows:]

#### PREPARED STATEMENT OF SENATOR HARKIN

Mr. Chairman, I applaud you for convening today's hearing on occupational safety and health issues related to immigrant workers, including working children. This is a much-needed oversight hearing and it comes at a critical time. President Bush has submitted a FY 2003 budget to the Congress that proposes deep cuts in the already-stretched federal resources intended to enforce our nation's laws to protect the fundamental rights and safety and health of all America's workers regardless of their immigrant status or ethnicity.

I want to applaud Thomas Maier, in particular, for his remarkable investigative reporting that yielded a disturbing and compelling series of articles in *Newsday* last year that unmasks the growing exploitation of immigrant workers in America. That first-rate piece of journalism provides a powerful indictment of the federal government's on-going failure to ensure that immigrant workers in America have their rights protected and don't have to sacrifice their health, safety, and dignity when they come to our country to work and build a brighter future.

As you know, Mr. Chairman, I have introduced comprehensive legislation—The Children's Act for Responsible Employment (S.869)—to eliminate the double standard in the Fair Labor Standards Act which allows children as young as 10 to work much longer hours under more hazardous conditions in large-scale commercial agriculture than is allowed for minors working in non-agricultural jobs. Currently, there are as many as 800,000 migrant farmworker children working in the fields of corporate farms all across America, harvesting the produce that we eat every day. Most of these children are immigrants.

These child laborers are at risk every day. They forfeit much of their childhood and are put at a decided disadvantage in their schooling. As such, they are perhaps the most vulnerable subset of millions of immigrant workers in many different lines of work who

deserve far greater protection of their rights as well as their safety and health on the job. Generations of immigrant workers have contributed and continue to contribute so much to the bounty and strength of America. They deserve far better treatment in the workplace than they are receiving and I hope today's hearing will stir us to action.

Mr. Henshaw?

**STATEMENTS OF JOHN HENSHAW, ASSISTANT SECRETARY FOR OCCUPATIONAL SAFETY AND HEALTH, U.S. DEPARTMENT OF LABOR, WASHINGTON, DC; AND ROSEMARY SOKAS, M.D., ASSOCIATE DIRECTOR FOR SCIENCE, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, CENTERS FOR DISEASE CONTROL AND PREVENTION, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ATLANTA, GA**

Mr. HENSHAW. Good afternoon. Thank you, Mr. Chairman, Senator Enzi, and Senator Clinton.

Thank you for this opportunity to testify about the Occupational Safety and Health Administration's effort to impact immigrant workers. As you know, Mr. Chairman, the Occupational Safety and Health Act of 1970, the OSH Act, charges OSHA with the responsibility to protect all working men and women in this Nation, regardless of race, ethnic origin or immigrant status.

I understand the subcommittee is concerned about immigrants and particularly Hispanic immigrants, who face a greater risk of occupational injury and death than other populations. The fatality rate among Hispanic or Latino workers troubles Secretary Chao deeply, and she is concerned about their rate of workplace injury. An immigrant herself, the Secretary is determined to tackle this issue head-on and has made outreach to immigrant and non-English-speaking workers in the United States a priority during her tenure at the Department of Labor.

To re-emphasize the Department's commitment to immigrant and non-English-speaking workers, I joined Secretary Chao in the press conference we held last Thursday to present and discuss the Department's work. I am proud to announce today that one of our new initiatives is a Spanish language website that is now available to employers and employees at [www.osha.gov](http://www.osha.gov).

Perhaps a good way for me to begin this hearing is to clarify the terms that we will be using today. Neither OSHA nor the Bureau of Labor Statistics collects data using the term "immigrant." BLS uses the terms "Hispanic" or "Latino" and "foreign-born" workers. The data on foreign-born workers includes all those who were born in other countries. The vast majority of foreign-born individuals are immigrants. Also included in this group are children born to U.S. citizens while they were overseas, including children of U.S. military personnel.

The data on Hispanic or Latino workers includes both native and foreign-born workers. Therefore, as you can see, these categories overlap.

However, the most recent BLS report on fatalities clearly shows that Hispanics or Latinos accounted for a disproportionate share of workplace fatalities in 2000. Recognizing a few years ago that non-English-speaking workers, the largest group of which are Hispanic,

may require special efforts to protect them, the agency began addressing this issue by translating many publications into Spanish.

More recently and as a result of my confirmation hearing—I heard from every member of this committee regarding the Hispanic interest—we began to review the issue around Hispanic and Latino fatalities. OSHA has developed additional emphasis as a result, starting this fall.

What have we put into place? We have established an Hispanic Workers Task Force which was created last September.

We have created an 800 number accessible to Spanish-speaking individuals.

We are initiating a national clearinghouse for training programs in Spanish.

We have created a Spanish language website which I announced just a moment ago for employees and employers.

We are compiling a list of fluent Spanish-speaking employees within the Occupational Safety and Health Administration which we will continue to build on in the Federal OSHA as well as in the State Plan States funded by OSHA and our onsite consultation services.

We are also strengthening our OSHA offices' contacts with policy and emergency responders to ensure that OSHA receives referrals when an injury is work-related.

My written testimony includes more details about these and other agency initiatives.

The Secretary and I have established a priority for OSHA for strong, fair, and effective enforcement. Except for reports of imminent danger, fatality investigations are the agency's highest enforcement priority. OSHA's practice is to investigate all occupational fatalities except those that are clearly not covered by the OSH Act, such as fatalities involving self-employed individuals and those resulting from working conditions regulated by other Federal agencies.

All employers covered by the OSH Act must report to OSHA within 8 hours work-related accidents that result in fatalities or hospitalization of three or more employees. We recognize that employers who hire undocumented workers may be afraid to report workplace deaths due to possible legal repercussions from their hiring practices. Therefore, OSHA uses other sources to attempt to identify all workplace fatalities, including those that employers fail to report. For example, our area offices use local radio, TV, and newspaper media reports of workplace accidents to learn of fatalities. We also receive referrals from local fire departments, police departments, or other Federal and State agencies that may be investigating the workplace pursuant to other statutes.

In the past, OSHA regional and field offices have entered into agreements with local law enforcement authorities and emergency response services for referral of any workplace injuries or fatalities to OSHA. As I mentioned earlier, I have directed the field offices to renew these arrangements with respective local organizations.

OSHA does not collect any data during enforcement actions to indicate either the employee's citizenship status or ethnicity. OSHA fatality and other investigations focus on workplace safety and health hazards that give rise to the accident in question. Although

this results in a nondiscriminatory enforcement policy—one that protects all workers—it does not allow us to track the number and type of injuries, illnesses and fatalities suffered by immigrant workers.

However, we propose to change the Accident Investigation Summary Form, which is the OSHA 170, to include several questions about ethnicity and language capabilities. I believe that collecting this data will help us determine if there is a nexus between language, cultural barriers, and employee injuries. In addition, this information will enable the agency to evaluate its outreach programs and determine further program outreach needs.

Fatalities are not the only concern of OSHA. OSHA's statutory mandate is to prevent workplace accidents and minimize injuries and illnesses before they occur. To leverage our resources, we have developed an inspection program that targets the most hazardous worksites for investigation and inspection. This site-specific program allows OSHA to address the nonconstruction industries and workplaces where the highest rates of lost work-day cases due to injury and illness occur. In many cases, these are the same industries that employ large numbers of immigrant workers, such as the meat and poultry processing plants.

Of course, there are still some dangerous worksites that are difficult to identify, particularly in the construction industry, where many small employers may work on a site for a few hours and then move to another location. To identify these sites, OSHA is adding construction employers to its site-specific survey and will upgrade its management information system to collect and disseminate additional data on this industry.

OSHA also relies on local emphasis programs or LEPs, as we call them, at area and regional levels to target smaller and more hazardous industries and employers that may have a large immigrant work force. OSHA plans to share all aspects of these local emphasis programs with our staff through our new Hispanic Task Force formed as part of the Department of Labor's initiatives to assist immigrant workers.

In August of 2001, in response to the Secretary's directive, OSHA established a task force to assess its outreach to Hispanic workers and reduce the number of deaths among Hispanic workers in this country. The task force is actively pursuing creative solutions to immigrant worker problems and plans to hold a best practice conference by the fall of 2002 so that employers can share information about their practices that have worked to reduce injuries and illnesses for nonEnglish-speaking employees. The task force is also establishing a national clearinghouse, as I mentioned, to catalogue and disseminate all videos, written publications and other training materials that have been translated into Spanish.

The agency has also developed a list of both Federal and State OSHA employees who are fluent in Spanish. I plan to expand that list to include other languages. OSHA's toll-free 800 number, as I mentioned, which is used to report emergencies to the agency is now available in Spanish. OSHA is also seeking to employ staff who speak other languages aside from Spanish.

Safety and health training grants are another tool that OSHA uses to address the unique problems of nonEnglish-speaking workers. In its fiscal year 2003 budget—

Senator WELLSTONE. Excuse me, Mr. Henshaw. I am going to be impolite. You are the Assistant Secretary of Labor for Occupational Safety and Health, and I want you to continue, but we have a lot of people to hear from today, so I might ask you to conclude in a couple of minutes. I know you have a lot to report on, and I am sorry to do that, and I am going to try to hold everybody to 5 minutes except for the Assistant Secretary, because we want to hear from everyone.

I apologize for that impoliteness.

Mr. HENSHAW. I have 2 minutes.

Senator WELLSTONE. You can go more than that, but not too much more than that.

Mr. HENSHAW. Thank you, Senator. I appreciate it.

Workplaces have changed significantly, and are employing an increasing number of workers from a myriad of cultures, with different languages, literacy, and educational levels. Among other issues, our training grants will earmark funds to address specific hazards faced by the Hispanic and nonEnglish-speaking workers.

OSHA's outreach in the Hispanic community is not only found at the national level but is also being done at an individual regional level as well. Several of our OSHA regions have developed programs specific to their regional needs. I have included details of these programs in my written testimony.

In addition to our national and regional programs, there are 26 States that operate their own occupational safety and health programs. Many of them are reaching out to Hispanic and foreign-born populations as well.

On Labor Day, Secretary Chao noted that we could do better in protecting Hispanic workers by reaching out and educating them and their families about safety and health. Of course, not all Latino and Hispanic employees are immigrant workers as defined by BLS, but they are the largest single group of immigrant employees.

As Secretary Chao has said, immigrants are the dreamers who come to America for a new start and a brighter future. We have a responsibility to protect these individuals from on-the-job dangers. I can assure you, Mr. Chairman, that OSHA will continue to work with you and the subcommittee to enhance our programs and use all the tools provided by law to protect immigrant workers and all other employees in this Nation.

Thank you.

Senator WELLSTONE. Thank you, Mr. Henshaw. Thank you for your work.

[The prepared statement of Mr. Henshaw follows:]

PREPARED STATEMENT OF JOHN L. HENSHAW

Mr. Chairman, members of the Subcommittee: Thank you for this opportunity to testify about the Occupational Safety and Health Administration's (OSHA) efforts to protect immigrant workers. As you know, Mr. Chairman, the Occupational Safety and Health Act of 1970 (OSH Act) charges OSHA with the responsibility to protect all working men and women in this Nation.

I understand the Subcommittee is concerned that immigrants, and particularly Hispanic immigrants, face a greater risk of occupational injury or death than other

populations. The fatality rate among Hispanic or Latino workers troubles Secretary Chao deeply and she is concerned about their rate of workplace injury. An immigrant herself, the Secretary is determined to tackle this issue head-on and has made outreach to immigrant and non-English speaking workers in the United States a priority during her tenure at the Department of Labor. Secretary Chao has directed DOL agencies to make unprecedented efforts to ensure that the Department's broad range of employment-related services—including workplace and mining health and safety training and information, compliance assistance, enforcement of wage and hour laws, pension and retirement information, and employment training—reach immigrant and non-English speaking workers.

Perhaps a good way for me to begin this hearing is to clarify the terms we will be using today. Neither OSHA nor the Bureau of Labor Statistics (BLS) collects data using the term “immigrant”. BLS uses the terms “Hispanic or Latino” and “Foreign-born” workers. The data on foreign-born workers includes all those who were born in other countries. The vast majority of foreign-born individuals are immigrants. (Also included in this group are children born to U.S. citizens while they were overseas, including children of U.S. military personnel.) The data on Hispanic or Latino workers includes both native- and foreign-born workers. Therefore, as you can see, these categories overlap.

I am very pleased to report that there has been a significant improvement in safety and health conditions in America. For example, from 1992 to 2000, the overall injury/illness incidence rate dropped by 31 percent. Furthermore, the number of fatal workplace injuries declined by 2% from 1999 to 2000, while overall employment increased that year. However, the BLS report on fatalities for the year 2000 shows that 815 Hispanic or Latino workers, including 494 foreign-born Hispanic or Latino workers, died as a result of job-related injuries—an 11.6% increase from the previous year.

Hispanics or Latinos accounted for a disproportionate number of workplace fatalities in 2000, 13.8 percent, compared with their proportion of employment, which was 10.7 percent. This appears to be largely due to the fact that Hispanics or Latinos are disproportionately employed in the more dangerous industries. For example, the construction industry accounts for about 7 percent of all employment, but 20 percent of fatalities. Hispanics or Latinos comprise almost 15 percent of construction employment, well above their representation in the workforce overall.

Although we have made progress, we believe that a single death is one too many, and OSHA will be at the forefront of renewed efforts to significantly reduce the number of fatal workplace injuries. This Administration will use the entire complement of tools provided by the OSH Act to address workplace hazards, including enforcement, training, information, and compliance assistance.

Recognizing that non-English-speaking workers—the largest group of which are Hispanic or Latino—may require special efforts to protect them, the Agency began addressing this issue a few years ago by translating many publications into Spanish. More recently, after reviewing data concerning the increasing, Hispanic or Latino fatalities, OSHA responded by developing an even stronger emphasis on this worker population by:

- Establishing an Hispanic Workers Task Force
- Creating an 800 number accessible to Spanish-speaking individuals
- Initiating a national clearinghouse for training programs in Spanish (includes videos, written publications and other training materials)
- Creating a Spanish-language website for employees and employers
- Compiling a list of fluent Spanish speaking employees in Federal OSHA and State Plan States and OSHA-funded, on-site consultation agencies (119 Federal, 38 state and 22 consultation)
- Strengthening OSHA offices' contacts with police and emergency responders to ensure that OSHA receives referrals when an injury is work-related

I will provide details on these and other Agency initiatives in my testimony, today.

#### **Fatality Investigation Process**

In FY 2001, Federal OSHA conducted more than 35,000 inspections. Approximately three percent of these inspections were fatality investigations. Because, as I will explain later, BLS and OSHA collect somewhat different demographic data on workplace injuries and fatalities, which makes it impossible to determine exactly how many OSHA investigations were related to immigrant worker injuries.

Except for reports of imminent danger, fatality investigations are the agency's highest enforcement priority. OSHA's practice is to investigate all occupational fatalities except those clearly not covered by the OSH Act, such as fatalities involving self-employed individuals or those resulting from working conditions regulated by

another Federal agency. All employers covered by the OSH Act must report to OSHA, within eight hours, work-related accidents that result in fatalities or hospitalization of three or more employees. We recognize that employers who hire undocumented workers may be afraid to report workplace deaths due to possible legal repercussions from their hiring practices. OSHA, however, issues citations against employers who fail to report worker deaths or multiple hospitalizations. In FY 2001, Federal OSHA issued 138 citations and proposed \$262,525 in penalties for employers' failure to report such incidents.

In responding to immigrant worker deaths the Agency often encounters a difficult situation because sometimes workers are afraid to speak out about unsafe or unhealthful conditions for fear of being deported. OSHA routinely pledges to keep the identity of informants confidential. In addition, OSHA informs all workers of their rights under the OSH law, including the whistleblower protection provisions under section 11(c), which forbids employers from discriminating against or discharging workers for making safety and health complaints under the OSH Act.

OSHA uses other sources to attempt to identify all workplace fatalities, including those that employers fail to report. For example, our area offices use local radio, TV and newspaper media reports of workplace accidents to learn of fatalities. We also receive referrals from local fire departments, police departments or other Federal and state agencies that may be investigating the workplace pursuant to other statutes. In the past, OSHA regional and field offices have entered into agreements with local law enforcement authorities and emergency response services for referral of any workplace injuries or fatalities to OSHA. As I mentioned earlier, I have directed the field offices to renew these agreements with the respective local organizations.

OSHA does not collect any data during enforcement actions to indicate either the employee's citizenship status or ethnicity. OSHA fatality and other investigations focus on workplace safety and health hazards that gave rise to the accident in question. Although this results in a non-discriminatory enforcement policy—one that protects all workers—it does not allow us to track data the number and type of injuries, illnesses and fatalities suffered by immigrant workers. However, we propose to change the Accident Investigation Summary Form (OSHA 170) to include several questions about ethnicity and language capabilities. I believe collecting this data will help us determine if there is a nexus between language, cultural barriers and employee injuries. In addition, this information will enable the Agency to evaluate its outreach programs and determine future program/outreach needs.

Another issue for immigrant workers is the number of deaths due to workplace assaults and acts of violence. It is important to note that OSHA is not the primary investigator for assaults and other violent acts at the workplace, which resulted in the deaths of 129 Hispanic workers in 2000. Because these acts are considered criminal, local law enforcement agencies have the primary role in investigating these fatalities.

Even so, the Agency is addressing violence in the workplace by issuing guidelines that inform employers of the best practices used to safeguard employees and contain suggestions by law enforcement personnel on safeguarding the workplace. Many immigrant workers are employed in the industries discussed in these guidelines, such as the "Guidelines for Preventing Workplace Violence For Health Care Workers," "Recommendations for Workplace Violence Prevention Programs in Late Night Retail Establishments," and an OSHA fact sheet for taxi drivers. Our goal is to prevent these tragedies from occurring by assisting employers to identify and reduce the risks of workplace violence.

#### **Targeted Investigations**

Fatalities are not the only concern for OSHA. OSHA's statutory mandate is to prevent workplace accidents and minimize occupational injuries and illnesses. To leverage our resources, we have developed an inspection program that targets the most hazardous worksites. For many years OSHA relied largely on BLS's annual injury/illness survey data to target its inspections. Although these data identified the most dangerous industries, they did not allow OSHA to specifically identify the most dangerous workplaces. In 1996, to complement its use of BLS data, OSHA launched a site-specific targeting program that surveys 80,000 general industry employers each year and uses the resulting data to identify those with higher-than-average lost workday injury and illness rates. These high-injury worksites are then targeted for inspection. OSHA sends letters to employers with rates that are double the national average encouraging them to seek consultation assistance to improve their workplace safety and health conditions.

The site-specific program allows OSHA to address the non-construction industries and workplaces where the highest rates of lost workday cases due to injury and illness occur. In many cases, these are the same industries that employ a large num-



ber of immigrant workers, such as meat and poultry processing plants. OSHA will increase its total inspections in FY 2002, conducting more than 36,000 Federal inspections and focus enforcement on high-risk jobs.

Of course, there are still some dangerous worksites that are difficult to identify, particularly in the construction industry, where many small employers may work on a site for a few hours and then move to another location. To identify these sites, OSHA is adding construction employers to its site-specific survey and will upgrade its management information system to collect and disseminate additional data on this industry.

OSHA also relies on Local Emphasis Programs (LEP) at area and regional levels to target smaller more hazardous industries and employers that may have a large immigrant workforce. For example, in Florida, many Hispanic workers are employed in the construction trades. Responding to an increasing number of construction fatalities in South Florida, OSHA developed the Construction Accident Reduction Emphasis (CARE) program in March 1999. OSHA also implemented local emphasis programs in this area, focusing on preventing falls and overhead power line accidents. OSHA plans to share all aspects of these local emphasis programs with our staff, through its new Hispanic Task Force formed as part of the Department of Labor's initiatives to assist immigrant workers.

#### **OSHA Initiatives**

In August 2001, in response to the Secretary's directive, OSHA established a Task Force to assess its outreach to Hispanic workers and reduce the number of deaths among Hispanic workers in this country. Headed by OSHA's Regional Administrator in Dallas and comprised of representatives from the National office, local OSHA offices, and state OSHA programs, the task force is actively pursuing creative solutions to the immigrant worker problems.

We plan to hold a best practices conference by the fall of 2002 so employers can share information about those practices that have worked to reduce injuries and illnesses for non-English speaking employees. The Task Force also is establishing a national clearinghouse to catalogue and disseminate for all videos, written publications and other training materials that have been translated into Spanish.

A number of OSHA employees in local offices are bilingual and they help Spanish-speaking and other non-English-speaking workers access OSHA's outreach resources, complaint and other services. The Agency now has a list of both Federal and State OSHA employees who are fluent in Spanish. I plan to expand that list to include other languages. OSHA's toll-free, 800 number, which is used to report emergencies to the agency, is now available in Spanish. OSHA is also seeking to employ staff that speaks languages other than Spanish.

Safety and health training grants are another tool OSHA will use to address the unique problems of non-English-speaking workers. In its FY 2003 budget, the Agency proposes to change the focus of its training grant program. Workplaces have changed significantly, and are employing an increasing number of workers from a myriad of cultures with different languages, literacy and educational levels. OSHA will provide grants to non-profit organizations and professional organizations, colleges, universities and community colleges as well as faith-based and community-based organizations. Grants will enable these groups to establish programs to train employees and small business employers in selected occupational safety and health topics; programs that can continue after the grant has ended. Materials posted on the web will have broad applicability and allow for easy access and training at the convenience of both employers and employees. Among other issues, our training grants will address workplace safety issues specific to Hispanic and other non-English speaking workers.

OSHA's outreach to the Hispanic community is not only found at the National level but is also being done in individual regions across the nation. Several of OSHA's regions have developed programs specific to their regional needs. In Region II, which includes New York and New Jersey, OSHA has worked closely with churches and community organizations representing immigrants. For example, in Central New Jersey, OSHA has worked with the Puerto Rican Congress, attending its annual conference and providing literature and information about the Agency. Also, in New Jersey, OSHA has participated in an alliance begun in 1995 between the Archdiocese of Newark, DOL's Wage and Hour Division and Union of Needletrades, Industrial, and Textile Employees (UNITE) to address the pay/benefits and health and safety conditions faced by workers in the apparel trades. OSHA also contributed material to curriculum developed and presented to every middle and high school student in the Newark, N.J. Archdiocese.

In addition to the Local Emphasis Programs that I mentioned earlier, we have distributed in Florida a variety of educational tools written in Spanish, including

a poster depicting the four major construction hazards, a packet card explaining the dangers of working with overhead power lines, and a pamphlet on ways to eliminate excavation hazards. OSHA teamed with Florida's consultation agency, which provides free safety and health advice to smaller businesses, to offer two ten-hour construction classes in the Fort Lauderdale area. OSHA met with various organizations of Hispanic workers to emphasize the extremely high number of construction fatalities in southern Florida. The results have been impressive. Between 1998 and 2000, the number of falls decreased by one-third, and fatalities caused by contact with overhead power lines dropped 60% during that period.

In Fort Worth, OSHA has provided a 10-hour course on construction safety, conducted in Spanish, and has developed a movable workplace safety billboard in Spanish, which is being displayed throughout the area. Our Fort Worth office also worked with the Hispanic Chamber of Commerce to coordinate courses in Spanish for a safety seminar. OSHA's Houston-North office uses Spanish-speaking compliance officers to interpret employee complaints and to interact with Hispanic workers, particularly on construction inspections. The Dallas office has worked with the Mexican consulate to train Hispanic workers, conducting 8-hour seminars on the leading causes of construction fatalities for Hispanic contractors and their sub-contractors.

OSHA Region VII has translated the Fall Protection Pocket Guide and other safety cards into Spanish and maintains a library of training videos in Spanish addressing hazards such as lead exposure, bloodborne diseases, and lockout/tagout. OSHA's Region IX in the West maintains an 800 number complaint and technical assistance line that provides information in Spanish, Korean and Tagalog.

This is a sample of the outreach, education and training programs for immigrant workers conducted by Federal OSHA. OSHA's Hispanic Task Force is compiling the information on the programs discussed above and other programs developed by our regional and area offices so OSHA field offices can share information and talk to one another about the best way to implement the program and to eliminate barriers to success. This sharing eliminates redundancy and enables OSHA's regions to learn from one another, and collaborate and coordinate programs for immigrant workers while tailoring programs to the specific needs of their geographical area. This sharing can only strengthen our work nationwide.

The Hispanic Task Force is also developing a clearinghouse for Spanish safety and health training materials developed by others. While these materials are not endorsed by the Agency, a list will be available to employers on the OSHA Web site. This will help employers find materials that will help them train and communicate with their Spanish-speaking workers.

In addition to our national and regional programs, there are 26 states that operate their own Occupational Safety and Health programs. Many of them are reaching out to the Hispanic and foreign-born population, too. For example, California, North Carolina, Oregon and Washington, have produced materials designed for agricultural workers whose primary language is Spanish. Each of these states maintains a staff of bilingual employees. New Jersey's on-site consultation program has staffers who can provide the service in Spanish.

On Labor Day, Secretary Chao noted that we could do better in protecting Hispanic workers by reaching out and educating them and their families about safety and health. Of course, not all Latino and Hispanic employees are immigrant workers, but they are the largest single group of immigrant employees. As Secretary Chao has said, immigrants are the dreamers who come to America for a new start and a brighter future. We have a responsibility to protect these individuals from on-the-job dangers. I can assure you, Mr. Chairman, OSHA will continue to enhance our programs and use all of the tools provided by law to protect immigrant workers and all other employees in this Nation.

RESPONSE FROM MR. HENSHAW TO QUESTIONS ASKED BY SENATOR WELLSTONE

U.S. DEPARTMENT OF LABOR,  
WASHINGTON, D.C. 20210,  
*April 19, 2002.*

Hon. PAUL D. WELLSTONE,  
*U.S. Senate,*  
*Washington, D.C. 20510.*

Dear Mr. Chairman: I am writing in response to the questions you have raised since the February 27, 2002 hearing on "Workplace Safety and Health for Immigrant and Low Wage Workers." I again wish to express my appreciation for being invited to testify before the Subcommittee on some of the many ways that the Agen-

cy's regional, area, and state plan offices are reaching out to protect Hispanic and Latino workers, while also increasing compliance assistance for their employers.

Your March 28, 2002 letter contains several different Departmental issues and policy matters. Those questions regarding subjects that do not fall under the Occupational Safety and Health Administration's jurisdiction have been referred to other agencies within the Department of Labor, or to other appropriate federal regulatory agencies.

The following are OSHA's responses to your questions:

*Question 1.* Please indicate the status of the Department of Labor's Inspector General investigation into the Occupational Safety and Health Administration's (OSHA) enforcement efforts with respect to workplace fatalities and injuries of foreign-born workers. Were any of the fatally injured workers under age 18? Did any of the fatalities occur at workplaces employing 10 or fewer workers?

Answer 1. The Inspector General's (IG) report has not yet been completed or forwarded to the Agency. I will be happy to comment upon the findings of the report once it is available.

As I mentioned in my testimony, during a safety or health inspection or a fatality/catastrophe investigation, OSHA does not collect, or require compliance officers to determine, the ethnicity, place of birth, or citizenship status of injured, ill, or deceased workers. Certain inspection data about violations of OSHA standards is maintained in OSHA's Integrated Management Information System (IMIS) database. For instance, federal inspection data includes fatalities of workers under the age of 18.

Also, the database includes total inspections of establishments with 10 or fewer employees where a fatality inspection has been conducted. But the database does not include information on place of birth or ethnicity.

*Question 2.* Please indicate the number of whistleblower complaints involving foreign-born worker fatalities or injuries OSHA has received over the last three years.

Answer 2. Although your question refers to whistleblower complaints related to injuries and fatalities, whistleblower investigations do not address injuries or fatalities. Rather the focus of OSHA whistleblower investigations is on the discriminatory action taken by the employer against a whistleblowing employee. Some examples of discrimination are firing, assignment to an undesirable shift, reducing pay or hours, denial of benefits such as sick leave or vacation time, or blacklisting with other employers, among other actions.

The Agency is responsible for protecting workers' rights under Section 11(c) of the OSH Act of 1970, along with 11 other federal whistleblower statutes. OSHA conducts in-depth interviews with each complainant to determine the need for an investigation, but does not inquire about a person's place of birth, so it is not possible for me to report on the number of whistleblower investigations involving foreign-born workers. If evidence supports a worker's claim of discrimination, OSHA's role is to seek the restoration of the worker's job, earnings and benefits.

*Question 3.* Please indicate the number of investigations OSHA has initiated in the last year that involved foreign-born workers.

Answer 3. As I stated earlier, OSHA health and safety inspections do not involve the collection of an employee's race, ethnicity, place of birth, or citizenship status. Due to the fact that OSHA does not collect such information, I am unable to answer this question.

However, as you know, one of the initiatives OSHA will be implementing in the field soon is a new procedure to collect additional information during each fatality and/or catastrophe investigation conducted by the Agency. This new procedure is to capture data regarding immigrant, foreign-born and Hispanic/Latino worker deaths or serious injuries. It will also aid the Agency in determining whether or not language barriers contribute to workplace fatalities and serious injuries.

Currently, other useful occupational safety and health data is available from the Bureau of Labor Statistics' (BLS) Injuries, Illnesses, and Fatalities program as prescribed under 29 CFR Part 1904—Recording and Reporting Occupational Injuries and Illnesses. See <http://www.bls.gov/iif/home> for details via the Internet. Since 1972, BLS annually reports on the number of workplace injuries, illnesses, and fatalities through two collection methods: an Annual Survey of Occupational Injuries and Illnesses, and starting in 1992, a separate Census of Fatal Occupational Injuries (CFOI).

*Question 4.* Please indicate the status of the National Institute for Occupational Safety and Health study of child labor hazardous orders. In particular, please indicate (1) whether this report has been submitted to OSHA or the Department, if so,

(2) when the report will be released, and (3) what actions OSHA plans to take to protect children as a result of this report to further protect children working in agriculture.

Answer 4. The National Institute for Occupational Safety and Health (NIOSH) is producing this report for the Department's Employment Standards Administration (ESA). ESA's Division of Wage and Hour administers the wage, hour and child labor provisions of the Fair Labor Standards Act, as well as portions of the Migrant and Seasonal Agricultural Worker Protection Act. I have referred your specific questions about the NIOSH study to ESA for a direct response.

ESA has not received the final NIOSH report on child labor hazardous occupation orders. Certainly once it is finalized, the Department will be happy to present a copy to the Subcommittee.

Upon completion of the study, OSHA will review the recommendations, if any, and decide upon a proper course of action.

Also, related information is available at: <http://www.cdc.gov/niosh/childag/ChildAghome.html>. NIOSH leads the National Committee for Childhood Agricultural Injury Prevention (NCCAIP), which works on developing relevant research, education, policy and other interventions aimed at reducing agricultural injuries among children.

*Question 5.* During the past few years, scores of farmworkers have died and many others have been seriously injured by preventable accidents in motor vehicles on their way to and from work in the fields. What is OSHA and/or the Department doing to ensure that safe vehicles are being used to transport farmworkers, day laborers and others? Should safety standards for these vehicles include seats and seat belts? Should the farm operators and other employers that rely on this transportation system be held responsible for ensuring the safety of workers using that transportation? If so, what measures would you propose. If not, please explain.

Answer 5. Because Section 4(b)(1) of the OSH Act limits the Agency from regulating ". . . the working conditions of employees with respect to which other Federal agencies, . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health," I am forwarding your request to the federal agencies discussed below.

ESA's Wage and Hour Division is responsible for enforcing regulations on the transportation of farmworkers if they have H2A visas, or are covered by the Migrant and Seasonal Agricultural Workers Protection Act. These regulations include requirements regarding vehicle safety; driver training, and the insurance to be carried.

Additionally, the Department of Transportation (DOT) Federal Motor Carrier Safety Administration (FMCSA) has exercised its statutory authority in this area by issuing regulations concerning the "Transportation of Migrant Workers." See 49 CFR Part 398. Therefore, to the extent the regulations of FMCSA and ESA cover the transportation of workers, OSHA may not conduct enforcement activity. Lastly, some states also regulate the transportation of farmworkers or day laborers; such laws would be enforced at the state or local level.

*Question 6.* Every summer several farmworkers die from heat stroke in the field. These deaths are preventable by ensuring that farmworkers have available adequate amounts of potable water to drink during work in the fields and that workers have some rest breaks in the shade. What steps is OSHA and/or the Department taking to ensure compliance with the Field Sanitation Standard? Are there other steps that could be taken to prevent these deaths and related injuries?

Answer 6. OSHA no longer has authority to enforce the field sanitation standard (29 CFR 1928.110). In 1997 the Department of Labor made permanent a transfer of specific enforcement activities between the Assistant Secretaries for ESA and OSHA to more effectively and efficiently utilize the Department's resources. Secretary's Orders 5-96, 6-96, and 3-2000 delegated enforcement of the field sanitation standard to ESA's Wage and Hour Division. This authority extends to nine States operating OSHA-approved State plans. In 14 other States operating OSHA-approved State plans, jurisdiction over field sanitation was not given to ESA and remains a State responsibility.

Another limitation on OSHA's involvement with the agriculture industry is the congressional appropriations rider that annually restricts the Agency from conducting inspections at small farms. This restriction also applies to ESA's enforcement of OSHA's field sanitation standard. A farming operation is exempt from all OSHA activity if it does not currently have—or had in the proceeding 12 months—an active temporary labor camp, or if it employs 10 or fewer employees (excluding family members). This rider prohibits compliance assistance, as well as investigations on

small farms stemming from complaints, reports of imminent danger, or fatalities or hospitalization of two or more workers.

Other than these exceptions (and certain instances where ESA enforces the temporary labor camp standard), OSHA enforcement in the agriculture industry includes all working conditions covered by its agricultural standards (29 CFR Part 1928); the seven general industry standards referenced in 29 CFR 1928.21; and the "General Duty Clause" (Section 5(a)(1) of the OSH Act).

Heat stress among farm workers is a serious problem that the Agency is working to bring attention to through education and outreach. OSHA and the Environmental Protection Agency (EPA) jointly issued "A Guide to Heat Stress in Agriculture," in 1993; it offers practical, step-by-step guidance for non-technical managers on how to set up and operate a heat stress control program. In 1998 OSHA began distributing a laminated heat stress card, which workers and employers can easily carry in their pockets. It is available in English and Spanish. Additional resources are available from NIOSH, and through OSHA's Technical Links Web Page: <http://www.osha.gov/SLTC/heatstress>.

*Question 7.* More than a decade ago, OSHA issued a Hazard Communications Standard ensuring that employers educate their workers about the chemicals to which they are exposed in the workplace. Since then, however, my understanding is that OSHA has not enforced this standard with respect to farmworkers' exposure to pesticides in the fields. What steps is OSHA and/or the Department taken with respect to providing farmworkers adequate information about particular pesticides being used, the symptoms of exposure and possible long term effects on their health. In particular, please explain OSHA's current enforcement strategy with respect to ensuring that farmworkers receive such critical information.

*Answer 7.* As noted in the answer to Question 5, due to Section 4(b)(1) of the OSH Act, the Agency is preempted from addressing working conditions that other federal agencies regulate. The Environmental Protection Agency (EPA) has the primary statutory authority (Federal Insecticide, Fungicide, and Rodenticide Act—FIFRA) to regulate the use of, and exposure to, pesticides for agricultural workers. Under FIFRA, in 1974, EPA issued its final "Worker Protection Standard for Agricultural Pesticides" (WPS). The WPS required labeling statements referencing EPA regulations; specified application restrictions; required restricted-entry intervals; required personal protective equipment; and required notification to workers of pesticide applications. WPS was amended in 1992 to not only expand its coverage to employees in forests, nurseries and greenhouses and employees who handle pesticides for use in these locations, but added new provisions for decontamination, emergency assistance, contact with handlers of highly toxic pesticides and pesticide safety training. The requirements contained in EPA's WPS closely parallel those contained in OSHA's Hazard Communications Standard (HCS). Because OSHA cannot conduct enforcement activity over working conditions if another federal agency has exercised its statutory authority over those working conditions, OSHA is preempted from applying its hazardous communication standard. Information about EPA's "Worker Protection Standard for Agricultural Pesticides" can also be obtained at <http://www.epa.gov/pesticides/safety/workers/workers.htm>.

Finally, I wish to respond to a point that was not raised in your March 28th letter, but was raised in the February 27th hearing.

During the hearing one of the witnesses, Mr. Maier, was asked why OSHA reduced penalties in two OMNI Recycling fatality cases in New York. He was also asked about the number of immigrant worker fatalities that he claimed were not investigated by the Agency. Since I did not have the opportunity to address these two important matters at the hearing I am writing to respond now. First, I will address the penalty reductions at OMNI Recycling of Babylon, Inc.

#### *OSHA Penalty Structure*

Since its inception, the Agency has been required by the provisions of Section 17 of the OSH Act to consider four criteria in determining the penalty to be proposed for any civil violation of the OSH Act or OSHA standards: the gravity of the violation; the size of the employer; the employer's good faith; and the employer's previous history of violations. The Agency has detailed procedures in place for applying these criteria in its Field Inspection Reference Manual (FIRM; OSHA Instruction CPL 2.103).

The primary factor in assigning a proposed penalty is the gravity of the violation: the severity of the injury or illness that could occur, and the probability of its occurrence. The other criteria (size, good faith, and history) are used as factors in reducing the proposed penalty in accordance with established Agency guidelines. For example, a small business with no history of OSHA violations would receive a penalty

reduction. The proposed penalty may be further reduced, in order to secure prompt abatement of the cited conditions, in formal or informal settlements with the employer. OSHA's penalty structure is not related to an employer's or employee's ethnicity or citizenship status.

OSHA issues citations for violations of civil law. Violations are classified as willful, serious, repeated, or other-than-serious. A fatality, per se, does not necessarily trigger a higher penalty. However, if the violation or violations contributed to the cause of the fatality and they are classified as willful or serious in nature, OSHA may propose a penalty up to the maximum allowed by law (\$7,000 for serious violations and \$70,000 for willful or repeated violations).

Penalties are assessed only on the basis of the violative condition(s), not on whether a fatality or injury resulted from this violation. Thus OSHA is legally precluded from attempting to weigh the value of a human life with a penalty.

*OSHA's Penalty Structure as Applied to OMNI Recycling, Long Island*

Although OMNI Recycling had two fatalities within a two-year time frame, the two OSHA fatality investigations should not be compared to each other. The conditions and hazards of the second fatality were completely unrelated to the first fatality. OSHA citations are based strictly on worker exposure to hazards and the employer's actions with respect to the hazardous conditions.

The first OMNI investigation, in March 1998, resulted in 17 serious and three other-than-serious violations. Two of these violations were possibly related to the fatality. However, since there were no witnesses, the relationship of these violations to the fatal accident cannot be affirmed. Since OMNI was a small business with less than 60 employees and had no history of OSHA violations, OSHA assessed penalties of \$28,250—a reduction from the full penalty. OMNI's penalties were further reduced to \$20,000 through an informal settlement agreement. This penalty reduction followed the guidelines of the FIRM.

The second OMNI fatality investigation, in February 2000, resulted in two repeat citations involving hazardous conditions that were unrelated to the death, six serious, and four other-than-serious violations. One of the serious violations was directly related to the death. OSHA assessed total penalties of \$19,850. Through an informal settlement process OSHA agreed to reduce the fines to \$16,000 because OMNI agreed to (1) correct all hazards, (2) establish a Safety and Health Program at all their worksites, (3) conduct daily inspections at their worksites, (4) provide training at all their worksites, and (5) contact OSHA's New York consultation services.

OSHA penalties do not follow the same formulas used by worker's compensation or insurance companies to determine death benefits. As I stated above, OSHA's penalty structure is based on violations of hazardous conditions. Neither legally nor morally can OSHA's penalties measure the value of a worker's life. Each worker's death, however, is a reminder to us that we must work harder to ensure safe and healthful working conditions, and encourage employers to do likewise.

I hope this clarifies the activity of the two OSHA inspections conducted at OMNI Recycling.

*Allegations of Uninvestigated Workplace Fatalities*

As you may recall, Mr. Maier claimed that from 1994 to 2000 OSHA did not investigate 800 immigrant worker deaths. Without knowing Mr. Maier's criteria for comparisons, we are unable to thoroughly address these allegations. Mr. Maier stated that computer-assisted reporting allowed for comparisons between the BLS and the OSHA databases. However, OSHA has been unable to duplicate Mr. Maier's findings. Since the Agency does not have ethnicity or citizenship status in the IMIS inspections database, it is impossible to determine which of the fatalities involved immigrant workers and which did not.

Because I cannot address the specific cases without further information about Mr. Maier's methodology, I will limit my discussion to the Agency's overall policies. OSHA's practice is to investigate all occupational fatalities of which we are aware, except those clearly not covered by the OSH Act, such as:

- fatalities involving self-employed individuals, or
- those resulting from working conditions regulated by another federal agency
- fatalities on farms employing ten or fewer workers
- cases of motor vehicle accidents where local law enforcement authorities have primary enforcement responsibility, and
- homicides or suicides where local law enforcement authorities have primary enforcement responsibility.

This is significant when considering that most taxicab drivers are self-employed. According to BLS data from 1994 to 2000, there were 200 foreign-born worker

deaths involving taxicabs. Additionally, 173 foreign-born workplace deaths were due to suicides (self-inflicted wounds); another 1,486 were due to homicides; and 683 were caused by highway accidents. These are fatalities that OSHA would not generally investigate.

The BLS and OSHA databases provide a great deal of information. Notably, neither of them provides information on immigrant worker deaths. The BLS category of foreign-born worker fatality comes the closest to immigrant worker fatality, but as I mentioned in my testimony, foreign-born workers include anyone who was born outside the United States, including those born to American military or business personnel while they are stationed/assigned in another country.

Thank you for the opportunity to respond to your questions and to clarify a statement made by a witness on a later panel. I hope you find this information helpful. I look forward to continuing to work with you to improve the safety and health of all our nation's workers. If you have further questions, please contact me.

Sincerely,

JOHN L. HENSHAW,  
*Assistant Secretary of Occupational Safety and Health.*

Senator WELLSTONE. Dr. Sokas?

Dr. SOKAS. Thank you, Mr. Chairman and Senators Enzi and Clinton, for the opportunity to be here. I will talk fast and will not use slides so we can get through this in 5 minutes. I do have written information that has been submitted.

Occupational injuries and fatalities are tragic but preventable, as you know. Sixteen workers in the United States will die today and every day from traumatic injury, and these deaths are not evenly distributed across the work force. The risk of death for a farm worker is more than 30 times that of a clerical employee. The risk of death for a taxicab driver is more than 40 times as high and for a construction laborer, 47 times as high.

As a group, foreign-born workers differ in terms of where they are in the workplace; although there are exceptions for highly-skilled workers, nevertheless on the whole, they are in the high-risk, low-wage sectors of the work force.

I want to focus on a few higher-risk sectors. Almost one-quarter of agricultural workers in the United States are foreign-born. Many farm workers who are in temporary or part-year employment may feel intimidated about reporting health problems for fear of reprisal and are unfamiliar with their rights as workers.

In response to these concerns, in 1997, NIOSH used lay health workers as advisors and questionnaire administrators in a project to raise awareness of workplace safety issues. We documented the prevalence of musculoskeletal disorders, skin irritation, eye injuries, field sanitation issues, and potential pesticide exposure. NIOSH has widely disseminated these results and continues to support intramural and extramural projects in these areas.

In 1998, we began a collaboration with the Department of Labor collecting large-scale data on the health and injury experience of crop farm workers through the National Agricultural Workers Survey. It is the only national survey that has documented the living and working conditions of immigrant workers. About 7,000 interviews have been completed on the health and injury sections, and data analysis is under way.

We also fund a number of extramural projects, including a study of the effectiveness of peer health workers in promoting the use of safety glasses, a program that uses English as a second language classes to teach teen farm workers about workplace safety, a

project examining child farm labor in the Hmong population of Minnesota, and others. We also provide support to the migrant farm worker STREAM forums, which help researchers, workers and advocates break down barriers to develop cooperation and trust.

Turning to construction, as you heard, 23 percent of fatal occupational injuries to foreign-born workers occur in this industry, disproportionately falling on Hispanic workers. NIOSH has a number of projects aimed at preventing injuries and fatalities in this high-risk group and works with universities and key partners such as the Center to Protect Workers' Rights to coordinate research, evaluate the effectiveness of interventions and disseminate those that emerge as best practices, with an emphasis on the Spanish-speaking work force.

Looking at yet another segment of the immigrant work force, many immigrant workers are employed by small businesses and in the service sector. NIOSH is actively working to prevent injuries and workplace violence in these settings.

To address workplace violence, we are evaluating the effectiveness of various prevention strategies such as the use of shields and digital cameras to reduce robbery-related injuries, assaults, and homicides to taxicab drivers. In Houston, for example, where photographs of those who assault drivers are published in the newspaper, crime against taxicab drivers appears to be declining.

NIOSH is assessing the effectiveness of various State and municipality-based approaches to workplace violence prevention for taxicab drivers as well as for convenience store clerks, health care workers, and other workers at high risk.

In addition to the higher-risk, lower-wage nature of the work, as you know, limited English proficiency contributes to workplace injuries and fatalities. The U.S. Chemical Safety and Hazard Investigation Board identified language barriers in worker training as a key factor in 1998 explosion in Nevada that killed four immigrant workers and injured another six. In response to these findings, the State of Nevada revised its Occupational Safety and Health Act to require that safety training be conducted and made available in a language and format that is understandable to each employee.

Through our Fatality Assessment and Control Evaluation, or FACE, program, NIOSH and 15 States funded by NIOSH conduct evaluations of workplace fatalities to identify potential risk factors and develop recommendations to prevent future incidents of fatal injury.

A number of evaluations have involved immigrant workers, including the case of a 22-year-old Hispanic laborer who fell 41 feet to his death on this second day on the job. In this and other cases, NIOSH-funded investigators have recommended that workers who do not understand English receive safety instruction in a language they understand.

This past fall, we unveiled our NIOSH Spanish website, NIOSH en Espanol, which provides links to additional Spanish language resources. Our other efforts to address low-English-literate workers include creating graphic representation of hazards and the development with the International Labor Organization of an occupational safety and health curriculum.



In addition, we have worked and are working with the National Academy of Sciences to really evaluate communication effectiveness strategy for disseminating information to Spanish-speaking workers.

I will cut to the chase. We have many research needs. The stakeholder-driven National Occupational Research Agenda identified 21 priority areas, one of which is special populations at risk, which focuses on the contribution of occupational factors to health disparities in low-income and immigrant worker populations. We are also looking at the impact of contingent and part-time work and on fatal injuries and other areas in this research agenda. We have partnered with other Federal agencies to support research in these areas but would really emphasize that there are many remaining challenges and opportunities in this arena, particularly for health education research. We also need to develop better tracking methods, as you have heard. We need to develop information in additional languages beyond Spanish and improve prevention, outreach and intervention strategies.

In summary, we hope to continue this work. We recognize that it is only a beginning.

Thank you.

[The prepared statement of Dr. Sokas follows:]

PREPARED STATEMENT OF ROSEMARY SOKAS, M.D., M.O.H.

Mr. Chairman and members of the Subcommittee, on behalf of the National Institute for Occupational Safety and Health (NIOSH), I am pleased to provide this testimony addressing the health and safety of immigrant workers.

NIOSH is an institute within the Centers for Disease Control and Prevention (CDC), a part of the Department of Health and Human Services. CDC's mission is to promote health and quality of life by preventing and controlling disease, injury and disability. NIOSH is responsible for conducting research, providing technical assistance, and making recommendations for the prevention of work-related illness and injury.

Immigrant workers always have played a vital role in our nation's success story because of their important contributions to our institutions, our commerce, and our society. Today's immigrants continue to come to our shores with great hopes, ready to work hard to make better lives for themselves and their families. They will continue to be an important part of our country's future. NIOSH is working to address the needs of immigrant workers through targeted efforts to reduce illness and injury in high-hazard sectors of the workforce and increase appropriate language materials available to workers, employers, clinicians, occupational safety professionals, and faith-based and other non-profit institutions who work with immigrant populations. My testimony today will address the current state of our knowledge regarding the safety and health of immigrant workers and summarize the activities under way at NIOSH to learn more about immigrant worker safety and to reach out to workers and employers through prevention, intervention, and information dissemination.

**Background**

Occupational injuries and illnesses are tragic yet preventable occurrences. Sixteen workers will die today and every day from traumatic injury in the United States. Every locality with a working population of 100,000 will experience four work-related deaths each year, but these deaths will not be distributed evenly across the workforce. The risk of death for a farm worker is more than 31 times that of a clerical employee; the risk of death for a taxicab driver is 42 times as high; for a construction laborer, 47 times as high; and for a timber cutter, the risk is more than 240 times as high. Overall, the industries with the highest occupational mortality rates are mining, agriculture, and construction; the leading overall causes of death are highway incidents and falls. In addition to these fatalities, an estimated 136 Americans die daily from the chronic effects of occupational disease, and 9,000 sustain disabling injuries. Again, these outcomes are not evenly distributed across the workforce.

### **Immigrant Worker Demographics**

To a great extent, the United States remains a nation of immigrants. According to the 2000 Current Population Survey (CPS) conducted by the U.S. Census Bureau for the Bureau of Labor Statistics, Department of Labor, one in every five Americans is an immigrant or the child of an immigrant. These figures include 16.5 million foreign-born workers. Latin America (Mexico, Caribbean, Central America, and South America) is the region of birth for over half of foreign-born workers, followed by Asia, Europe, Africa, and Canada.

Although foreign-born workers are diverse and include highly educated individuals with sought-after technical skills and strong family support, many foreign-born workers are from poorer, more disadvantaged societies, have recently endured disasters, or have arrived from war-torn countries.

As a group, foreign-born workers differ from U.S.-born workers in occupation and rates of injuries and fatalities. On the whole, foreign-born workers are less likely to be employed in managerial and professional specialty, technical, sales, and administrative support occupations (45.6% of foreign-born workers versus 61.5% of U.S.-born workers). At the same time, they are more likely to be employed in the higher-risk and lower-wage sectors of the workforce.

Nineteen percent of all foreign-born workers are employed in service occupations (private household, personal, cleaning and building protective service, food service, and health service), versus 13% of all U.S.-born workers. Of foreign-born workers in service occupations, 62% were born in Latin America.

Nineteen percent of all foreign-born workers are employed as operators, fabricators, and laborers (machine operators, assemblers, and inspectors; transportation and other material moving; handlers, equipment cleaners, helpers; construction laborers), versus 13% of all U.S.-born workers. These workers are also primarily from Latin America.

And foreign-born workers are twice as likely to be employed in farming, forestry, and fishing as U.S.-born workers. Of the foreign-born farm worker population, 90% are from Latin America.

According to the Bureau of Labor Statistics Census of Fatal Occupational Injuries (CFOI) surveillance system, between 1992 and 1998, 25% of work-related deaths of foreign-born workers occurred in retail operations (many resulting from crime-related homicides). The industry with the second highest number of foreign-born worker fatalities was construction (17%), followed by transportation and public utilities (15%).

The employment data we have may not provide a complete picture of the immigrant worker population. Recent or undocumented workers are likely to have been excluded from data collections since they may not have stable residences or may live in unofficial residences such as garages and backyard structures, or in shelters.

Furthermore, limited English proficiency may contribute directly to workplace fatalities. For example, the U.S. Chemical Safety and Hazard Investigation Board identified language barriers in worker training as a key factor in a January 7, 1998, explosion at a chemical company in Mustang, Nevada, that killed four immigrant workers and injured another six. In response to these findings, the State of Nevada revised the Nevada Occupational Safety and Health Act to include the following requirement: "The written safety program and all training programs required pursuant to this section must be conducted and made available in a language and format that is understandable to each employee."

### **Foreign-Born Agriculture Workers**

There were 101 fatal injuries to foreign-born workers in the agriculture industry in the U.S. in 2000, comprising 16% of all occupational fatalities in agriculture. In 1990, with guidance from Congress, NIOSH established the National Program in Agricultural Safety and Health to address the severe health and safety hazards in agriculture and to protect and enhance the health and safety of farm operators, workers, and families. The program now includes funding for ten Centers across the country for agricultural disease and injury research, education, and prevention, as well as the National Children's Center for Rural and Agricultural Health and Safety.

In an effort to improve surveillance of farm worker safety and health, in 1995, NIOSH convened an expert work group consisting of public policy experts, farm worker representatives, and occupational health professionals. Although many of the findings and recommendations of the working group were specific to the occupational exposures of farm workers, they also addressed some issues generic to immigrant workers, especially recent immigrants. One of the key findings of the group was that many farm workers are employed in temporary, part-year employment and may feel intimidated about reporting health problems for fear of reprisals. These

concerns are compounded when farm workers are undocumented immigrants. Also, immigrant farm workers may have different cultural beliefs that can influence their understanding of health risks, disease causation and treatment options. Another finding of the workgroup was that immigrants may be unfamiliar with their rights as workers including: health care coverage, lost work time payments available through workers' compensation, and their right to make complaints to OSHA or other government agencies when they encounter unsafe working conditions. The work group recommended forming research teams that include community members who are knowledgeable about local customs and concerns and have the trust of the community. For example, they recommended the use of "promotores" or lay community health workers to provide better outreach and communication with the worker community.

In 1997, based on the recommendations of the work group, NIOSH designed a pilot surveillance project which used lay health workers as advisors and as questionnaire administrators. The survey populations were in large part Mexican or Mexican-American so the obvious advantage was knowledge of language, especially local language variations. Other advantages included access to the community, knowledge of the local area, and a stake in the success of the project. The project raised awareness of the importance of occupational health and safety within the farm worker communities and documented the prevalence of musculoskeletal disorders, skin and eye irritation, field sanitation, and potential pesticide exposure. In addition, the results from this study have been disseminated to workers and other interested parties through collaborating organizations, at migrant health forums, at state meetings, and at general public health conferences.

To increase our understanding of the immigrant agricultural worker population, NIOSH began a collaboration with the Department of Labor in 1998 to collect large-scale data on the health and injury experience of hired crop farm workers through the National Agricultural Workers Survey (NAWS). NAWS data collected in fiscal 1999–2000 reveal that 85 percent of hired crop farm workers were foreign-born. The NAWS takes into account the seasonality and distribution of agricultural work done in the U.S. An employment-based survey, in which workers are found and sampled at their work sites, the NAWS is recognized for its ability to locate immigrant workers who may otherwise be missed in household surveys due to their mobility and/or nonstandard housing arrangements. It is the only national study that has documented the living and working conditions of immigrant workers. About 7000 interviews have been completed on the health and injury sections, and data analysis is underway.

Current NIOSH-funded research and education projects targeted at immigrant farm workers include: (1) annual Migrant Farmworker Stream Forums which help researchers, workers, and advocates break down barriers to develop cooperation and trust; (2) teaching teen farm workers about workplace safety through school-based ESL (English as a Second Language) classes; (3) maintaining the National Agricultural Safety Database; (4) using peer educators to train high school students; (5) a health education project using theater as a medium, thereby addressing literacy limitations; and (6) examining child farm labor in the Hmong population in Minnesota.

#### **Construction Worker-Related Initiatives**

According to the CFI, in 2000, 23% of fatal occupational injuries to foreign-born workers occurred to construction laborers and workers in construction trades (i.e. brick masons, carpenters, drywall installers, electricians, painters, roofers, structural metal workers). While the number of Hispanics working in construction in the U.S. increased 19.8% between 1996 and 1997, the fatality rate among these workers increased 40.7% (CFI, 1998).

NIOSH has a number of projects aimed at preventing injuries and fatalities to construction workers, a high-risk industry for immigrants. For example, NIOSH is doing a study on drywall work, the construction occupation that has the highest percentage of Hispanic workers. NIOSH participated in 2000, along with other Federal agencies and the National Safety Council, in organizing and participating in the "Hispanic Forum on a Safe and Healthy Environment" which discussed a range of safety and health topics including issues relevant to construction safety. NIOSH also works with universities and key partners such as the Center to Protect Workers' Rights to coordinate research, evaluate the effectiveness of interventions, and disseminate those that emerge as best practices. Two current projects address: (1) evaluation of CPS data describing Hispanic construction workers with the objective of guiding development of initiatives targeting this group and very low-income construction workers in general, and (2) safety culture of Hispanic workers in construction.

NIOSH also targets the immigrant population for health education. For silicosis, a fatal disease which was identified in rock drillers and other construction workers, NIOSH developed a silicosis survey in Spanish and evaluated the effectiveness of targeting a silicosis prevention message to Hispanic construction workers. We have now developed a Spanish translation of silicosis education materials. Other construction-related education materials available in Spanish cover topics such as sand-blasting, operation of wood chippers, electrocutions and falls during tree trimmings, working in hot environments, and work-related hearing loss. The Electronic Library for Construction Occupational Safety and Health (eLCOSH), funded by NIOSH, provides English and Spanish education materials relevant to construction. The materials are available on the Internet for distribution by trainers and health educators.

#### **Safety Promotion, Hazard Evaluation, and Workplace Violence Prevention**

Many immigrant workers are employed in the service sector and small businesses. NIOSH is actively working to disseminate information to prevent injuries and workplace violence in these industries. In 2000, 24% of fatal occupational injuries to foreign-born workers were due to homicides. The majority of foreign-born homicide victims were tending a retail establishment; ten percent were in vehicular and transportation operations.

To address workplace violence, NIOSH is evaluating the effectiveness of various prevention strategies. NIOSH researchers are assessing crime prevention strategies for taxicabs, such as bullet-resistant partitions, panic buttons, satellite-based tracking devices, and driver training, in reducing robbery-related injuries, assaults, and homicides to taxicab drivers. NIOSH is also assessing the effectiveness of various state-based approaches to workplace violence prevention, including state-specific occupational safety and health regulations, as well as other regulatory activities that might enhance workplace violence prevention.

The results of much of our research is communicated on our web site. For example, the new NIOSH Spanish-language web site, "*NIOSH en Español*," includes materials addressing topics such as workplace stress and prevention of homicide in the workplace.

For nonfatal injuries, NIOSH has also funded a range of projects relevant to immigrant workers, including research on home health care aides and poultry workers. We currently have a health hazard evaluation document available on dry cleaning chemical hazards translated into Korean for Korean operators and employees of dry cleaning establishments and hope to translate more materials into more languages in the future. The NIOSH Health Hazard Evaluation Program is available to employers and to workers and their representatives and provides safety and health evaluation and recommendations at no cost to the employer.

Through NIOSH's Fatality Assessment and Control Evaluation (FACE) Program, NIOSH, and state-based evaluators in 15 states funded by NIOSH, conduct evaluations of workplace fatalities using an epidemiologic model to identify potential risk factors and develop recommendations to reduce the risk of fatal injury. Since the FACE program was initiated, NIOSH and its state partners have conducted a number of evaluations of the deaths of immigrant workers. Examples include a machinist who was pinned between parts of metal materials handling equipment and a 22-year-old laborer who fell 41 feet to his death from a roof under construction. Language barriers were identified in each of these two instances. NIOSH-funded evaluators recommended that supervisors ensure that workers who do not understand English are offered safety instructions in a language they do understand.

#### **Information Dissemination**

NIOSH has developed many innovative methods of communicating occupational health and safety information to immigrant workers. Immigrant workers who have Limited English Proficiency (LEP) are susceptible to failures of communication with their employers and co-workers which can lead to work-related injuries and fatalities. NIOSH is working to accurately enumerate the number of LEP workers in the U.S. by occupation and high-risk industries, e.g., construction, agriculture, and mining. Using this information, NIOSH will be better able to develop new methods to communicate injury risk and prevention information to LEP workers.

NIOSH recently published a document entitled "*Simple Solutions: Ergonomics For Farm Workers*." Backaches and pain in the shoulders, arms, and hands are the most common symptoms that farm workers report. The "tip sheets" in this booklet show how to make or order inexpensive new tools or to modify existing ones to reduce the risk of pain.

Current efforts to address low-English-literate workers include development of graphic representation of hazards and the development, with the International Labor Organization, of an occupational safety and health curriculum which may

benefit immigrant workers. Also, NIOSH is partnering with international organizations to fund a web site which provides International Chemical Safety Cards (ICSC) in 13 languages. The cards contain summaries of chemical safety information for use at the "shop floor" level in factories and other workplaces.

We are working with the National Academy of Sciences to host a workshop to develop a Spanish-language dissemination strategy. Currently, in addition to consulting our Spanish-language web site, Spanish-speaking workers can call the NIOSH 800 number (800-356-4674) and access Spanish speakers.

#### **NIOSH Extramural Research**

In 1996, NIOSH and hundreds of its stakeholders launched the National Occupational Research Agenda (NORA), a framework for setting priorities in occupational safety and health research. One of the priority research areas identified was Special Populations at Risk. One focus of the NORA Special Populations at Risk team is the contribution of occupational factors to health disparities in low-income populations, including the immigrant worker population.

Research into the immigrant worker population poses many challenges, including: language/cultural barriers, greater job mobility, over-representation in temporary work situations, over-representation in small industries, and employers less likely to want to participate in occupational health research. The goal of the NORA Special Populations team is to identify gaps in research and make recommendations for new types of survey instruments to be developed. Issues of concern include validating questionnaires for multi-cultural, low-literacy, non-English speaking populations and developing questions that have universal application across a wide range of occupations and exposure situations.

Additional NORA priority areas that address the specific needs of immigrant workers include the Organization of Work Team, which has focused attention on contingent and part-time work; the Traumatic Injuries Team, focused on fatal injuries, and the Intervention Effectiveness Team, which has developed guidelines for taking off-the-shelf materials and evaluating their efficacy in workplaces. Alone as well as in partnership with the National Institutes of Health, the Environmental Protection Agency and others, NIOSH has funded research projects to evaluate teen farm worker education and specific health and safety interventions, state-based pesticide illness tracking, the use of community health centers to track minority occupational health outcomes, control technologies to reduce electrocutions, and a variety of innovative programs to track and prevent injury and illness among high-risk, low-wage and LEP workers.

#### **Opportunities for Improving Immigrant Worker Health and Safety**

There are many opportunities for research and health education activities that target the immigrant worker population.

Data collections involving immigrant workers can be improved. Researchers should take into account not only cultural and language barriers, but also factors such as job insecurity, high job mobility, temporary employment, and informal employment such as day labor and domestic and childcare work. Interventions must better address needs and concerns of small employers, and workplace health and safety recommendations should be appropriate to small businesses where immigrant workers are often employed. In general, occupational health research should incorporate multi-disciplinary approaches that include disciplines such as engineering, economics, sociology, anthropology, and political science.

Community-based programs for immigrant workers could include an occupational safety and health component which would address the social/political challenges low-wage immigrant workers face, including lack of transportation and access to social services, inadequate housing, and exploitation due to their unfamiliarity with U.S. culture and institutions. Special efforts should be made to educate immigrant workers about U.S. regulations and compensation programs and take into account concerns of undocumented immigrants.

#### **Conclusion**

In summary, NIOSH is making progress in working to address the needs of immigrant workers. The activities mentioned herein are only the beginning of our efforts to conduct research into immigrant worker safety and health, track injuries and illnesses, and communicate workplace health and safety issues to immigrant workers. Many challenges specific to immigrant workers have been identified and innovative prevention strategies have been developed. Increased understanding of the experience and concerns of immigrant workers will help us better tailor education and intervention programs to the needs of this diverse population. NIOSH is dedicated to continuing this work to further protect the health and safety of the immigrant worker population.

I will be glad to answer any questions you may have.

Senator WELLSTONE. Thank you, Dr. Sokas. You can take a breath now.

[Laughter.]

I am just absolutely amazed that you were able to do that.

Mr. HENSHAW. I am going to take lessons from her.

Senator WELLSTONE. No, no, no, not at all. Really, Mr. Henshaw, I was embarrassed even saying that to you, because you are in such a key position, and we really thank you for being here.

I think what we are going to do—Senator Enzi made a good suggestion which is that we will probably submit written questions to you as well, and each of us will take 5 minutes. I know what happens. Lots of people come to testify, and then a vote comes up, and no one comes later on, and people have to leave, and it is not fair. So we are going to restrict ourselves to 5 minutes each and then will submit written questions. And if you can give fairly brief answers, then we can ask more questions of you, too.

First, Mr. Henshaw—and I do not like to do this to you, but you know this question is coming, and it has to do with repetitive stress injuries—the Department has still not announced what it is going to do. Since this rule or standard was overturned last March, an estimated 1,648,080 workers have suffered repetitive stress injuries. Every 18 seconds, a worker suffers a repetitive stress injury in the workplace. That represents 5,000 injured workers every day in the United States of America.

Can you shed any light on when we are going to see some action, because as you know, we were promised by the Secretary last March that there would be a comprehensive approach that you all would be taking, and we have not seen anything yet.

Mr. HENSHAW. Mr. Chairman, I think you know my background. I have been in this business for 26 years, and I know that importance of safety and health, and I know the fact that ergonomic-related injuries or injuries that are associated with repetitive stress and awkward postures are real and disabling injuries. They need to be addressed; they are important, and they are a high priority for us.

You also know that we have been working since I was confirmed in August. We have held forums to gather more information, relevant information, and we have been looking at that information. As the Secretary announced, as a result of 9-11, our focus has been drawn toward those issues dealing with the attacks of September 11 as well as anthrax and homeland security.

So we are in the process of reviewing all that information and determining what our comprehensive approach is, and it will be coming out soon.

Senator WELLSTONE. Well, first of all, I do not want to beat up on you. You came here today, and I appreciate who you are and the work that you do. I would say that if you could just communicate this to the Secretary because we have been waiting a long time, and your response is the response that we have been getting every time we ask the question. And we have been asking the question ever since last March. So that, for whatever it is worth, I think those of us who feel strongly about this issue and want to see this comprehensive approach, if you will, the proof is in the pudding,

and we are just not getting any results from you. So please tell the Secretary that we are becoming impatient and we want to see some action. A lot of people are experiencing disabling injuries in the workplace. Enough said.

I absolutely appreciate the work you are doing with Hispanic workers and some of the actions that you have taken, and I thank you for giving us that report today. There are lots of other workers, obviously, from immigrant communities who need the additional assistance and support. That is why I do not understand the Department's efforts to eliminate the Susan Harwood Institutional Competency Grants. As you well know, these go to a lot of the non-government organizations that provide a lot of training to people in workplace safety that is culturally sensitive, that is done in native languages. So I do not quite understand why the Department is now trying to eliminate this program. Can you shed some light on this?

Mr. HENSHAW. As you know, through the appropriations and the restoration, we have \$11.2 million for this year for the Susan Harwood grants, and we will be making the decisions on the applications and criteria for that grant process very soon, for the 2002 budget. And obviously, the criteria are going to include nonEnglish-speaking, hard-to-reach populations, just as in 2001.

The request for 2003 is for \$4 million for the grant program. All of the individuals who applied in 2000, 2001, and 2002 can apply for the grant money in 2003. So we are not excluding anybody from that process. What we are trying to focus on is reaching out and accomplishing—for that \$4 million that we have in our budget, we want to absolutely maximize and optimize those funds to reach the populations that need to be reached. So that is what we are going to focus on in 2003, is to optimize and completely leverage that money to the extent we possibly can, reaching out to as many people as we possibly can with that \$4 million. And all of the applicants who applied in 2001 and 2002 will be eligible in 2003.

Senator WELLSTONE. I do not understand. You are going to make a cut from \$11 million to \$4 million for a program where the data shows that grantees have trained over 80 percent more workers than planned for in the first year. Why are you cutting a program that is effective in doing the very outreach and training that we need in order to protect workers? Why are you cutting this program?

Mr. HENSHAW. Mr. Chairman, you know that obviously, we are operating under a wartime budget and recovering from a recession, and we had to make some serious choices as to where to put our money. And as you know, we are maintaining a strong, fair, and effective enforcement policy, and we are going to continue with that, in fact, increasing our enforcement efforts and increasing our inspections by 1,300 more inspections in 2003. We are also increasing our efforts in compliance assistance, as Senator Enzi mentioned, where we really believe we will get a bigger bang for the buck. We will continue to do that. We have \$4,000 for grant money. What we will do is devise a process and award grants to those where we can get the biggest bang for the buck and reach as many employees as we can, using new technologies and new approaches that will allow us to reach more people.

Senator WELLSTONE. Well, I have got to live up to my agreement on this, and Dr. Sokas, I will have questions for you as well. I see cutting this, I see cutting the enforcement budget as well, and you are telling me, "Well, you know, we have a war before us." But with all due respect—and again, Mike, I promise you, I am not going to get on my soapbox on this—but I can look at the tax cuts, I can look at the ways in which there is not going to be revenue, and there are tradeoffs, and the only thing I can tell you is that given a lot of the testimony that we are going to hear today, it does not do a lot of people who are disabled and in tremendous pain and cannot support their families or lose their lives because of their injuries a lot of good to see that we are making cuts in the very programs that are there for their protection.

I just want to express my dismay. I think this is a profound mistake. It is not you. I think you are very committed to this work. But I just think we need the resources.

Senator Enzi?

Senator ENZI. Thank you, Mr. Chairman.

I want to thank both of you for your testimony, and I did learn a lot by reading through it. One of the biggest surprises, though, Dr. Sokas, was your statistics on the relative number of injuries compared to secretarial services; and I did not know that being a cab driver was more hazardous than being a farm worker. I thought farms had more injuries than almost anything else, but I saw that timber had 240 times compared to 31 times, cabbies had 41 times compared to 31 times.

I will ask a question in a minute, but before I ask the question, I did want to comment on the progress that OSHA is making. I appreciate their Spanish website and the fact that they are hiring Spanish-speaking employees to help and are now going into some other languages.

I want to congratulate you on your interaction with police, fire, and emergency people. Finding the injuries in some of these segments is very difficult, and they are underreported, and I think that that is an important data collection point.

I am pleased with the new information collection that you are going to be doing in some additional categories, and I have always been pleased when there was targeting of businesses with accidents. Of course, the only way you can target them is to come up with good data, and both of you get to work with the good data.

The question that I have for both of you is that I am concerned about small businesses not having the capability to adequately assess immigrant workers' skills and experience levels, and I am concerned with ensuring that small businesses are included in the development and delivery of immigrant worker safety initiatives. I think that small business probably employs a lot of the day workers, and as I mentioned, we do not have good statistics on how many of those are immigrant workers.

Could you comment on this and give me some ideas as to how that can be accomplished and how you can ensure that that will happen?

Mr. Henshaw?

Mr. HENSHAW. Yes, Senator Enzi. Small businesses, as you know, have to be a key focus of ours. That is where the majority



of employees work, and certainly the Hispanic population and the immigrant population.

The website is available for employees and employers, so the employers can go to the website. Many employers are Spanish-speaking themselves, and some know very little English. We want to reach out to those employers.

Two weeks ago, I met with the Hispanic Contractors of America, a relatively small organization that deals with small contractors, getting to the contractors and the employers to make sure they understand their responsibility to train employees. And the training is not just to speak the words, not just to speak in Spanish and provide the material, but actually implicit in our requirements is to make sure that those employees understand what those issues are and how the law protects them and what is safe and what is not and the standards that employers and employees must abide by.

So we are reaching out to the contractors and reaching out to the employees and reaching out to the small businesses where most of these employees are employed.

Senator ENZI. Dr. Sokas?

Dr. SOKAS. Yes, thank you. I did want to point out that those were deaths, and some of the severe injury rates would be different, and also that among self-employed individuals, the death rate is actually three times what it is for the work force as a whole. So that in fact small businesses are critically important and very difficult to reach. And as Senator Wellstone mentioned, we are a part of the Centers for Disease Control in Health and Human Services, and we are trying to figure out ways to approach that through community-based organizations and State-based public health departments to really provide information for small businesses.

For example, at the NORA Symposium we had last year, the award winners were a group from Oregon that worked with the State public health association, several different small business employee associations, including restaurant workers, and the local United Food and Commercial Workers Union, to address specific problems that occur with small businesses and ways to address them effectively, and they had marked success in reducing dermatitis.

So we absolutely agree that that is a priority.

Senator ENZI. Thank you. I will have some follow-up questions on that, and I will put those in writing, but I do want to comment that besides having the special language safety training, there are some problems on the job when there is a mix of languages so that adequate warning cannot be shared or comments about the work site cannot be communicated properly. Accidents can come out of that, and that is an area that I do not even know how to concentrate on, but I hope you will have some suggestions on, too.

Thank you, Mr. Chairman.

Senator WELLSTONE. Senator Clinton?

Senator CLINTON. Thank you very much, Mr. Chairman.

I think Senator Enzi has just described every workplace in New York, because there is hardly a one that does not have, if not totally different languages, different dialects and different regional

uses of the same language that make it difficult for communication to be easily accomplished.

Thank you both for being here, and Mr. Henshaw, thank you for your commitment to working with us on these issues. I think our bottom line is that we believe there needs to be increased enforcement of Federal labor protections governing health and safety discrimination and wage and hour laws because of the reports that we have received concerning the particular issues that confront day laborers and immigrant workers.

One of the ideas that has been promoted is to increase the penalties associated with nonreporting to make them severe enough so that businesses do report and also to use them as a way of supplementing the funds available to provide additional training, supervision and oversight.

Could you tell us whether you would support increasing the penalties for businesses that fail to report fatalities and injuries to OSHA?

Mr. HENSHAW. I would certainly be willing to work with you as we address the penalty structure. We have a penalty structure that was, as you know, modified a few years ago. That penalty structure has served us well. Obviously, things change, and if that is appropriate, we could work on those issues.

Just to let you know, we did find 138 occasions last year where people did not report fatalities, and that totalled over \$200,000 in penalties. So we are actively pursuing the nonreporting and will continue to do that.

Senator CLINTON. And what about the investigative function of OSHA? In the Newsday series that we will hear more about in a few minutes, a thorough analysis of the labor records in New York found that, for example, 161 immigrants died in retail jobs over the 6-year period of their study, yet OSHA never investigated 143 of those deaths.

So part of what we are hoping to achieve through this hearing and through our cooperative efforts is to increase not only reporting but also investigation. And I think that perhaps one of the ways we can address that is to increase the funds available, as Senator Wellstone was saying, that you have to work with as you attempt to meet these obligations.

Second, I was pleased to hear in your testimony that you are adding construction employers to your site-specific studies. Could you tell us whether OSHA has plans or is currently investigating other industries with high numbers of low-wage immigrant workers, such as the retail industry and the garment industry?

Mr. HENSHAW. Yes. That is part of our data collection initiative. As you may or may not know, we sent out last year our survey on 8,000 establishments, including some retail, and we are including 16,000 facilities for construction, small construction companies. So we will be adding that to our survey this year, and that will be part of our site-specific targeting.

But keep in mind that over 50 percent of our inspections are construction sites, and generally, those sites average fewer than 41 employees. So we are focusing on the small ones during our normal inspection process, including our site-specifics, and we will be adding that next year to our data collection.

Senator CLINTON. How about the retail and garment industries?

Mr. HENSHAW. Some of the retail, certainly the areas where there is high Hispanic population. I will need to go back and look and get back to you about exactly what retail facilities and which ZIP codes we are going to be including in the survey next year. I will be glad to do that.

Senator CLINTON. I would appreciate that.

I would also hope that the Department of Labor would conduct research on subcontracting in the informal economy. We have a lot of trouble getting good statistics on what is called "contingent work," yet we know that contingent workers are part of the change in the 21st century work force. I think, Mr. Chairman, that just as we had to in the 20th century develop work rules for the 20th century work force, we need 21st century work rules, and part of what I think we have to focus on is this whole area of contingency work, and certainly immigrant workers are a big part of that.

Dr. Sokas, I appreciate greatly you being here and the work that you are doing and the attention you are paying to these issues. Could you tell us when you expect your special population team to come out with their findings regarding the gaps in research on immigrant workers, and do you have a rough cost estimate of what a comprehensive study of immigrant workers would cost?

Dr. SOKAS. They are two separate questions. The Special Populations At Risk Team, probably best guesstimate by the end of the calendar year, will have something together that is useful that will go out to people, and there are team members working on that actively.

I do not think we have really put together specific suggestions to the point where we could put a cost estimate on it. I would suggest that the targeting of research dollars in collaboration, for example, with NIH for looking at community clinics as a source of information and some of this other activity is ongoing, and we have managed to leverage some funding there. I would really have to get back with you on cost estimates.

Senator CLINTON. Thank you.

Senator WELLSTONE. Thank you very much.

Let me thank both Mr. Henshaw and Dr. Sokas so much for coming. We much appreciate your time.

Before I bring up the next panel, by the way, there are some additional seats—as long as you leave just a few up here—if some of you want to sit up here, if anybody is having a tough time standing in the back, there are a couple more chairs up here.

Thank you both so much. It is much appreciated.

Let me now call the final panel. I will introduce each of the panelists, and we thank all of you for coming.

You Di Liao is a garment industry worker. She emigrated to America from a province in Southern China where she had been a farmer. For more than 10 years, she worked in a garment sweatshop in New York. She was injured on the job in the summer of 1997 and was unable to continue working. She is still waiting to receive her worker's compensation benefits. Ms. Liao is representing the It's About Time Campaign for Workers' Health and Safety, which is sponsored by the Chinese Staff and Workers' Association,

the National Mobilization Against Sweatshops, and Worker's Awaaz.

Arturo Rodriguez is president of United Farm Workers. This year, United Farm Workers celebrates its 40th year in the country. Mr. Rodriguez is an exceptional leader, carrying on the vision of Cesar Chavez for gaining dignity, respect, decent wages and working conditions for millions of farm worker families in this country.

Tom Maier is a remarkable reporter for Newsday who has authored an exceptional and I think chilling series on the plight of immigrant workers in our country. His series detailed the serious and devastating workplace safety and health problems faced by these very vulnerable workers. We have asked him here today to share with us the key findings from his journalistic research.

Bobby Jackson is vice president for national programs for the National Safety Council. The National Safety Council was founded in 1913 and was chartered by the U.S. Congress. We thank you, Mr. Jackson, for your fine work.

And finally, Omar Henriquez, with the New York Committee on Occupational Safety and Health, where he is coordinator of the Immigrant and Youth Program. NYCOSH is a private, nonprofit, union-based health and safety organization located in Manhattan.

Senator Clinton, if you want to say more about any of the panelists, you are welcome to.

Senator CLINTON. No. You did a great job.

Senator WELLSTONE. Thank you.

You Di Liao, we will start with you.

**STATEMENTS OF YOU DI LIAO, GARMENT INDUSTRY WORKER, NEW YORK, NY, ACCOMPANIED BY JOANNE LUM; ARTURO S. RODRIGUEZ, KEENE, CA, PRESIDENT, UNITED FARM WORKERS OF AMERICA, AFL-CIO; TOM MAIER, MELVILLE, NY, REPORTER, NEWSDAY; BOBBY JACKSON, VICE PRESIDENT FOR NATIONAL PROGRAMS, NATIONAL SAFETY COUNCIL, WASHINGTON, DC; AND OMAR HENRIQUEZ, COORDINATOR, YOUTH AND IMMIGRANT PROJECT, NEW YORK COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH, NEW YORK, NY**

Ms. LUM. My name is Joanne Lum. I have been asked by the witness, Ms. Liao, to serve today as an advisor to her because her occupational injury to her head caused her to have problems with concentration and memory. So today, she is going to speak from her personal experience as an injured worker, but she would also like to refer you to her written testimony submitted earlier this week.

She and I would be happy to respond to any questions that you have. We would also like to thank Senator Clinton for giving us this opportunity to be heard today.

Ms. LIAO. [Through interpreter.] My name is Mrs. You Di Liao. I am here today to represent the It's About Time Campaign for Workers' Health and Safety, which is sponsored by the Chinese Staff and Workers' Association, National Mobilization Against Sweatshops and Workers' Awaaz.

I am also here to represent all the workers in this country who, like myself, are stripped of our health and our dignity day by day. I am here to assert our demands.

Although I am a garment worker, I represent workers from all different industries and backgrounds. I have been working in the garment industry for most of the time that I have been in this country. I have worked as a garment hanger in garment factories for nearly 10 years now.

Usually, I worked 6 to 7 days a week, and I worked at least 14 hours a day when I was working in the garment factory. My boss put extreme pressure on me to finish my orders quickly, and this caused me to undergo extreme stress.

On July 4, 1997, when I was working, I was told to perform a very heavy load of garments, and I was going to lift this bag of garments, and I suddenly fell, collapsed, and hit the floor. I suffered serious injuries over my entire body, and I was immediately rushed to the hospital. When I left the hospital, I had no arm to work with and no leg to walk on.

After being discharged from the hospital, I realized that I was permanently disabled, I could no longer work, and I could no longer take care of myself. This is when I applied for worker compensation benefits.

I am just one of hundreds of injured workers in New York State and one of millions of injured workers across the country. It has been 4 years now, and I have not received one penny from the workers' compensation board.

The United States is a country that prides itself on human rights, but if other workers continue to work these long hours like I did, they will also be stripped of their dignity and health and will eventually become injured. Working people in our country are slowly dying.

When we are injured, we must wait 4, 8, or even 12 years for our cases to be resolved by the workers' compensation board. Meanwhile, we have nothing to live on; our families fall apart. And when we do receive benefits, our payments are as low as \$40 a week.

How can we live on \$40 a week? Nobody can. We are treated like garbage. In America, there is no Federal or State law that prohibits mandatory overtime or delays of the workers' compensation board. Isn't this a violation of our human rights? It is a violation of international law under the NAFTA labor side companion agreement; yet the Government has done nothing to enforce this.

So, last October, a delegation of injured workers including myself traveled to Mexico to file charges against the New York State Workers' Compensation Board for violations of those health and safety provisions under the labor side agreement under NAFTA. So far, the Federal Government has done nothing in response. Why is this so?

We hope today that the subcommittee and the Senate will take immediate action. Most importantly, we call on you to introduce a Federal law that prohibits mandatory overtime. And we also demand a law that prohibits delays in workers' compensation, which is destroying so many of our lives.

We ask you to implement the Federal Government's commitment by developing a program that enforces the workers' health and safety rights provisions that are guaranteed under NAFTA and its labor side agreement.

I can no longer wait. Of course, injured workers can no longer wait. If you care about preventing further workplace injuries and deaths, please act now to protect our human rights.

Thank you very much.

Senator WELLSTONE. Thank you, Ms. Liao. I think that your Senator from New York is very, very committed to these issues. We are not holding this hearing just for symbolic reasons, and we intend to do everything we can to make a difference, to make a positive difference in the lives of so many hardworking people.

[The prepared statement of Ms. Liao follows:]

PREPARED STATEMENT OF YOU DI LIAO

My name is Mrs. You Di Liao. I am here today to represent the *It's About TIME! Campaign for Workers' Health and Safety*, which is sponsored by the Chinese Staff & Workers' Association, National Mobilization Against SweatShops and Workers' Awaaz. I am also here to represent all the workers in this country who, like myself, are stripped of our health and our dignity day by day. For more than ten years, I worked in a garment sweatshop. From sunrise to well after sunset, I hung garments in a unionized factory. Each week I worked 6–7 days a week, 14 hours a day, like many thousands of garment workers. These crushing hours put me under intense stress. On July 4, 1997, while reaching for plastic garment bags, I collapsed and hit the floor. I then suffered a stroke, and was hospitalized for 40 days. When I left the hospital, I had no arm to work with and no leg to walk on.

I am only one of hundreds of thousands of injured workers in New York State and the millions of injured workers across the country. If you are not injured now and you're working long hours, it's just a matter of time before you develop serious health problems or injuries. How could it be that in the United States it is legal for bosses to force us to work these overtime hours and fire us if we dare to refuse? In a country that prides itself on its human-rights record, countless working people are being killed slowly. It's not enough to look at deaths on the job or the lack of bilingual education on health and safety. What about the majority of us—people who are robbed of our health little by little, day in and day out, until there is nothing left of us?

When we are injured, we must wait four, eight, or even 12 years for our cases to be resolved by the New York State Workers' Compensation Board. This is true in many other states. Meanwhile, we have nothing to live on. Our families fall apart. Because of our successful efforts to reform the Workers' Compensation Board, injured workers have received some benefits. But when we do receive Workers' Comp benefits, our payments are as low as \$40 a week. Who can live on \$40 a week? Some of us have no choice but to go back to work in pain. Others of us turn to public assistance. Some of us become homeless. We are treated like garbage.

Yet no state or federal law declares that these delays and long work hours to be violations of our human rights. However, they do violate international law under the NAFTA agreement, which President Clinton signed in 1993. As you know, the NAFTA labor-side companion agreement lists 11 labor principles. One principle requires that the signatory governments take actions necessary to prevent occupational accidents and diseases. Another principle requires adequate compensation for work-related injuries and illnesses. In signing NAFTA, our Federal government committed itself to taking a role to address workplace injuries. Last October, a delegation of injured workers, including myself, traveled to Mexico to file a petition charging the New York State Workers' Compensation Board for violations of the health and safety provisions under the labor side-agreement of NAFTA. But so far, the U.S. National Administrative Office has done nothing in response.

We call on this subcommittee and the Senate as a whole to take immediate action to address the long work hours and the delays in Workers' Compensation benefits that are destroying the lives of working people across this country. We ask that you commission a report by the General Accounting Office looking into the extent and the cause of delays in the New York State Workers' Compensation Board. We urge that you demand an explanation from the U.S. National Administrative Office about why it has not responded to our NAFTA petition, and what it plans to do. We ask you to develop a program to implement the Federal government's commitment, in its signing of NAFTA and its labor-side agreement, to ensuring fair and timely compensation to injured workers. And last, we call on you to introduce a federal law that prohibits mandatory overtime.

We cannot wait any longer. Our lives are at stake. We urge the Senate to take leadership in protecting and promoting the human rights of working people in this country. To maintain our health, our families and our homes when we are injured, we must have immediate and just compensation. And to ensure that more workers do not become injured and worked to the bone, we must have control over the hours that we work. All of those here with me today—and thousands of others who could not be here—are here because we are sick and tired of being sick and tired. We want a fighting chance at a life of good health and dignity. We hope you will join us in this endeavor.

Senator WELLSTONE. Mr. Rodriguez?

Mr. RODRIGUEZ. Thank you very much, Chairman Wellstone and Senator Clinton. It is an honor to be here with this distinguished panel, and I really acknowledge the courage of Ms. Liao to come here before the committee today and talk about her own experiences.

This year, United Farm Workers, as you mentioned, Chairman Wellstone, will celebrate its 40th anniversary. Cesar Chavez had a vision for gaining dignity, respect, and decent wages and working conditions, and the United Farm Workers believes that the future for farm workers could be brighter by working cooperatively with advocacy groups, Government, and employers.

Today I am here to discuss ways to improve the occupational safety and health of migrant and seasonal farm workers and immigrant workers.

This hearing is very relevant for farm workers. About 80 percent of farm workers are immigrants. Farm workers face serious and often unnecessary risks of injury and illness on the job.

There are an estimated 1.6 to 1.8 million farm workers in the United States excluding their family members. Most farm workers have incomes below the poverty level, very limited education, limited English language proficiency, and inadequate knowledge of Government safety standards that are intended to protect them. The fact that they are immigrants limits the ability of many farm workers to make demands on their employers for safer workplaces or to ask the Government to enforce the safety and health protections that do exist.

Agriculture ranks, as has already been mentioned, as one of the three most dangerous occupations in the United States. There are many kinds of risks—fractures due to falls, eye injuries from chemicals and machinery, cuts and lacerations from knives, heat stroke, cancer, birth defects, and neurological damage. These occupational hazards, combined with inadequate housing, poor nutrition, and poverty, diminish the health status of farm workers and their families.

Let me mention a few specific concerns. Last year, the American Journal of Industrial Medicine published an important study evaluating the incidence of cancer in the membership of the UFW and examining sites of high rates of cancer among our membership. The study revealed that farm workers had a 59 percent higher risk of leukemia than other Hispanics living in the State of California and a 69 percent higher risk of stomach cancer; uterine cancers in females were also elevated, as was brain cancer for both males and females. Leukemia and brain cancer are highly associated with exposure to toxic pesticides. These cancers are occupational illnesses that can and should be prevented.

Methyl bromide is a widely used toxic pesticide that has been deemed to be so hazardous to the environment that the Federal Government and other nations have required that its use be terminated by the year 2006. Some pesticide users have announced that they intend to replace methyl bromide with another carcinogenic pesticide called Telone. We have strong concerns about the health risks of Telone, and we ask that you continue to investigate that.

In recent years, California farm workers have been run over, seriously injured, or even killed by the so-called driverless tractors, which are used during harvest periods to pull flatbed trailers in the fields. A moving farm vehicle without a person to guide it is inherently dangerous. Such practices must be ended.

We have several suggestions for improving the safety and health of farm workers. Federal law on safety and health regarding agricultural workers is far weaker than it is for other occupations. Such discrimination should cease.

For most working people, it is expected that there are sanitary facilities on the job, including an operating toilet, potable drinking water and handwashing facilities. However, under Federal law, employers of 10 or fewer employees need not provide farm workers with toilets, handwashing facilities, or drinking water.

The denial of such basic amenities is not just an affront to dignity but a serious public health issue. Women are particularly affected by urinary and parasitic infections from the unavailability of sanitary facilities.

The denial of drinking water has resulted in preventable deaths in the fields from heat stroke. In other jobs, we expect such things to be provided. In California, farm workers are entitled to sanitary facilities, and they should be as a matter of Federal law.

The Food Quality Protection Act of 1996 seeks to protect people from harmful health effects from pesticides on food, in water, or used in homes or gardens. But in determining which pesticides are dangerous to health, the risks to workers are ignored. The concern over consumers is appropriate, but the direct risk of harm to farm workers from occupational exposure needs to be acknowledged by legislative action.

Enforcement of occupational safety and health protections is inadequate. There are insufficient resources for investigations, and when violations are found, the penalties assessed are often too low. Employers get the message that they can flout the law. Law-abiding companies are subjected to unfair competition from those that are trying to cut labor costs. Enforcement is particularly difficult where farm operators used farm labor contractors to recruit, supervise or transport workers. Farm operators must accept the responsibility for preventing injuries and illnesses in their fields.

The protections for whistleblowers against employer retaliation are poorly enforced. California has also recently taken the lead by requiring that farm workers be transported in vehicles that do have seatbelts and are certified as safe by the California highway patrol. However, this just took place last year. This law was passed in the wake of several terrible accidents, including one in which 13 workers were killed this past year. Federal law and the laws of other States are not as protective.



Many States discriminate against farm workers in worker compensation laws by denying farm workers the same coverage and benefits for work-related injuries and illnesses that other occupations are granted. In such States, employers have little incentive to make work safer.

We must educate workers and employers about workplace hazards. Let me just mention one particular failure in this regard. Over a decade ago, OSHA issued the Hazard Communication Standard. Unfortunately, OSHA has interpreted this requirement to exclude farm workers with regard to agricultural pesticides. The right to know about pesticides needs to be and should be extended to farm workers.

UFW is working with companies to improve their productivity while making work safer. For example, we are cooperating with the engineers at the University of California at Davis and agricultural employers to devise modern methods of harvesting mushrooms. This cooperative venture will reduce injuries, lower worker compensation insurance costs, and increase productivity.

These and other cooperative efforts are win-win propositions.

About one-half of farm workers in the fields are undocumented. Undocumented farm workers are often too afraid to report injuries and illnesses. This fear of coming forward also prevents workers from getting the medical care and the disability benefits that they need for their families to survive. One solution is to offer such undocumented workers the chance to become immigrants and citizens.

We must as a society recognize the true cost in human life of the occupational safety and health risks experienced by migrant and seasonal farm workers and immigrant workers in general. The UFW is dedicated to helping the agricultural industry become a sustainable, safe, healthy and prosperous work environment.

Again I want to thank you, Mr. Chairman and Senator Clinton for giving us this opportunity today. As you mentioned a little earlier, we are considered disposal Americans, and it is time that we come out of the shadows, it is time that we are allowed as farm workers and as immigrants to live and to escape from the shadows of America and enjoy the fruits of our labor.

Thank you very much.

Senator WELLSTONE. Thank you, President Rodriguez.

[The prepared statement of Mr. Rodriguez follows:]

#### PREPARED STATEMENT OF ARTURO S. RODRIGUEZ

##### I. INTRODUCTION

Mr. Chairman and Senators, thank you for the opportunity to appear before you today. I am Arturo Rodriguez. I am President of the United Farm Workers of America, AFL-CIO. This year the United Farm Workers will celebrate its fortieth year as an organization. It's primary goal is to provide advocacy for farmworkers in this country. Cesar Chavez had a vision for gaining dignity, respect and decent wages and working conditions through dignified, non-violent methods and the United Farm Workers was the mechanism by which he hoped to achieve these goals. Cesar Chavez, like the current leadership of the United Farm Workers, always believed that the future for farmworkers could be brighter if the union could work with other advocacy organizations, government and employers to reach common ground. Today I am here to discuss ways to reach common ground to improve the occupational safety and health of migrant and seasonal farmworkers.

## II. STATUS OF FARMWORKERS

The hearing is very relevant for farmworkers. About 80% of farmworkers are immigrants, and most of those who are not immigrants are children of immigrants. Farmworkers face serious and often unnecessary risks of injury and illness on the job. Let me briefly outline for you some of the salient facts about farmworkers and their occupational safety and health.

**A. Farmworkers Generally**

There are an estimated 1.6 to 1.8 million farmworkers in the United States, excluding their family members. In California, which has the number one agricultural economy in the country, it is argued that there are between 350,000 and 1.2 million farmworkers. The National Agricultural Workers Survey recently found that 61% of farmworkers had below poverty incomes.<sup>1</sup>

It is relevant in discussing how to improve worker safety and health to note that most farmworkers have very limited education, limited English language proficiency, and limited knowledge of government safety standards that are intended to protect them.

The fact that they are immigrants limits the ability of many farmworkers to make demands on their employers for safer workplaces or to ask the government to enforce the safety and health protections that do exist.

**B. Occupational Safety and Health of Farmworkers**

Agriculture ranks as one of the three most dangerous occupations in the United States.<sup>2</sup> There are many kinds of risks: musculoskeletal, skin, heat stroke, cancers, birth defects, neurological damage. Occupational hazards (like pesticides), inadequate housing, poor nutrition, and poverty combine to diminish the health status of farmworkers and their families.<sup>3</sup>

In the period 1980–1994, the combined category of agriculture, forestry and fishing experienced a fatality rate of 20.5 deaths per 100,000 workers, which was second only to mining.<sup>4</sup>

Moreover, in 20 states, the agricultural category topped the list with the highest rate of work-related deaths and in 11 states the agriculture category had the largest number of work-related deaths. Motor vehicles (including tractors) and machinery were the leading causes of agricultural fatalities. State statistics show similar trends: in 1990, 41% of the occupational fatalities suffered by Florida farmworkers were caused by transportation-related accidents.<sup>5</sup>

Working conditions on farms and in nurseries, greenhouses and packing sheds also put farmworkers at high risk for non-fatal injuries including musculoskeletal, repetitive motion, and traumatic injuries.

Crop production agriculture has a non-fatal injury rate of 8.5 cases per 100 workers, with 3.2 cases per 100 workers involving lost work time.<sup>6</sup> A National Institute for Occupation Safety and Health (NIOSH) study of workers' compensation records from 1985 to 1987 reveals that sprain and strain injuries account for 37.2% of all claims filed by agricultural workers. Many of these injuries could be prevented.

Farmworkers also suffer from fractures due to falls, eye injuries from chemicals and debris ejected by machinery, cuts and lacerations from knives and machetes, and a host of crush, contusion, and amputation injuries associated with the use of heavy equipment among other things.<sup>7</sup>

Let me mention a few specific concerns.

*Cancer Study*—Last year, the American Journal of Industrial Medicine published an important study evaluating the incidence of cancer in the membership of the

<sup>1</sup>U.S. Department of Labor, Office of the Assistant Secretary for Policy, Findings from the National Agricultural Workers Survey: A Demographic and Employment Profile of U.S. Farmworkers (March 2000), at p. 39, available online at <<http://www.dol.gov/asp/programs/agworker/report.8.pdf>>.

<sup>2</sup>National Migrant Resource Program, Inc., Migrant and Seasonal Farmworker Health Objectives for the Year 2000 at 10 (1990).

<sup>3</sup>See, e.g., National Advisory Council on Migrant Health, Under the Weather: Farmworker Health (1993); California Rural Legal Assistance Foundation, Hunger in the Heartland (1991).

<sup>4</sup>Centers for Disease Control and Prevention, "Fatal Occupational Injuries—United States, 1980–1994," Morbidity and Mortality Weekly Review, Vol. 47, No. 18 (April 24, 1998).

<sup>5</sup>Becker, W.J., An Analysis of Agricultural Accidents in Florida—1990, Agricultural Engineering Department, Special Series, Report SS-AGE-25, Gainesville, FL, University of Florida (1991).

<sup>6</sup>National Safety Council, Accident Facts (1998 ed.).

<sup>7</sup>Demers P., Rosenstock L., "Occupational Injuries and Illnesses among Washington State Agricultural Workers," American Journal of Public Health 81(12):1656–1658 (1991).

United Farm Workers of America and examining sites of high rates of cancer.<sup>8</sup> By reviewing the union's medical and pension benefit plan roster with the files of the California Cancer Registry, the study revealed that these farmworkers had a 59% higher risk of leukemia (cancer of the blood) than other Hispanics living in California and a 69% higher risk for stomach cancer. Uterine cancers in females were also elevated, as was brain cancer for both males and females. The study also found that certain cancers were diagnosed at a later stage among farmworkers than among the general population. This makes it more difficult to effectively treat the disease.

The authors, Dr. Paul Mills and Sandy Kwong, M.P.H., concluded that these findings among California farmworkers are in general agreement with findings from other studies which have concentrated on farm owners and operators. Leukemia and brain cancer are highly associated with exposure to toxic pesticides.

These cancers are occupational illnesses that can and should be prevented.

*The Use of the Pesticide Methyl Bromide and Telone*—Methyl bromide is a widely used toxic pesticide that has been deemed to be so hazardous to the environment that the federal government and other nations have required that its use be terminated by the year 2006. Some pesticide users have announced that they intend to replace methyl bromide with another carcinogenic pesticide called Telone. We have strong concerns about the direct impact on workers that Telone causes.

*"Driverless Tractors"*—There are some particularly serious risks of injury and illness caused by employer practices that need to be changed. One example involves so-called "Driverless Tractors."

In recent years, California farm workers have been run over, seriously injured or even killed by so called "driverless tractors," which are used to pull flatbed trailers in the fields during the harvest. The tractor runs driverless in deep field furrows and generally at a rate slow enough so that workers picking along side it can place harvested produce into crates or boxes on the rig. A moving farm vehicle without a person to guide it is inherently dangerous. Such practices must be ended.

### Conclusion

Senators, as you know, for someone who works with his or hands and back, a serious physical injury can ruin the worker's life and the economic future of the worker's family.

### III. HOW CAN WE PREVENT INJURIES AND ILLNESSES IN AGRICULTURE AND HOW CAN WE IMPROVE THE HEALTH OF FARMWORKERS AND THEIR FAMILY MEMBERS?

We have several suggestions for improving the safety and health of farmworkers.

#### A. We Must Change The Laws That Discriminate Against Farmworkers

##### 1. Federal Law

Federal law on safety and health regarding agricultural workers is far weaker than it is for other occupations. Let me cite just a few examples.

*OSHA Field Sanitation Standard*—For most working people, it is expected that there are sanitary facilities on the job, including an operating toilet, potable drinking water, and handwashing facilities. However, farmworkers do not have the same protection as other employees.

The Occupational Safety and Health Administration issued a field sanitation standard in the late 1980's, requiring toilets, drinking water and hand-washing facilities. However, under federal law, employers of 10 or fewer employees need not provide farmworkers with toilets, handwashing facilities or drinking water. The denial of such basic amenities is not just an affront to dignity, but a serious public health issue. Women are particularly affected by urinary infections and parasitic infections from the unavailability of sanitary facilities. The denial of drinking water has resulted in preventable deaths in the fields from heat strokes. In other jobs, we expect such things to be provided. In California, farmworkers are entitled to sanitary facilities and they should be as a matter of federal law.

*The 1996's Food Quality Protection Act Protections Fail Farmworkers*—The Food Quality Protection Act of 1996 seeks to protect people from harmful health effects from pesticides on food, in water or used in homes or gardens. But in determining which pesticides are dangerous to health, the risks to workers are ignored. The concern over consumers is appropriate, because infants and children especially can be affected by the minute residues of pesticides on food. But the direct risk of harm to farmworkers from occupational exposure needs to be acknowledged by legislative action.

<sup>8</sup>Paul K. Mills and Sandy Kwong, "Cancer Incidence in the United Farmworkers of America (UFW), 1987-1997," *American Journal of Industrial Medicine* 40:596-603 (2001).

*Department of Labor Hazardous Work Orders*—The U.S. Department of Labor is responsible for issuing “hazardous work orders” which restrict children from performing certain tasks. In agriculture, the hazardous work orders allow children to do jobs, such as climbing on tall ladders, that cannot be done by children in other occupations. There is no justification for such discrimination against farmworkers. Our farmworker children need protection.

*Labor Law Enforcement*—Enforcement of occupational safety and health protections is inadequate. There are insufficient numbers of investigations, inadequate resources for investigations, and when violations are found, the penalties assessed are too low. All of these factors mean that employers get the message that they can flout the law. Law-abiding companies are then subjected to unfair competition from those who are trying to cut labor costs.

Enforcement is particularly difficult where farm labor contractors are used. Farm operators often claim that they do not employ any farmworkers and therefore are not responsible for the safety and health of the workers, or for their workers’ compensation coverage. They claim that farm labor contractors are the sole employer of the workers. This is a common problem for workers who are recent immigrants, many of whom work for farm labor contractors who cannot or will not comply with labor laws. We must find ways to encourage farm operators to accept responsibility for preventing injuries and illnesses in their fields.

Farmworkers are also prevented from exercising their rights for fear of losing their jobs. With wages for farmworkers so low, the loss of a job can raise a question of survival for the farmworker and his or her family member. Nor is this fear of retaliation unfounded. Unfortunately, farmworkers get fired when they seek medical care for a work-related injury or request protective equipment, let alone complain to a government agency. Currently, the pesticide law does not have any anti-retaliation protection and the protection that is available under OSHA is too limited.<sup>9</sup>

The fear of retaliation is especially of concern with regard to immigrant workers. As newcomers to this country, without adequate knowledge of our legal system, and without the same legal protection granted to U.S. citizens, immigrants often cannot or will not attempt to enforce the law.

## 2. State Laws

In California, we have secured a number of protections that prevent unnecessary risks to farmworkers and family members. Some of our requirements regarding the use of pesticides offer greater protections to farmworkers, farmers and residents of agricultural communities than under federal law. Unfortunately, enforcement of these protections has not always been adequate.

*Short-Handled Hoe and Hand-Weeding: Unnecessary Back-Breaking Work*—Our California laws are far from perfect.

Some years ago California and about 5 other states outlawed the use of the back breaking “short-handled hoe” because it caused so many injuries and was unnecessary despite claims of reduced productivity in the absence of it. The decline in the use of the short-handled hoe in California from 1965 to 1970 led to a 34% reduction in strain and sprain injuries in that state.

Recently, we have had growers insist that workers use their hands to weed the fields; that is they can’t use a hoe at all. Such a requirement imposes severe harm on workers and is unnecessary. It also imposes severe costs on society at large by disabling relatively young workers and shortening their careers. We are working on state legislation to fix this loophole.

*Safe Transportation*—California has also recently taken the lead by requiring that farmworkers be transported in vehicles that have seat belts and are certified as safe by the California Highway Patrol. This law was passed in the wake of several terrible accidents, including one in which 13 workers were killed. But when California farmworkers are transported outside the state, they are subject to federal law—which still doesn’t require seatbelts or even seats—and many farmworkers around the country continue to die on our highways as a result.

*Many Other States’ Laws Discriminate Against Farmworker*—Many states discriminate against farmworkers in labor protections without any valid justification. For example, workers compensation laws often deny farmworkers the same coverage and benefits for work-related injuries and illnesses that other occupations are granted. Yet farmworkers need such coverage and benefits as much, if not more than other workers. Rarely, except in union shops, do farmworkers receive health insurance as a benefit on the job. The lack of workers’ compensation coverage often pre-

<sup>9</sup>The California Agricultural Labor Relations Act contains some protections when workers engage in concerted activity to improve safety and health on the job, but most states lack that protection and there are many obstacles to enforcement of the ALRA’s protections.

cludes farmworkers from affording medical care. Such workers either do not get health care or else, if they do go to the hospital for treatment, then the taxpayers are forced to absorb the medical costs that workers' compensation insurance could cover. In addition, where agricultural employers are completely or partially exempt from workers compensation coverage, these employers have a reduced economic incentive to create a safe work place.

### 3. *International Safety Standards*

As we increasingly globalize the economy, some international labor standards have been developed. In 2001, the International Labor Organization, a United Nations agency to which the United States belongs, overwhelmingly approved a new set of standards called the Convention on Safety and Health in Agriculture. While the U.S. already complies with some of the Convention's standards, it contains a number of suggestions that would help the United States improve its record on safety and health for farmworkers. It should be followed and it should be ratified by the Congress.<sup>10</sup>

### **B. We Must Educate Workers and Employers About Their Rights and Responsibilities and About How to Make Workplaces Safer**

Farmworkers often lack adequate information about safety and health on the job. Let me mention just one particular failure in this regard.

*The Right to Know*—Over a decade ago, OSHA issued regulations requiring employers to educate their workers about the chemical hazards in their workplaces. This is called the Hazard Communication Standard. Unfortunately, OSHA has interpreted this requirement as excluding farmworkers with regard to agricultural pesticides. This exclusion prevents farmworkers from learning that certain pesticides cause cancer, birth defects, sterility and neurological damage. If the "right to know" protection were extended to agricultural pesticides, both farmworkers and their employers would gain critically important knowledge. A greater appreciation of risks and costs of using these products, undoubtedly lead employers to choose safer products and practices.

### **C. Our Public Policies Must Promote Greater Cooperation Between Employers and Their Workers to Reduce Preventable Injuries and Illnesses**

We as a union recognize the need to communicate with employers. Although farmworkers are excluded from the National Labor Relations Act, in California we have the Agricultural Labor Relations Act, which, though imperfect, encourages conflict resolution through negotiation between representatives of businesses and workers.

We are working with unionized companies to improve their productivity while making work safer.

For example, the United Farm Workers is cooperating with engineers at the University of California at Davis, a major agricultural institution, and agricultural employers to devise safer and more productive methods to improve the harvesting of mushrooms. This cooperative venture will soon change the way mushrooms are harvested to reduce injuries, lower workers compensation insurance costs and increase yields.

The union is also working with growers to arrange for low-interest financing to purchase new equipment that will also reduce injuries and make the mushroom growers more productive. These and other cooperative efforts are "win-win" propositions for workers and employers.

### **D. Legalization of the Undocumented Farmworkers**

Any effort to improve safety and health for workers and reduce the negative impact on society that comes from high injury rates must be accompanied by legalization of undocumented immigrants. About one-half of farmworkers in the fields are undocumented and about one-half possess lawful immigration status or U.S. citizenship. Working, in the shadows, undocumented farmworkers are often too afraid to report injuries and illnesses. This reluctance to come forward prevents us from knowing about their injuries and illnesses and interferes with our ability to create effective responses. This fear of coming forward also prevents workers from getting the medical care and the disability benefits they need for their families to survive.

<sup>10</sup>The text of the Convention, Number 184 (2001), is available on the website of the International Labor Organization ([www.ilo.org](http://www.ilo.org)) (see "International Labor Standards") and at <http://iloex.ilo.ch:1567/english/convdisp2.htm>.

### Conclusion

We must as a society recognize the true cost, in human life, of the occupational safety and health risks experienced by migrant and seasonal farmworkers.

We must also recognize that preventing illnesses and injuries at work saves us all money. Safety does not cost. Safety pays. Through a combination of public education, better laws, more effective enforcement and cooperation among workers, employers and government, we can and must make agricultural work safer.

The United Farm Workers is dedicated to helping the agricultural industry become a sustainable, safe, healthy and prosperous work environment. Thank you for the opportunity to appear before you today.

Senator WELLSTONE. Mr. Maier?

Mr. MAIER. Thank you, Mr. Chairman, Senator Clinton, and other members of the committee, for your invitation to testify today about the findings of *Newsday's* recent series concerning the health and safety problems faced by immigrant workers around this Nation.

At the outset, I would like to make it clear that as a journalist, I am here today appearing not as an advocate nor to espouse any cause or solution. At your request, I am here simply to outline the findings of our investigation as they pertain to this growing national issue.

Immigrant workers come to America from dozens of countries, speak many different languages, and take jobs that nobody else wants. America's immigrant workers are the lowest paid and the least protected. When *Newsday* set out to tell their story last year, we discovered that they are also the most vulnerable.

Our 10-month investigation revealed that New York suffers the Nation's highest rate of immigrant workers killed on the job; that victims and their survivors wait years for compensation; and that hundreds of immigrant worker deaths nationwide were never investigated by the Government.

Here are several of our specific findings. First, more than half of America's roughly 4,200 immigrant worker fatalities from the years that we studied, 1994 to 1999, were concentrated in four gateway States—California, Texas, Florida, and New York—the traditional ports of entry for immigrants seeking opportunities. Nationally, Hispanics accounted for 54 percent of all immigrant deaths during this period—part of what many health experts told us has become a “disposable” work force in America's economy.

Second, in New York and nearly every large State where immigrants flocked in the 1990's, foreign-born workers were much more likely to die on the job than those born in America, even taking into account their significant presence in the work force.

Third, nationally, one of every three immigrants killed on the job died as a result of homicide or some other form of workplace violence—more than twice the rate for native-born workers—and nowhere do immigrant workers die from violent crime in greater numbers than in New York City, where 61 percent of foreign-born workers killed on the job died because of workplace violence. Experts we talked to said that many of these deaths could be prevented if workers who drive livery cabs or work behind retail counters were protected by basic safety measures.

Fourth, the United States Immigration and Naturalization Service, which is responsible for preventing immigrants from being hired illegally, punishes only a small percentage of American firms

who employ undocumented workers, even when these workplaces have a history of injury or death. Because of their illegal status in this country, many undocumented workers are vulnerable to abuse, fearing that they will be deported if they complain about unsafe and unhealthy job conditions.

Fifth, hundreds of immigrant deaths go uninvestigated by OSHA, the main regulator of workplace safety. An analysis of Federal labor records shows that the agency fails to concentrate its resources on most of the industries and States in which immigrants are dying in substantial numbers.

Finally, in New York, families of foreign-born workers killed or injured are ill-equipped to deal with the maze of regulations and delays which can last for months and sometimes years in getting workers' compensation benefits mandated by State law. Even when clear evidence of serious or fatal injury exists, relatives can wait years to be compensated for burial costs and to receive other death benefits.

I would like to submit a copy of our series as part of today's testimony. I would also like to point out that Federal data released after the series' initial publication last summer has confirmed Newsday's original findings. In New York, the number of immigrants killed on the job soared to a record high in 2000—nearly 40 percent of all workplace deaths—and continued as a severe problem across the Nation.

Our investigation ranged from telling the stories of immigrant workers who perished in unsafe workplaces to unearthing Government data on the deaths of foreign-born workers to visiting the families and gravesites of workers who journeyed from places like El Salvador to New York.

We began this reporting by interviewing day laborers congregating on the streets of New York and Long Island. As the U.S. Census confirmed last year, the boom economy of the 1990's served as a magnet to attract millions of workers from around the world to fill low-paid jobs throughout the Nation. They encountered a lack of housing, health care, and cultural support, along with outright hostility, including the well-publicized case of two Mexican day laborers plucked off the streets of Farmingville, Long Island, and beaten in a hate crime incident in September 2000.

It was against this backdrop that Newsday learned about the various circumstances surrounding the deaths of several workers, particularly two young men from El Salvador, Fredi Canales and Gabriel Nunez, killed less than 2 years apart in the same garbage recycling plant on Long Island.

With extensive reporting, we were able to document that Fredi Canales was hired at the garbage plant when he was 16 and was killed a few days after his 17th birthday after falling nearly 20 feet from atop a sorting machine. Gabriel Nunez died after falling into an uncovered, unmarked manhole while earning \$5 an hour sorting rubbish outside the plant.

We focused initially on the lives and deaths of these two young men, but as we went along in our reporting, we found many similar stories of death, injury, and hardship among dozens of immigrant workers and their relatives.

More than a century after crusading journalists first exposed the exploitation of America's immigrant workers, we believe this series has helped expose critical issues of health and safety for a new generation of immigrants. As Dr. Howard Frumkin of Emory University's Rollins School of Public Health told us in an interview: "It is a deeply moral issue for the country. The clothes we wear, the food we eat often comes from the exploitation of immigrant workers."

Thank you for your attention.

Senator WELLSTONE. Thank you.

[The prepared statement of Mr. Maier follows:]

PREPARED STATEMENT OF THOMAS MAIER

Thank you, Mr. Chairman, for your invitation to testify today about the findings of Newsday's recent series concerning the health and safety problems faced by immigrant workers around this nation.

At the outset, I'd like to make it clear that, as a journalist, I am not here today appearing as an advocate, nor to espouse any cause or solution. At your request, I'm here to outline the findings of our investigation as they pertain to this growing national issue.

Newsday is one of America's largest newspapers, providing news and information to Long Island and New York City. As one of the key ports of entry for thousands of immigrants, the continuing influence of the foreign-born on our society is an issue of vital importance to our readers and the communities we cover.

Immigrant workers come to America from dozens of countries, speak many different languages and take jobs nobody else wants. America's immigrant workers are the lowest paid and the least protected. When Newsday set out to tell their story last year, we discovered that they are also the most vulnerable.

Our 10-month investigation revealed that New York suffers the nation's highest rate of immigrant workers killed on the job; that victims and their survivors wait years for compensation; and that hundreds of immigrant worker deaths nationwide were never investigated by the government.

Here are several of our specific findings:

1. More than half of America's roughly 4,200 immigrant worker fatalities from 1994 to 1999 were concentrated in four "gateway" states—California, Texas, Florida and New York, the traditional ports of entry for immigrants seeking opportunities. Nationally, Hispanics accounted for 54 percent of all immigrant deaths during this period; part of what many health experts warn has become a "disposable" workforce in America's economy.

2. In New York, and nearly every large state where immigrants flocked in the 1990s, foreign-born workers were much more likely to die on the job than those born in America, even taking into account their significant presence in the workforce. Immigrant workers in New York were one-third more likely to die than their native-born counterparts.

3. Nationally, one of every three immigrants killed on the job died as a result of homicide or some other form of workplace violence—more than twice the rate for native-born workers. And nowhere do immigrant workers die from violent crime in greater numbers than in New York City, where 61 percent of foreign-born workers killed on the job died because of workplace violence. Experts we talked to said many of these deaths could be prevented if workers who drive livery cabs or work behind retail counters were protected by basic safety measures.

4. The U.S. Immigration and Naturalization Service, which is responsible for preventing immigrants from being hired illegally, punishes only a small percentage of American firms who employ undocumented workers, even when these workplaces have a history of injury or death. Because of their illegal status in this country, many undocumented workers are vulnerable to abuse, fearing they will be deported if they complain about unsafe and unhealthy job conditions.

5. Hundreds of immigrant deaths go uninvestigated by the U.S. Occupational Safety and Health Administration, the main regulator of workplace safety. An analysis of federal labor records shows that the agency fails to concentrate its resources on most of the industries and states in which immigrants are dying in substantial numbers.

6. In New York, families of foreign-born workers killed or injured are ill-equipped to deal with the maze of regulations and delays, which can last for months—some-



times years—in getting workers' compensation benefits mandated by state law. Even when clear evidence of serious or fatal injury exists, relatives can wait years to be compensated for burial costs and to receive other death benefits.

I'd like to submit a copy of the series, "Death on the Job," as part of today's testimony. I also want to point out that federal data released after the series' initial publication confirmed *Newsday's* overall findings. In New York, the number of immigrants killed on the job soared to a record high in 2000—nearly 40 percent of all workplace deaths—and continued as a severe problem across the nation, particularly in Texas, California and Florida.

Our investigation ranged from telling the stories of immigrant workers who perished in unsafe workplaces, to unearthing government data on the deaths of foreign-born workers, to visiting the families and gravesites of workers who journeyed from El Salvador to America. We found and confronted owners of unsafe workplaces and public officials who failed to protect the workers and compensate their survivors.

We began this reporting by interviewing day laborers congregating on the streets of New York and Long Island. As the U.S. Census confirmed last year, the boom economy of the 1990s served as a magnet to attract millions of workers from around the world to fill low-paid jobs throughout the nation. They encountered a lack of housing, health care, and cultural support, along with outright hostility including the well-publicized case of two Mexican day laborers plucked off the streets of Farmingville, Long Island, and beaten in a hate-crime incident in September, 2000.

Against this backdrop, *Newsday* began exploring a government database compiled by the Labor Department that tracks the national origin of workers who die on the job. We also learned of the circumstances surrounding the deaths of two young men from El Salvador—Fredí Canales and Gabriel Nunez—killed less than two years apart, in the same garbage recycling plant on Long Island. Their deaths had nearly gone unnoticed by the media and the government.

With extensive reporting, we were able to document that Fredí Canales was hired at the garbage plant when he was 16 and killed a few days after his 17th birthday after falling nearly 20 feet from atop a sorting machine. Gabriel Nunez died after falling into an uncovered, unmarked manhole while earning \$5-an-hour job sorting rubbish outside the plant. We focused initially on the lives and death of these two young men, but as we went along in our reporting, we found many similar stories of death, injury and hardship among dozens of immigrant workers and their relatives.

More than a century after crusading journalists first exposed the exploitation of America's immigrant workers, we believe this series has helped expose critical issues of health and safety for a new generation of immigrants. As Dr. Howard Frumkin of Emory University's Rollins School of Public Health told us in an interview, "This is a deeply moral issue for the country . . . the clothes we wear, the food we eat, often comes from the exploitation of immigrant workers." Thank you for your attention.

Senator WELLSTONE. You are just superb panelists; all the testimony has been just superb.

Mr. Jackson, thank you.

Mr. JACKSON. Thank you, Mr. Chairman, and thank you for holding this hearing, and Senator Clinton, thank you for sitting through it. I would like to express my appreciation to Senator Enzi for inviting the National Safety Council to participate in this hearing.

Senator WELLSTONE. We appreciate you being here; and he is going to try to get back. He is at a Senate Foreign Relations Committee meeting that is taking place at the same time; otherwise he would be here.

Mr. JACKSON. Thank you.

My name is Bobby Jackson, and I am vice president for national programs for the National Safety Council. I am going to summarize my statement, but I would like my full statement submitted to the record if I could, sir.

Senator WELLSTONE. Without objection.

Mr. JACKSON. The National Safety Council is the only safety organization in America that is chartered by the United States Con-

gress. We are charged with the responsibility of preventing human suffering and economic losses arising from preventable causes. The National Safety Council is a not-for-profit, nonGovernment organization that was founded about 99 years ago. Since that time, the Council has been instrumental in saving lives of Americans in the workplace, on our Nation's highways, as well as in our homes and our communities.

I do not need to tell you, and I certainly do not need to tell the folks in this audience, that over 5,200 men and women were killed in the workplace last year, and over 4 million suffered disabling injuries. As others have testified today, Hispanic and immigrant workers were disproportionately represented in those statistics.

The Council has a long history and an outstanding record of working with the underserved community, particularly with the Hispanic community. My remarks today will focus on what we and our 50 local chapters have learned from our work and what we believe needs to be done to better serve the immigrant community in the future.

First, the Council's involvement in the Hispanic work force community has led to the development of several beneficial projects. First of all, we conducted a comprehensive Hispanic Forum that brings together community-based organizations from across the country to address concerns and seek solutions to safety and health in the environment and environmental problems. We also develop and disseminate, as many of you know, Spanish language safety posters, booklets, videos, training programs, all of which are designed with the help of the Hispanic community. They are for employers who have Hispanic employees, and they deliver concise, effective safety and health information to their workers. These materials address many issues relative to occupational safety and health.

As another project, the National Safety Council has led workshops for Hispanic community-based organizations and farm worker groups to address strategies to prevent lead poisoning and asthma, which are major health problems in these workplaces and communities. And under a recent grant from the Department of Labor, the Council has developed training materials specifically for Hispanic workers in the highway construction sector.

The lessons learned by the Council are many, and I would like to comment on a couple of those. First, we have learned that it is not enough to simply translate materials that were developed for English-speaking workers to Spanish, because many immigrant workers have literacy barriers that extend to their own language. For this group of workers, verbal training and on-the-job demonstrations of safe work procedures are needed.

We also learned that small and medium-sized employers often do not have the training or the knowledge to assess their workers' skill level and their experience level. For these employers, simple checklists designed to evaluate the working level of the employee are both helpful and appropriate.

We have also learned that the effectiveness of training and outreach materials depends heavily on the involvement of the members of the targeted minority in all stages of development and delivery of those programs. Bringing members of that community into

the process ensures that the materials developed will be sensitive to issues of literacy and culture.

We also learned that partnering with groups and organizations with strong ties to the community is essential to the success and the credibility of any outreach effort targeted population.

Unfortunately, we have also learned that except for a few isolated incidences, no organization appears to have systematically addressed the growing issue of workplace safety and health for the nonEnglish and nonSpanish-speaking immigrant community. We are hopeful in the Council that the lessons learned from the Hispanic programs will establish a solid foundation for immigrant initiatives.

The number of deaths, injuries, and illnesses among the immigrant worker population demand that a coordinated national effort be launched to address the problems. The strategy adopted to carry out this effort must be designed to conserve resources by eliminating overlapping and duplication and to ensure program effectiveness. In addition, performance measures need to be built into the initiative at the outset.

The National Safety Council believes that reliance on public-private partnerships offer the best, if not the only, hope of achieving meaningful reductions in the number of lives lost and disabling injuries among workers. An excellent example of this is our highly successful public-private partnership with the Council's Hispanic Forum, which I mentioned earlier. This event was held 2 years ago and was cosponsored by the U.S. Environmental Protection Agency, the Pan-American Health Organization, and the National Alliance on Hispanic Health. Scholarships were provided to members of the Hispanic community to come to the forum and learn about problems facing Hispanic workers and their families. Attendees were able to form new partnerships, and they were able to develop a model plan of action to address the problems that were identified.

We are going to conduct another Hispanic Forum this October, and we expect even greater interest and participation, and we certainly expect a successful venue.

Public-private partnerships are uniquely positioned to develop the infrastructure to develop safety and health products and services to workers and their communities, as well as small and medium-sized employers.

The Council's nationally-recognized Hispanic Forum and other training and outreach programs for the vulnerable populations will continue to play a leading role in this national imperative. We look forward to continuing to contribute to this mission.

We appreciate the opportunity to present this information today, and we will be happy to answer any questions at the end of the panel.

Thank you, sir.

Senator WELLSTONE. Thank you, Mr. Jackson. Thank you very much.

[The prepared statement of Mr. Jackson follows:]

PREPARED STATEMENT OF BOBBY JACKSON

Thank you Mr. Chairman and good afternoon. My name is Bobby Jackson. I am the Vice President for National Programs of the National Safety Council. The Na-

tional Safety Council (NSC) is pleased to provide testimony to the Committee on this important issue.

Founded in 1913, and chartered by the U.S. Congress, the NSC is a not-for-profit, public service organization dedicated to making the United States a safer nation, safer in our workplaces, safer on our roadways and safer in our homes and communities. Our mission is to educate and influence society to adopt safety, health and environmental policies, practices and procedures that prevent and mitigate human suffering and economic losses arising from preventable causes. NSC is very concerned about the safety and health of all persons, and, in particular, has devoted significant attention to the safety and health issues of underserved populations.

The National Safety Council believes that reducing injuries and deaths, both on and off the job, is one of America's most pressing challenges. NSC faces that challenge through partnerships with corporations and other institutions, public awareness campaigns, sponsoring volunteer activities, and much more. The National Safety Council provides information, products and services through a variety of initiatives to address America's safety and health issues.

Last year, over 5,000 workers were killed on the job. Another 3.9 million suffered disabling injuries. This cost our economy more than \$122 billion. The cost in human terms is, of course, not measurable. The National Safety Council was founded in 1913 by representatives of leading, industrial companies. Its purpose was to address occupational safety issues. It has since expanded into highway safety and home and community safety, but our heritage is in occupational safety and health.

NSC has long been a leader in occupational safety and health training that covers a variety of topics for all employer and employee levels. Training options include nationally recognized classroom programs, convenient packaged training, and, most recently, online programs. Safety and health training programs for business, industry and government assist employers and employees in complying with OSHA and other regulations and convey best practices for specific industries and job tasks. Many of these training programs are delivered to local employers, employee groups and community based organizations through local NSC chapters. A number of these programs are available in Spanish.

Although private- and public-sector organizations purchase NSC training programs, services and publications, the NSC also relies upon public-private partnerships to help fulfill its mission, particularly in providing services for vulnerable and underserved populations. Outreach activities, many of which address the needs of minority and underserved communities, include:

- In an excellent example of a public-private partnership, the NSC cosponsored the Hispanic Forum on a Safe and Healthy Environment. This Forum was co-sponsored by the U.S. Environmental Protection Agency (EPA), the Pan American Health Organization (PAHO), and the National Alliance for Hispanic Health. It provided scholarships for members of community based organizations to attend the Forum to address the pressing occupational safety, health, and environmental issues and challenges facing the Hispanic community in the United States. Attendees from around the country were able to form new partnerships and develop a model plan of action to address these problems.

- The NSC has developed a series of Spanish safety posters, booklets, videos, and training materials to provide Hispanic employers with the foundation for effective safety and health programs. These materials communicate a concise safety and health message that is perfect for new hires or for providing basic safety orientation. The materials include:

- Principles of Occupational Safety and Health
- Coaching the Lift Truck Operator
- Defensive Driving Guide
- First Aid/CPR Training Materials
- The Ultimate Driving Challenge
- Lifting and Carrying
- Safety Awareness

- Under a grant from the Department of Labor, the NSC has developed and is beginning to deliver safety and health training to hard-to-reach immigrant Hispanic workers in the highway construction sector. The original material, which was developed in English, was developed under a partnership between the NSC and the American Road and Transportation Builders Association (ARTBA).

- The National Safety Council is also involved in the Hispanic community in a number of public health and environmental issues. These range from lead poisoning to general air pollution to indoor air quality to asthma and seat belt use. The NSC has gained considerable experience in this community as a result of these efforts.

The economic security of the U.S. is dependent on a productive, well trained and skilled workforce. Immigrants occupy an increasingly large portion of the U.S. workforce. The NSC has devoted significant resources to activities in the Hispanic community. Some of the factors influencing that decision include:

- The Hispanic population in the U.S. rose 58% over the past decade.
- Hispanics make up about 12 percent of the population.
- Nearly 1 of every 4 Americans will be Hispanic by the year 2050.
- Many Hispanics work in lower-skilled and lower-paid sectors.
- Hispanics make up 10% of the workforce but account for 12% of work fatalities.
- From 1999 to 2000, construction fatalities for Hispanic workers increased 24%.
- Since 1992, fatal injuries for Hispanic workers have steadily increased.

Most immigrants come to the United States in search of opportunity to earn an income to benefit their families in their native countries. Frequently, when immigrants enter the United States, they are virtually “on their own,” with little or no organized support and assistance available to them.

The first cultural barrier many immigrant workers face is that most do not understand English. This lack of English literacy limits the job opportunities available to immigrants, which serves as a barrier that prevents them from rising out of poverty or near poverty conditions. Workers who are disadvantaged by limited education in their own language usually get by with instructions and job-related information from their peers, who usually know only a little English. Therefore, most of the information they receive is second hand and has usually been tempered by another immigrant with limited understanding of the instructions and information.

Cultural factors compound the difficulties when immigrants enter the work force. When workers are unable to fully understand the requirements of their job because of language or cultural limits or lack the technical skills needed to perform tasks or operate machinery, mistakes are likely to occur. Many of these workplace mistakes result in serious workplace injuries and illnesses.

#### *Lessons Learned From Previous Efforts*

Having worked in the Hispanic community, the NSC has learned a number of things that may be useful for immigrants in general:

1. Simply translating safety and health material into a native language is not sufficient. Often immigrants are not literate in their own language.
2. Literal translations often fail to take into consideration cultural issues.
3. Small and medium-sized employers often don't have the capability to adequately assess immigrant workers' skill and experience levels.
4. It is important to involve people who are members of the targeted minority audience in every stage of the development of education and outreach materials and activities.
5. There is a demand among Hispanic community-based organizations and other mainstream institutions for more user-friendly, culturally-sensitive, and linguistically-appropriate information for health educators and promoters.
6. Partnering with groups and organizations with existing ties to the target community is very beneficial in developing programs and research.
7. Through its initiatives to educate the Latino community about lead poisoning and other public health and environmental matters, the NSC learned that a Spanish language campaign built from scratch was critical. Words, messages and images that are appropriate for Caucasians or African-Americans will not necessarily convey the same meaning or be acceptable to Latino audiences. Literal translation does not work well.

#### *What Is Needed*

The National Safety Council believes that a great deal is required to address the health and safety needs of immigrant workers. Systems, processes, materials, tools, and training programs are needed to help employers assess the job skills of immigrant workers and educate those with limited English proficiency and low-levels of literacy. We need to find ways to address this complex challenge with little or no overlap and duplication of effort.

1. Determine, on a sector-by-sector basis, the common risks and hazards, injury/illness data, and needs of immigrant workers, especially those with limited English proficiency and a low-level of literacy.
2. Develop occupational safety and health management systems and Spanish-language programmatic materials, with special attention to those workers with limited English proficiency and a low-level of literacy.
3. Establish a delivery system, which could include NSC Chapters and community colleges.

4. Establish an infrastructure for the delivery of technical services to small businesses and community-based organizations.

5. Create technology-based learning and job tools and delivery infrastructure (NSC Chapters, community colleges, trade schools, and high schools, etc.) to standardize training and evaluation.

6. NSC also believes that research is needed to determine various aspects of the issue.

There is no lack of data on the occupational mortality experience of the Hispanic immigrant workforce. The Bureau of Labor Statistics, NIOSH, and OSHA can identify objectively the priority occupational safety and health problems affecting these workers. What is not adequately understood are the cultural barriers, language inhibitors, and the workers' own views, knowledge, and attitude toward the safety and health risks in their working environment. This latter information is critical in understanding the current awareness level and the potential behavior change motivators needed.

The National Safety Council believes that a major national effort is needed to address the significant problems associated with the health and safety of immigrant workers. This effort requires a national strategy that eliminates overlap and duplication and relies on coalitions and partnerships, involving government, non-governmental, and private-sector organizations.

This effort will require an infrastructure to deliver the products and services to workers, communities, and community-based organizations in a culturally sensitive way that recognizes the literacy and skill levels of immigrants. Also needed will be a focus on expanding the capacity of community-based organizations to provide occupational safety, health, and environmental stewardship services to Hispanics. Forums to measure the progress of these efforts, document successes, and conduct follow-up activities—such as those provided by the NSC's Hispanic Forum—should be an important aspect of this national imperative. Thank you for the opportunity to present this testimony.

Senator WELLSTONE. We will finish, last but not least, with Mr. Henriquez, and then start with Senator Clinton's questions to the panelists.

Thank you, Mr. Henriquez.

Mr. HENRIQUEZ. Thank you, Mr. Chairman, Senator Clinton, fellow brothers and sisters from the labor movement, and my fellow immigrant workers.

I am Omar Henriquez, the coordinator of the Youth and Immigrant Project of the New York Committee for Occupational Safety and Health, NYCOSH.

I would just like to say that I am going to speak slowly because I want to be sensitive to the interpreter, if I could.

NYCOSH is part of the National COSH Network, a network of 22 similar nonprofit safety and health training and advocacy organizations located in 17 States.

While it is an honor to have this opportunity to testify, the conditions that bring me here are nothing to be proud of. There is nothing honorable in immigrant workers having to sacrifice their lives in record numbers while they contribute to the economic well-being of this great Nation. Nor can we be proud of depriving this colossal work force of the most basic safety and health protections granted to every other worker in America.

We are hired to do the most undesirable and dangerous jobs at the lowest wages. We often do not know what rights we have or what law protects us, and we receive no training in safety and health. Language and cultural barriers make it difficult to learn of our rights, and particularly those who lack immigration status are fearful to speak out. We are considered "disposable" and therefore easy to exploit.

Immigrant workers, though supplying needed resources to keep America growing, are not granted the most basic rights that other workers enjoy. Nowhere is this more evident than in the occupational safety and health of immigrant workers.

NYCOSH has a great deal of direct experience with the lack of safety and health protections for immigrant workers. Most recently, NYCOSH has collaborated with two other nonprofit organizations to operate a mobile medical unit which offers free medical examinations, training, and respiratory protection to the thousands of nonunionized, overwhelmingly immigrant workers who have been hired to clean up dust and debris in the buildings surrounding the World Trade Center.

Ninety-nine percent of the day laborers who have been examined have symptoms of exposure to dust that is irritating to the respiratory system. Identifying such a large number of workers with respiratory distress is a very strong indication that the day laborers are receiving no safety and health training and that the OSHA regulations and enforcement intended to protect them are inadequate.

As you know, the Susan Harwood Training Grant program was put in place by Congress and the U.S. Department of Labor to ensure that sufficient resources be devoted to providing safety and health training to immigrants and other vulnerable workers. Congress has provided full funding for the third year of this 5-year program, but OSHA is planning to cancel this program after year two, terminating programs that have a proven record of educating and training these vulnerable workers. With funds provided by the Susan Harwood Training Grant, the National COSH Network has trained over 6,000 vulnerable workers in 15 months, accomplishing over 200 percent of our training goals.

We were not only able to train this vulnerable and underserved population in a personal and humane manner, but in addition, our average efforts were able to forge alliances and working relationships with numerous immigrant organizations in our areas. These relationships produced, for example, a first-time meeting between OSHA and immigrant organizations in Long Island. But most important, by working with immigrant organizations that already have the trust of immigrant workers, we were able to assist a local organization to file an OSHA complaint on behalf of an immigrant worker who had been exposed to toxic chemicals in his workplace. This case resulted in OSHA issuing the company multiple serious violations, fines, and ordering it to change its unlawful practices.

Since I was part of this effort, I can tell you with absolute confidence that no amount of written material, web-based education, toll-free hotlines, or partnerships such as those being proposed will replace the hands-on training that we deliver under this grant.

I make the following recommendations on behalf of the COSH group. We are opposed to any effort, however well-intended, that excludes a significant number of immigrant workers. OSHA's initiatives for Hispanic workers are commendable and necessary; however, these initiatives do not include other immigrant groups that are also a part of the labor force. A Spanish language hotline and web page are useful only to those who speak and read Spanish, but not to hundreds of thousands of other workers from Russia,

China, Korea, Vietnam, Haiti, and dozens of other countries to whom we will have very little access. And for those with limited literacy and for the majority who do not have access to the Internet, the web page will not be useful.

Under the training grants that we now have—but which we will lose if Congress adopts the President's proposed Labor Department budget—we had the flexibility to train immigrant workers in their native languages at a level that was appropriate and in a style that was most effective for the learning process.

Second, OSHA must hire enforcement officials who are fluent in languages other than English and come from immigrant communities. OSHA cannot protect immigrant workers if they cannot communicate with them.

Third, OSHA must increase its efforts to effectively enforce the requirement that employers report workplace fatalities within 8 hours. How can OSHA properly investigate fatalities that it never learns about, or learns about days or weeks after they occur?

Fourth and finally, OSHA must impose meaningful fines that serve as a strong deterrent to violators. For example, after investigating the death of an immigrant worker in the vicinity of the World Trade Center, OSHA reduced its initial \$4,000 fine to only \$100—a mere slap on the wrist for a violation that strikes at the heart of OSHA's ability to protect workers.

For many years, NYCOSH has questioned the effectiveness of training nonunion workers about their rights under the OSH Act, because in far too many cases, attempts by nonunion workers to exercise those rights have led to their being fired. Now we are beginning to make progress on this important front, but without strong enforcement, stringent standards, and education for all workers, OSHA will be more like a lapdog than a watchdog.

Thank you very much.

[The prepared statement of Mr. Henriquez follows:]

#### PREPARED STATEMENT OF OMAR HENRIQUEZ

Mr. Chairman, and members of the Committee: I am Omar Henriquez, the coordinator of Youth and Immigrant Project of the New York Committee for Occupational Safety and Health (NYCOSH).

NYCOSH is a private, non-profit, union-based health and safety organization located in Manhattan. Over 200 local unions in the metropolitan area are members of NYCOSH, as are several hundred individual workplace health and safety activists, health care professionals, and workers' compensation attorneys. NYCOSH has been providing technical assistance and comprehensive training in occupational safety and health to unions, employers, government agencies, and community organizations for over twenty years.

NYCOSH is part of the National COSH Network, a national network of 22 similar non-profit safety and health training and advocacy organizations, located in 17 states.

While it is an honor to have this opportunity to testify, the conditions that bring me here are nothing to be proud of. There is nothing honorable in immigrant workers having to sacrifice their lives in record numbers while they contribute to the economic well-being of this great nation. Nor can we be proud of depriving this colossal workforce of the most basic safety and health protections granted to every other worker in America.

It is estimated that between twenty-eight and thirty million immigrants live in the United States, slightly more than 10.4% of the U.S. population.<sup>1</sup> Ninety percent

<sup>1</sup>Urban Institute, Tabulations of 1990 Census and March 1999 Current Population Survey.



of these are of working age.<sup>2</sup> In the large immigrant states, three out of every four tailors, cooks, and textile workers are immigrants.<sup>3</sup> And nationally, the majority of taxi drivers, garment, agricultural and domestic workers are immigrants.<sup>4</sup>

As workers, immigrants have a disproportionate rate of accidents and fatalities in the workplace. We are hired to do the most undesirable and dangerous jobs at the lowest wages. We often do not know what rights we have or what laws protect us and we receive no training in safety and health. Language and cultural barriers make it difficult to learn of our rights and particularly those who lack immigration status are fearful to speak out. We are considered disposable and therefore easy to exploit.

Immigrant workers, though supplying needed resources to keep America growing, are not granted the most basic rights that other workers enjoy. Nowhere is this more evident than in the occupational safety and health of immigrant workers. For instance, Latino workers, who comprise 11 percent of the U.S. labor force, experienced 14 percent of the fatal occupational injuries in 2000, up from 11.4 percent in 1994–1999.<sup>5</sup> According to the U.S. Bureau of Labor Statistics nationwide in the year 2000, 849 foreign-born workers were killed on the job, of these 494 or 58 percent were of Latino origin.

NYCOSH has a great deal of direct experience with the lack of safety and health protections for immigrant workers. Most recently, NYCOSH has collaborated with two other non-profit organizations to operate a mobile medical unit, which provides free medical examinations, training and respiratory protection to the thousands of non-unionized, overwhelmingly immigrant workers who have been hired to clean up dust and debris in businesses, and apartments and institutions that are located adjacent to the World Trade Center.

The mobile medical unit began operations on January 14. Since then, physicians who specialize in occupational medicine have examined approximately 350 non-unionized day laborers—the vast majority of them immigrants—who have been employed in the clean-up effort near the World Trade Center. Virtually every worker who we have examined (more than 99 percent) has symptoms of exposure to dust that is irritating to the respiratory system. Of course, we know that workers who have not experienced any health problems are not likely to come to our unit for an examination, but identifying such a large number of workers with respiratory distress is a very strong indication that the day laborers are receiving no safety and health training, or training that is inadequate, that the OSHA regulations intended to protect them are inadequate, and the enforcement of those regulations is inadequate.

We are very pleased that OSHA has recently decided to declare lower Manhattan to be a Local Emphasis Program site, and thereby step up its inspection activity in the area, but we would like to emphasize that OSHA's decision to do so results in a large part from the results of outreach that NYCOSH has done that was funded by this year's Susan Harwood Training Grant.

As you know, the Susan Harwood Training Grant program was put in place by Congress and the U.S. Department of Labor to insure that sufficient resources be devoted to providing essential safety and health training to workers who have an exceptionally great need for it, including immigrant workers and other vulnerable workers.

But in his latest budget request for OSHA, President Bush has proposed reductions in the very programs that have a proven record of educating and training these vulnerable workers from \$11.2 million to only \$4.0 million. The President's budget proposes to eliminate OSHA's very successful Susan Harwood Training Grant program.

With funds provided by a Susan Harwood Training Grant, the National COSH Network has trained over 6,000 vulnerable workers in 15 months, accomplishing over 200 percent of our training goals. Since I was a part of this effort, I can tell you with absolute confidence, that no amount of written material, web-based education, toll-free hotlines or partnerships, such as those being proposed, are going to replace the hands-on training that we deliver under this grant.

We were not only able to train this vulnerable and underserved population in a personal and humane manner, but in addition, our outreach efforts were able to forge alliances and working relationships with numerous immigrant organizations in our areas. These relationships, for example, produced a first time meeting be-

<sup>2</sup> Current Population Survey, March 2000.

<sup>3</sup> Findings from the National Agricultural Workers Survey, Research Report No.8, 13 U.S. Dept. of Labor.

<sup>4</sup> Id.

<sup>5</sup> Newsday, Thomas Maier report Death on the Job July/2001.

tween OSHA and immigrant organizations in Long Island, (See Newsday article.) But most importantly, by working with immigrant organizations that already have the trust of immigrant workers, we were able to assist the organization We Make the Road by Walking in Brooklyn, to file an OSHA complaint on behalf of an immigrant worker who had been exposed to toxic chemicals in his workplace. This case resulted in OSHA issuing the company multiple, serious violations, fining it thousand of dollars and ordering it to change it's unlawful practices. (See attached letter.)

We are pleased that Secretary Chao and OSHA have acknowledged that there is a special need to protect immigrant workers. And, while OSHA's initiatives to protect Hispanic workers are commendable and necessary, these initiatives do not accommodate or include other immigrant groups that are also a part of the labor force. A Spanish language hotline and web page are useful only to those who speak and read Spanish. However, for those who speak other languages these services will not help. And for those with limited literacy, and for the majority that do not have access to the Internet, the web page will not be useful. Under the training grants that we now have, but which we will lose if Congress adopts the President's proposed Labor Department budget, we had the flexibility to train immigrant workers in their native languages at a level that was appropriate and in a style that was the most effective for the learning process. We have translated multilingual materials, thanks to organized labor. We are opposed to any effort, however well-intended, that excludes a significant number of the workers that need the information.

New York and in many cities throughout our country, there is an enormous need for more OSHA enforcement officials who are fluent in languages other than English. The protection afforded to workers by the Occupational Safety and Health Act is particularly important to the most vulnerable members of the workforce, including those who do not speak English. OSHA cannot adequately protect those workers if it cannot communicate with them. OSHA has an affirmative obligation to hire enough bilingual compliance officers and translators in order to order to insure that all workers enjoy the protection of the OSH Act.

Thanks to the Susan Harwood Grant to the National COSH Network, we have recently been able to reach out to tens of thousands of workers to which we had previously had very little access. But there are many hundreds of thousands of other workers, immigrants from Russia, China, Korea, Vietnam, Haiti and dozens of other countries that we still have very little access to. To far too great an extent, OSHA is in the same predicament.

OSHA must increase its efforts to effectively enforce the requirement that employers report workplace fatalities within eight hours. How can OSHA properly investigate fatalities that it never learns about, or learns about days or weeks after they occur? Just last month OSHA learned of the death of an immigrant worker doing clean-up work in the vicinity of the World Trade Center. When OSHA investigated and confirmed the fatality, it proposed to fine the employer \$4000, a sum that might have the effect of deterring another employer from a similar violation. But then OSHA agreed to reduce the fine to \$100, a mere slap on the wrist for a violation that strikes at the heart of OSHA's ability to protect workers.

Last year, on the average, OSHA fined employers that failed to make timely reports of fatalities more than \$1,250 for each violation. Those penalties could have been substantially higher, but even a \$1,250 fine is far better than a \$100 fine. It is troubling, however, that OSHA issued a total of 143 citations for failure to report a fatality last year, a number that is much lower than the total number of fatalities that were not reported to OSHA.

For many years, NYCOSH has questioned the effectiveness of training non-union workers about their rights under the Occupational Safety and Health Act, because, in far too many cases, an attempt by a non-union worker to exercise those rights has been tantamount to asking to be fired. Now we are beginning to make progress on this important front, but without strong enforcement, stringent standards and education for workers, OSHA will be more like a lapdog than a watchdog. Thank you for this opportunity to make our views known.

Senator WELLSTONE. Thank you very much, Mr. Henriquez. That was very powerful.

Senator CLINTON?

Senator CLINTON. Thank you.

I want to thank all of the witnesses. I am especially proud that three of the witnesses are from New York, and I am very pleased that they could be here to express not only their observations and

experiences but really, those of thousands and thousands of people whom you represent.

And I want to thank Mr. Henriquez for a very effective statement. We will take each of your recommendations and work, using those as a basis for the action that we believe should be taken. I agree with you completely that the proposed budget would not continue to support the kind of comprehensive approach that you have found to be successful.

I also applaud you for the work that you have done with respect to the World Trade Center. It is especially troubling that we have anyone who has been exposed to any kind of bad air quality or particulate matter that has caused asthma and respiratory disorders, but I know that I have worked with the fire department and the police department and some of the hospitals about how we are going to care for the people who were in the immediate vicinity of the World Trade Center on September 11 and who have continued to work there.

But what has been mentioned by you with respect to NYCOSH's experience are the undocumented workers, the day laborers, who did not volunteer, did not know what they were getting into, were not given adequate advice and protection.

I understand that you are operating a mobile medical unit for these workers, and I thank you for that. As you know, I held a hearing on the air quality issues on February 11, and I spoke about the problems of the undocumented workers with Dr. Levin from Mount Sinai. One thing that I hope we can work on together is how we can do a better job to establish a registry or a health tracking system and provide the treatment that immigrant workers need. Perhaps we can have a follow-up with you on that and really make a good effort with your extraordinary interventions to make sure it is not just what we do today but how we try to follow these people in the future.

So I look forward to any suggestions you might have about that, Mr. Henriquez.

Mr. HENRIQUEZ. I will be more than happy, and I look forward to doing that.

Senator CLINTON. Thank you very much.

Mr. Jackson, I really appreciate your being here and the work that the National Safety Council does. It sounds as though your approach is more like what Mr. Henriquez has recommended, that it is more focused on the cultural and linguistic differences. Yes, the majority of the workers who are undocumented in our country or who are immigrant day laborers are Hispanic, but they are not the only group. We have, as Mr. Henriquez very well stated, people from many other countries. We also have immigrants from Central America who do not speak Spanish very well. They come with a different language. So we have some very specific challenges, and it sounds as though that is the approach that you take in the Council. Is that correct, Mr. Jackson?

Mr. JACKSON. Yes, Senator. One of the experiences that we have in working specifically with the Hispanic community is learning that to be successful in developing any kind of safety and health training program, or any other for that matter, is to utilize the strengths of the community to develop those programs. And as I

said in my statement, outreach to the nonprofits and nongovernment organizations is what we attempt to do when we are developing the programs.

Yes, you are absolutely right about other languages coming out of South America, for example, Portuguese in Brazil. My experience many years ago as a safety professional at a mine in Arizona was that I was quite surprised when I learned that while Spanish was the tongue of the work force and the tongue in the home, and speaking Spanish was predominant in the work force, when I talked to them and asked if it would be better to have the safety programs in Spanish, they said yes; and when I asked if it would be better to have the safety training materials in Spanish, they said, "No. We do not read Spanish." And that was the preponderance of the work force there.

So yes, there are many variables that we have to deal with.

Senator CLINTON. And as gratified as I am with the Department of Labor's new emphasis on Hispanic workers, I think we have to expand and deepen that, and I will look to experts like Mr. Jackson and Mr. Henriquez to make sure that we get the best possible recommendations to pass on to DOL and for any legislation that we propose. That is essentially one of the challenges that I have learned that we face in this area.

I want to thank Mr. Maier again for his extraordinarily powerful reporting. I am amazed, reading your series, at what kind of access you had; the fact that you were able to overcome what I am sure were barriers and discomfort among employers and employees to discuss the problems. Do you have any suggestions for us as we attempt to get a better understanding of the overall issues that we face?

Mr. MAIER. Senator Clinton, as you undoubtedly realize, as a journalist, it is really not my place to suggest measures. That is for people like yourself.

The difficulties that we had were myriad, from literally being thrown out of workplaces when we asked employers about the conditions. I guess one of the most poignant aspects of the whole story was just talking to some of the families, the people who are left trying to deal with the rest of their lives. Dealing with the loss of a loved one was very, very difficult.

Newsday is a paper that has the resources and the time to make that effort, and I am just very proud that they committed Newsday as an institution to exploring it as thoroughly as we could go.

Senator CLINTON. I am, too, and I commend Newsday as well as your own journalistic efforts. The only regret I have is that we are still discovering and writing about these issues.

The first hearing I ever worked on was in 1970, when Walter Mondale held a hearing to look into the conditions of farm workers 10 years after the "Harvest of Shame." I think Mr. Rodriguez remembers that. It was a real eye-opener and a very painful experience to get the testimony of so many farm workers from Florida to California, especially in light of what had been a devastating indictment in the portrayal of the way that farm workers were treated in the 1960 special by Edward R. Murrow, "Harvest of Shame." And there we were 10 years later, and conditions had not improved that much. And now here we are, 32 years later, and we are still

dealing with the same issues. So I think it is a real wake-up call, because it is not something that we should just shrug our shoulders over and say that is the way it is.

Of course, one of the principal reasons why any improvement has been made, particularly in California, is because of the United Farm Workers. The UFW, under very good leadership over a number of years, has made a difference in the lives of farm workers. I wish we could see the same kinds of reforms nationwide that have been pioneered in California.

But I wanted to salute Mr. Rodriguez on behalf of all the farm workers for 40 years for very effective advocacy and reform.

I am particularly interested in the changes that California has brought about legally in the last several years, and I would hope to get more information from you about that, and we will submit some written questions. I think those are good examples of what could be done nationally. Certainly the environment in California is one that has been difficult, but the changes that have occurred have not undermined the agricultural sector in California, and I think we can learn a lot from what you have done.

The second area I want to ask you to expand on a little bit is that I am very interested in the link between the environment and health, and no one is a better source of knowledge about that than our farm workers because of their exposure to pesticides. The high cancer rate that you cited in your testimony—do you have additional information that you can provide us that we can use, not only for the purposes of this hearing, but also for other work that we are doing in regard to the environment and health?

Mr. RODRIGUEZ. First of all, Senator Clinton, we would be more than happy to share with you whatever we have been able to accomplish, although as you have mentioned, it is very meager in comparison with what the real issues and real problems are.

Specifically with regard to pesticides and use of pesticides, there have been a number of cancer clusters that we have been able to find and locate there, especially after Cesar Chavez did his fast in 1988. In particular, there was the discovery of a cancer cluster in McFarland, CA in the San Joaquin Valley, in Earlimart, CA, and Fowler, CA, where the childhood cancer rate was extremely beyond what it was on a national basis. We have always thought there was a direct connection between those childhood cancer rates and the environment, because they were all surrounded by agricultural fields, whether it be table grapes, tree fruit, or cotton. However, it was never possible to actually demonstrate that or prove that in a scientific study.

But we were very encouraged by Dr. Paul Mills' study that was completed last year and has come out. As a result of all the work that we have done throughout the years, in 1987, I believe, it was finally legislated that there be a cancer registry set up in the State of California. It was through that that Dr. Paul Mills developed this study and utilized our data to find out and determine what the effects and impacts were of farm workers working out in the environment and the rates of cancer. So those astounding findings came out at that particular time.

We are working with Dr. Paul Mills to continue that effort, to expand it. We are looking for other ways to get other materials so

that not only can we document this, but we can demonstrate to the agricultural community as well as to the community at large, particularly to the legislators, the need for continuing to work to ban a number of different, currently carcinogenic and teratogenic pesticides that are being used in agriculture.

So we look forward to continuing to work with you and with others certainly in terms of dealing with it not only on a statewide basis but hopefully on a very national scope, protecting farm workers and protecting the environment as well and, most importantly, protecting consumers, because we are of the belief that it not only impacts the farm worker who comes in direct contact with these pesticides and chemicals, but it certainly does have an impact on the consuming population within our Nation as well.

Senator CLINTON. I agree with you 100 percent, and next week, I will be chairing a hearing about a health tracking proposal that I have been working on with Senator Harry Reid and others so that we can begin to track these cancer clusters, these asthma clusters, these outbreaks that we can correlate with environmental impacts.

I held a hearing on Long Island last summer about the high rate of breast cancer on Long Island. We know that there are reasons. We cannot yet pinpoint all of them, but we are beginning to make progress, and I believe we should put some significant resources into tracking chronic disease the way we track infectious disease. And that has a direct impact on the workers who are represented here, who are often the ones most exposed to toxic chemicals, to pesticides, to other unsafe conditions.

So I think that this is a big piece of it, and I thank you for mentioning it in your testimony today.

Finally, Ms. Liao, thank you so much for being here this afternoon and for telling us your story. I am going to take your suggestions very seriously, and I will do two things. I will write a letter to the Governor, because of course, the State runs the workers' compensation system, and I will have my office call the workers' compensation officials to find out if there is any way that we can expedite your particular case. I think it is disgraceful that you have waited all these years, and we will see what we can do to try to help.

And certainly I know that many people are in your position. As we heard from the testimony of others, the worker's comp system does not respond as quickly as it needs to given the difficulties that people face when they have been injured.

Second, I will ask for the GAO to conduct a study that looks at the shortcomings of our State workers' compensation systems when it comes to undocumented workers, immigrant workers, day laborers, so that if there are changes that we can recommend, we will have that information.

I thank you for bringing both of those issues to our attention and for traveling to be part of this important hearing. Thank you very much, Ms. Liao.

Thank you, Mr. Chairman.

Senator WELLSTONE. Let me thank all of you as well. I am going to be relatively brief, because everyone has been here for a long time.

Ms. Liao, I also thank you for your testimony. You said at one point in your written testimony that you were “sick and tired of being sick and tired.” Those were the words of Fanny Lou Haemer many years ago, and it puts you in a great tradition of courageous women fighting for economic justice. As a United States Senator and chair of this subcommittee, it is an honor to have you here today.

President Rodriguez, as I understand it, in California and some other States, the short-handled hoe has been outlawed just because of the effect on the back; it is just back-breaking to do the work. Now I understand that some employers are insisting that rather than using a regular hoe, the farm workers should just stoop over and pull the weeds by hand.

Are you familiar with this? Is this the case? I have had this note handed to me, and I am looking at it, thinking this cannot be true. Is this true?

Mr. RODRIGUEZ. Unfortunately, Senator Wellstone, it is true, and very briefly, I just want to describe it. This was something that was utilized throughout the early part of the last century and all the way up to 1974.

The agricultural community obligated us as farm workers to use a hoe that was about a foot long, and their rationale had always been that that was the only way that we could accurately remove weeds that were growing between lettuce plants or cotton plants in a field, and we had to be close to the ground to be able to do that.

Consequently, as a result of that, there were extremely high rates of back injuries and other kinds of injuries that were incurred by farm workers because of the use of that short-handled hoe.

Finally, in 1974, we were able to ban its use via the work of Cesar Chavez and Dolores Huerta and our organization. But now, for whatever reason, 26 years later, the agricultural community is coming back and saying, well, if you cannot use the hoe, maybe you can use a knife or your hands to pull out the weeds. They are reverting back to the same or worse system now than was implemented back in the thirties and forties and fifties and sixties.

We are totally awed at the ability of these folks to come before the legislature in California and in other States and actually try to rationalize why we as farm workers, as migrant workers, as pickers of fruits and vegetables would revert back to a system that has proven serious damage to individuals throughout the agricultural and farm worker community.

So that unfortunately, it is an attempt being made by the agricultural industry right now. We are fighting it in the State of California, and we are also fighting it in other States like Texas, Arizona, here on the East Coast, North Carolina, Florida, to prevent that type of work being done where, again, farm workers would have to remove weeds via their hands or via a knife to pull them out of the dirt.

Senator WELLSTONE. Farm workers removing weeds by hand or by knife in the year 2002 is just unbelievable.

Mr. Maier, on the Omni Recycling case in Long Island, NY—they were the subject of an OSHA investigation following the death of Fredi Canales, who was a garbage picker from El Salvador—during the investigation, OSHA discovered many safety violations. In

total, there were 16 serious safety violations. In response, OSHA fined Omni Recycling \$28,250. However, that fine was reduced to \$20,000 with the provision that Omni would fix all the serious safety violations.

The following year, 20-year-old Gabriel Nunez, also an employee of Omni Recycling, died tragically on the job. OSHA once again investigated the working conditions at Omni and again found serious violations. This time, OSHA only fined Omni \$16,000.

So my question is why would OSHA fine Omni Recycling \$4,000 less for the second violation, especially considering that Omni Recycling never corrected the violations from the previous year. Can you shed any light on that?

Mr. MAIER. Not a great deal, simply because one of the reasons why we chose that circumstance was for precisely the reason that you get at with your question. When we tried to say what example we were aware of in the New York metropolitan area—and frankly, there were a number of them; there was a case in Brooklyn where a worker drowned in cement when the building collapsed, there was recently a scaffolding collapse where five immigrant workers died and 14 were injured—but for our purposes, in many ways, this particular example illustrate so many themes including what you are getting at, what appear to be very low OSHA fines and a policy that certainly we felt deserved a lot of attention.

Senator WELLSTONE. Well, these fines do not seem to be either an adequate form of punishment or a deterrent.

Let me ask you one other question. On what do you base your conclusion that immigrant deaths go uninvestigated by OSHA?

Mr. MAIER. Essentially, we took a database from the Bureau of Labor Statistics, their Census of Occupational Fatalities—and one of the great powers of journalism these days is the ability of computer-assisted reporting to take large chunks of data and to examine it—so we essentially took a list of the Bureau of Labor Statistics fatalities and we compared them with a number of OSHA investigations in not only the same years but in the same categories. And then, by the simple deduction of looking at, say, if there were 150 deaths, how many actual OSHA investigations occurred, that is where we found that over 800 deaths nationwide were not investigated by the Government. Even though BLS had reported those as immigrant workplace deaths, OSHA never investigated them.

Senator WELLSTONE. Eight hundred deaths nationwide not investigated by the Government.

Mr. MAIER. Yes. This was over the 6 years that we examined.

Senator WELLSTONE. That is damning.

Let me finish by asking Mr. Jackson and Mr. Henriquez—and I feel, Mr. Henriquez, that you should give the final word. I hope you do not think it was plagiarizing; it was your testimony that I used at the beginning because I thought it was so powerful about “disposable”——

Mr. HENRIQUEZ. As a matter of fact, I was very honored.

Senator WELLSTONE. Thank you.

Let me ask both of you as we come to the conclusion of the hearing, in terms of courses of action, what would each of you list as your top two or three priorities?



Mr. JACKSON. Let me go ahead if Mr. Henriquez is going to have the last word—and I do not think there is any plagiarism in this town, anyway.

One thing that we say in our testimony is there needs to be a national program to look at the entire problem, and that is across agencies. That includes OSHA, MSHA, the Department of Labor's Employment and Training Administration, NIOSH, CDC—all of these agencies—to come together and look at what can be done in a broader scale. And then, as I say in my testimony, there must be outreach in public-private partnership to see if we cannot address some of these problems as we do in the Hispanic Forum that we put together to address these problems.

So I think there are several levels that have to be initiated, but first, it has to be on a national scale.

Mr. HENRIQUEZ. What we have been doing—and I started it in NYCOSH as a pilot program—is to outreach to immigrant communities that already work with immigrants and train them first, because we found that most immigrant organizations do work with immigrants but do not have a knowledge of safety and health. So we provide the training to them, in partnerships, as a bridge to reach the workers.

I tend to think that when we say penalties for not reporting deaths, we assume that there are deaths. What I would like to see is a reduction of fatalities. So of course, I advocate for higher penalties, but that is after the fact. One worker dead is too many, but I think that the continuation of the programs that we have been working with is an effective way, and also to be reminded that Latino workers—although we have the highest rate of fatalities—are not the entire universe of the labor force. We must be considerate and sensitive to other workers—Chinese workers in New York have a great need to be provided with safety training—and again, it is training that is done in a personal and humane way. You go to the communities, and you provide that service.

Senator WELLSTONE. Senator Clinton?

Senator CLINTON. Let me thank you all again for coming. I know that there are many people here from New York, and what I am hoping is that when the chairman officially ends the hearing, I would like to come down and meet as many of you as I can. I was hoping to do that later, but there are so many of you that I cannot get all of you into my office, so I will just do it here, and that way, I will get to see everybody, and you may be able to get out of here and on your way home a little sooner.

I want to thank Senator Wellstone, who is a great champion of working people. I have to say that he may be short in stature, but he is a giant when it comes to—

Senator WELLSTONE. I am as tall as you are.

[Laughter.]

Senator CLINTON. [continuing]. I am not sure that is right—but he is a giant when it comes to what really matters, and he certainly has a heart as big as this room.

So I want to thank him for convening this hearing. I want to thank Senator Enzi who also has a great interest in these issues, and particularly I want to thank Senator Enzi for making sure that

Mr. Jackson was on this panel; I think that was a very, very useful addition to our panel.

I look forward to working with all of you as we begin to deal with a lot of these problems, and maybe we will not have to keep holding hearings like this one in the years to come if we try to do the work right now.

Thank you very, very much.

Senator WELLSTONE. I want to thank Senator Clinton for her kind words. We have held a couple of these Subcommittee hearings, and I really look forward to working with Senator Clinton; it is great that she is here in the U.S. Senate.

I would like to thank Senator Enzi as well, and I want to announce that we will leave the record open for 2 weeks. This has been very powerful, riveting testimony. A lot of you came from a good distance, and we thank you for your commitment, and we want to make it clear to you that you have our commitment.

This Hearing of the Subcommittee on Employment, Safety and Training of the Health, Education, Labor, and Pensions Committee is adjourned. Thank you, everyone.

[Additional material follows.]

## ADDITIONAL MATERIAL

### PREPARED STATEMENT OF THE HUMAN RIGHTS WATCH

Mr. Chairman, and members of the Committee: Human Rights Watch appreciates the opportunity to submit this testimony regarding health and safety concerns facing child farmworkers in the United States. Agricultural work is the most hazardous and grueling area of employment open to children in the United States. It is also the least protected.

Hundreds of thousands of children and teens labor each year in fields, orchards, and packing sheds across the United States. They pick lettuce and cantaloupe, weed cotton fields, and bag produce. They climb rickety ladders into cherry orchards, stoop low over chili plants, and “pitch” heavy watermelons for hours on end. Many begin their work days—either in the fields or en route to the fields—in the middle of the night. Twelve-hour workdays are common.

In June of 2000, Human Rights Watch published a report (*Fingers to the Bone: U.S. Failure to Protect Child Farmworkers*) based on an extensive investigation that included dozens of interviews with child farmworkers, farmworker advocates and experts. Interviews included both migrant and seasonal agricultural workers; many are immigrants, or the children of immigrants.

Our investigation found that child farmworkers labor under more dangerous conditions than their contemporaries working in non-agricultural settings. They are routinely exposed to dangerous pesticides, sometimes working in fields still wet with poison, often given no opportunity to wash their hands before eating lunch. They risk heat exhaustion and dehydration, as their employers fail to provide enough water, or any at all. They suffer injuries from sharp knives, accidents with heavy equipment, falls from ladders. Repetitive motions in awkward and punishing poses can interfere with the proper growth of their bodies. Lack of sleep—because they are working too many hours—interferes with their schooling and increases their chances of injury. Depression affects them more often than other minors, a reflection of the cumulative stresses and burdens in their young lives. Only 55 percent of them will graduate from high school.

Farmworker youth face persistent wage exploitation and fraud. One-third of those interviewed by Human Rights Watch reported earnings that were significantly less than minimum wage. Some earned only two or three dollars an hour.

Incredibly, these juvenile workers are protected less under United States law than are juveniles working in safer occupations. Under the Fair Labor Standards Act (FLSA), children working on farms may be employed at a younger age than other working children—twelve (even younger under some circumstances) as opposed to fourteen. Employers may also work them for longer hours—in agriculture, there is no limit to the number of hours a child may work. In all other occupations, children under the age of sixteen are limited to three hours of work a day when school is in session. Not only that, but FLSA does not require overtime pay for agricultural work as it does for other occupations. Finally, juveniles in agriculture may engage in hazardous work at the age of sixteen; for all other occupations, the minimum age for hazardous work is eighteen.

The Fair Labor Standards Act claims to prohibit “oppressive child labor.” Yet the FLSA permits oppressive child labor in agriculture to continue. FLSA’s bias against farmworker children amounts to de facto race-based discrimination: an estimated 85 percent of migrant and seasonal farmworkers nationwide are racial minorities. In addition to raising serious concerns under the Equal Protection clause of the U.S. Constitution, this discrimination may violate numerous provisions of international law.

#### **Health and Safety Risks: Pesticide Exposure**

Exposure to pesticides is a serious risk to all farmworkers. The Environmental Protection Agency estimates that as many as 300,000 farmworkers suffer pesticide poisoning each year, while the Natural Resources Defense Council estimates as many as 40,000 physician-diagnosed poisonings occur each year. Only a small percentage of pesticide-related illnesses are reported to government or health officials.

Children and adults working in the fields may be exposed to pesticides in a variety of ways, including: working in a field where pesticides have recently been applied; breathing in pesticide “drift” from adjoining or nearby fields; working in a pesticide-treated field without appropriate protective gear, such as gloves and masks; eating with pesticide-contaminated hands; eating contaminated fruits and vegetables; and eating in a pesticide-contaminated field. Fields are typically sprayed with pesticides on a weekly basis.

Immediate signs of acute pesticide poisoning include nausea, vomiting, diarrhea, wheezing, rashes, headaches, and dizziness. Long-term consequences may include childhood leukemia, kidney tumors, brain tumors, brain damage, and learning and memory problems.

In 1997, a seventeen-year-old migrant farmworker died after being sprayed by pesticides twice in one week while working. After the second spraying, he showed symptoms of severe pesticide poisoning, including vomiting, sweating, diarrhea and headaches. He had received no training from his employer regarding pesticide dangers and the symptoms of exposure, and reportedly slept in his pesticide-soaked clothing the night before his death.

Many of the children interviewed by Human Rights Watch reported being exposed to pesticides and experiencing one or more symptoms of pesticide exposure, most commonly headaches, nausea and vomiting, rashes, and dizziness. Some were subjected to pesticide drift when adjacent fields were sprayed while they were working. Others noticed the smell of pesticides in the fields where they worked and saw residue on leaves. None of the youth interviewed by Human Rights Watch had received training regarding the dangers of pesticides, safe usage, preventive measures, or what to do in the event of exposure. Such training is required by the Worker Protection Standard of the EPA. Some of the teens interviewed did not even know what pesticides were.

Although there have been very few studies to date regarding pesticide exposure among children and youth working in agriculture, the data that do exist suggest that such exposure is commonplace. A 1990 Natural Resources Defense Council study of migrant farmworker children in New York State found that more than 40 percent had worked in fields still wet with pesticides, and 40 percent had been sprayed with pesticides, either directly from crop duster airplanes or indirectly from drift.

### **Sanitation**

Drinking water, water for hand washing, and toilet facilities are the minimum sanitation requirements imposed by the U.S. Occupational Safety and Health Administration (OSHA) on farms. Even these minimal requirements, however, are often ignored by growers and by the farm labor contractors who bring in workers. Furthermore, Congress prohibits enforcement of these regulations on farms with ten employees or less, essentially exempting small farms from having to protect their workers' most basic health and dignity requirements. An estimated 95 percent of all United States farms fall under this exemption.

Nearly all of the children interviewed by Human Rights Watch for this report said that they had worked in fields or orchards where one or more of these three basic requirements—drinking water, handwashing facilities, and toilet facilities—was not met.

#### *Lack of Toilet Facilities*

Many children interviewed by Human Rights Watch reported a complete lack of toilet facilities or portapotties that were too unsanitary to use. Lack of usable toilet facilities contributes to the spread of parasitic infection among workers. It can also be particularly dangerous and humiliating for girls and women, in that it leaves them with the unpleasant choice of public urination—more obvious and awkward for females—or urinary retention. Urinary retention is a cause of urinary tract infections, which are suffered by farmworkers at a higher rate than the general population. A desire to avoid urination may also lead workers to limit their fluid intake, with potentially grave, even deadly consequences.

#### *Lack of Handwashing Facilities*

Both federal and state occupational safety and health laws require agricultural employers to provide their workers with soap and water for handwashing. Only about half of the teens interviewed for this report said that handwashing facilities were available at their work sites.

Being unable to wash their hands with soap and water increases farmworkers' risk of pesticide poisoning. Pesticide residue on the plants transfers to workers' hands and arms, where it remains until they are able to wash it off. If this is not possible while at work, their skin can remain contaminated for twelve hours or more—however long it takes them to get home and wash greatly prolonging their pesticide exposure.

Unwashed hands also virtually guarantee that pesticides will be ingested when workers eat their lunch. Workers typically break for thirty minutes for lunch, often sitting right in the fields to eat or moving to the edges of the fields when shade is available.

When employers don't provide handwashing facilities, workers may resort to washing in irrigation ditches, which are unclean and often contaminated with fertilizer and pesticide runoff. Or the employers or field supervisors may themselves provide dirty and contaminated water to the workers. Such water exposes workers to dangerous chemicals and to organic wastes and parasites.

#### *Lack of Drinking Water*

Physical labor under hot conditions can rapidly overwhelm the body. Without adequate fluid intake and rest, workers risk devastating dehydration and heat-induced illness, up to and including death.

OSHA and the Environmental Protection Agency (EPA) recommend that workers laboring under hot weather conditions drink a minimum of eight ounces of water every half-hour. Very high heat or humidity increases the amount of recommended water, so that, for example, a person working in 90 degree heat under a full sun should drink eight ounces of water every fifteen minutes.

Federal and state occupational safety and health laws require agricultural employers to supply sufficient amounts of cool water to their workers. OSHA estimates "Sufficient" at "two to three gallons per worker on a hot day." Only some growers and farm labor contractors comply with this requirement. Many provide inadequate amounts of water, water that is hot or warm, or no drinking water at all. Still others provide contaminated water. An Arizona farm was cited in 1997, for example, for providing farm workers with canal water contaminated by *E. coli*, dangerous and potentially fatal bacteria.

Many teens reported to Human Rights Watch that their foremen or farm labor contractors would bring one five or ten-gallon jug to the work site; when it was gone, no more water was brought in. Other young workers told Human Rights Watch that they had to bring their own drinking water. Still others bought beverages from co-workers or supervisors who, in lieu of providing water, sold sodas or beer for \$1.00 to \$1.50 each.

#### **Heat Illnesses**

Heat illnesses can lead to death or brain-damage and are an ever-present danger for field workers. The EPA and OSHA estimate approximately 500 deaths annually from heat illnesses in the United States. Children are more susceptible to heat stress than adults.

Many of the young workers interviewed by Human Rights Watch had suffered from mild to moderate heat illness, with symptoms including dizziness, headaches, nausea, and vomiting. Two reported witnessing cases of heat illness—one of a sister, another of a boyfriend—so severe that the afflicted person was unable to work for an entire week. "He had the heat inside him," described one. "He was very pale and throwing up." "He was sick from the sun."

#### **Musculoskeletal Trauma**

The strenuous and often awkward labor of farmwork increases the risk of injuries, including chronic repetitive stress disorders and musculoskeletal trauma. Several teens told Human Rights Watch that they suffered from chronic back and/or neck pain when they were working in the fields.

Early adolescence is a time of rapid growth, which makes teenage workers more vulnerable than adults to musculoskeletal disorders. Agricultural work in particular has been linked to musculoskeletal trauma, due to the stresses on the body of constant bending, lifting, twisting, and other awkward or punishing work. Furthermore, because back pain is generally rare among adolescents as a whole—and a history of back pain is a risk factor for new back injuries medical experts conclude that "the long-term consequences of back strains among adolescent workers are of substantial concern."

#### **Hazardous Equipment and Work-Related Injuries**

Agriculture is the most dangerous occupation open to juveniles in the United States. Farmworkers routinely use knives, hoes, and other cutting implements; operate or work near heavy machinery; work on ladders; and work with or near pesticides and other dangerous chemicals. Children working in agriculture in the U.S. make up only 8 percent of the population of working minors overall, yet account for 40 percent of work-related fatalities among minors. The National Research Council and Institute of Medicine report that an estimated 100,000 children suffer agriculture-related injuries annually in the United States. Minors working in agriculture have also been found to suffer a higher frequency of severe and disabling injuries than those working in all other occupations.

Tractors and other motorized farm equipment represent very serious hazards, and FLSA prohibits their operation by children aged fifteen and younger. Abundance by

this prohibition, and enforcement when it is violated, is another matter. Human Rights Watch interviewed a sixteen year old who had worked full time for the three previous summers—when thirteen, fourteen, and fifteen years old—driving a tractor.

For all workers, but especially for field workers, fatigue increases the risk of injury. Long hours, early morning hours, and work in very hot conditions all increase fatigue, as does the heavy physical labor entailed in most agricultural work. The relative inexperience of young workers also increases their risk of accidents and injury.

Cuts from knives were the injury most commonly reported to Human Rights Watch by young workers. Several knew of other people who had been injured badly, their fingers cut off by knives or their hands mangled in machinery.

### **U.S. Law and Enforcement**

U.S. law is grossly and unjustifiably inadequate—not only does it offer insufficient protection for farmworker children and adolescents, but it offers them vastly less protection than it does for juveniles working in other occupations. The Fair Labor Standards Act allows children in agriculture to work at younger ages, for longer hours and under more hazardous conditions than minors in other jobs. The law allows children as young as twelve to work unlimited hours in agriculture. In contrast, children in other occupations cannot work before age fourteen, and can only work three hours on a school day until age sixteen. Finally, the FLSA allows children in agriculture to engage in hazardous work at the age of sixteen; for all other occupations, the minimum age for hazardous work is eighteen. Because 85% of farmworkers are racial minorities—the vast majority Latino—the law's double standard amounts to *de facto* race-based discrimination.

Further worsening the situation, government enforcement of even these deficient laws is sporadic and weak. Only a tiny fraction of child labor violations are ever uncovered by the Department of Labor. For example, in 1998, the Department of Labor's Wage and Hour Division found 104 minors illegally employed in agriculture—one for every 1,000 estimated to be working illegally in the fields. In addition, penalties are typically too weak to discourage employers from using illegal child labor.

In addition, Congress has limited in recent years the ability of publicly-funded legal aid offices to assist farmworkers, by prohibiting class-action lawsuits and prohibiting the representation of persons in the U.S. without proper documentation. In sum, juvenile farmworkers are left with limited protection and few means of recourse when their rights are violated.

## RECOMMENDATIONS TO CONGRESS AND THE ADMINISTRATION

### **To The United States Congress**

(1) The Fair Labor Standards Act should be amended to increase the protection extended to juveniles working in agriculture. Such protection should conform with that offered to other working children in the United States and bring it into accord with international standards for the protection of children. Specifically, the act should be amended to: (a) Prohibit the employment of children aged thirteen and younger in agriculture, except for those working on farms owned and operated by their parents; (b) Limit the number of hours that children aged fourteen and fifteen can legally work in agriculture to: three hours a day on a school day and eighteen hours a week during a school week; eight hours a day on a non-school day and forty hours a week when school is not in session; (c) Prohibit before-school agricultural work by children aged fifteen and younger. (Currently, there are no restrictions on early-morning agricultural work, although in nonagricultural occupations such work is forbidden for under-sixteen-year olds.); and (d) Raise the minimum age for hazardous agricultural work to eighteen.

(2) Regarding application of the Occupational Safety and Health Act, Congress should halt its yearly approval of a rider exempting farms with ten or fewer employees from OSHA jurisdiction.

(3) Congress must address the educational and vocational needs of farmworkers. This is urgent, particularly for those juveniles who have already dropped out of school. The national program created for farmworker youth under the Workforce Investment Act of 1998 should be adequately funded to enable states to assist farmworker youth in completing their education and securing meaningful job training and placement assistance.

### **To the Wage and Hour Division, United States Department of Labor**

(1) The Wage and Hour Division should dramatically increase agricultural workplace inspections targeting child labor and minimum wage violations. All violators

should be sanctioned to the fullest extent of the law. Furthermore, serious, repeat, and willful violators should be actively publicized as such, both for deterrence purposes and to educate the public regarding child labor rights.

(2) The Wage and Hour Division should utilize The Fair Labor Standards Act's "hot goods" provision, which prohibits the interstate movement of goods produced in violation of child labor or minimum wage laws, whenever possible, favoring it over the traditional course of citations and relatively insignificant civil money penalties.

(3) The Wage and Hour Division should vigorously enforce the OSHA Field Sanitation Regulations, which require employers to provide workers with drinking water, toilets, and handwashing facilities. Such enforcement must be proactive and include agency-initiated, unannounced inspections.

(4) The Wage and Hour Division should collect, maintain, and disseminate disaggregated statistics regarding children working in agriculture, including the number and ages of children working; the number of children injured, including type and severity of injury; the number of children sickened by occupational exposure to pesticides; the number of inspections carried out at agricultural workplaces; and the result of the inspections.

#### **To The Environmental Protection Agency**

(1) The Worker Protection Standard should be amended to: (a) Impose a minimum age of eighteen for all pesticide handlers; (b) Revise restricted-entry intervals (REIs), which prohibit entry into an area treated by pesticides for a specified period of time following the application of the chemicals. The revised REIs should distinguish between adults and children and impose more stringent REIs for children. The revised REIs also should incorporate an additional safety margin on top of what is determined necessary to ensure short and long-term safety, and should take into account the combined effect of both occupational and non-occupational exposures. The EPA currently uses an acute illness model that does not protect workers from long-term, chronic effects of pesticides.

(2) The EPA should closely monitor states' enforcement of the Worker Protection Standard and related pesticide regulations to ensure that such enforcement is vigorous and meaningful.

(3) The EPA should expand its program to educate workers regarding the Worker Protection Standard, and should ensure that materials used are culturally, age, and language appropriate.

#### **PREPARED STATEMENT OF THE NATIONAL MOBILIZATION AGAINST SWEATSHOPS**

[1] The National Mobilization Against SweatShops (NMASS) is a grassroots effort led by youth and working people from all backgrounds and communities. We are a membership organization dedicated to fighting for control over our time and our lives. Through educational and organizing work, we are demanding the right to work 40 hours a week at a living wage for all working people, whether we are overworked, underemployed or working at home caring for our children or other family members.

[2] Our members come from all trades and industries. We are garment workers, restaurant employees, asbestos removers, paralegals, cleaning employees, teachers, construction workers, and home health care attendants. We are both U.S.-born and immigrants, documented and undocumented workers. We are fighting together for the human rights of all workers.

[3] NMASS, along with the Chinese Staff & Workers Association and Workers' Awaaz are leading the "It's About TIME!" Campaign for Workers Health & Safety, an effort that brings together injured and not-yet-injured working people and youth to fight for what we value: our health, families and lives. We are working to expose the greediness of employers and insurance companies whose profit-driven practices devalue our time and health. We are organizing to change the New York State Workers' Compensation Board to give injured workers timely and just compensation for work-related injuries. Ultimately, we are fighting to end the root causes of occupational injuries and illnesses: long hours and other sweatshop conditions.

#### **I. THE PROBLEM**

##### **A. Long Work Hours Destroy all Workers' Lives**

*New York State allows employers to force workers to work long hours and "Sweat" to death under unsafe working conditions, violating workers' basic human rights.*

[4] Working people all over the United States are being overworked, forced by employers to labor inordinately long hours. As U.S. businesses "downsize" the workforce, workers who remain are forced to work harder and longer work weeks to com-

pensate for the many lost hours of labor. Those who lose their jobs can only find contingent or temporary work, and become even more vulnerable to exploitation by employers trying to squeeze profit from cheap labor. Many are forced to work several jobs, just so their families can survive. According to the federal Bureau of Labor Statistics, the U.S. leads the industrialized world in the number of hours worked—U.S. workers work 350 more hours, or 9 more full-time weeks than Europeans. In fact, in workplaces such as garment factories, a 40-hour work week is considered part-time. Eva Herrera worked for over 10 years printing designs onto T-shirts, inhaling fumes from numerous chemicals and solvents, while averaging 80 hours per week. Amapola Ochoa found that being a full-time home health care attendant often meant working 24 hours per day, caring for physically and mentally ill patients and performing an endless number of other tasks.

[5] In addition to the increasingly long hours of overtime, U.S. workers are forced to work under hazardous and unhealthy conditions. They are pushed to work at intense paces, exposed to toxic chemicals and forced to use harmful repetitive motions. As a result, more and more workers are getting hit with debilitating injuries and health problems. Mussa Abdulkader suffered a debilitating and permanent back injury while lifting heavy objects in his job as a public school custodian. Arkadiusz Tomaszewski developed severe respiratory and skin illnesses after working long hours exposed to asbestos and toxic glues.

[6] The law does nothing to combat these problems; most workers do not have the right to say “no” to employers who force them to work overtime. New York State does not protect workers from being obligated to work more than 40 hours a week. Hundreds of thousands of workers in New York are suffering from an array of occupational injuries and illnesses, many of which are not easily diagnosed. Repetitive-stress-syndrome, back and spinal damage, neuropsychological problems, and respiratory disease are just a few examples. Both Eva Herrera and Arkadiusz Tomaszewski suffer from complex occupational injuries, and have encountered many problems finding adequate medical treatment. However, when they applied for Workers’ Compensation benefits, they encountered even more problems.

#### **B. The New York State Workers’ Compensation Board Violates Labor Law**

*New York State’s Workers’ Compensation Board (WCB) permits endless delays and denials of benefits and medical treatment to injured workers, violating workers’ right to compensation for injuries and illnesses incurred while working.*

[7] Unable to work after getting injured, many workers turn to the New York State Workers’ Compensation Board (WCB), whose supposed purpose is to protect the health and safety of injured workers. However, injured workers find that they are unable to receive Workers’ Compensation benefits in a timely manner. They are called to numerous hearings, where judges and lawyers continually disregard workers’ rights by silencing injured workers and allowing the insurance companies’ lawyers to say whatever they please to justify the denial of benefits and medical treatment. Injured workers must then endure endless delays in an effort by the WCB and insurance companies to force them back to work, accept small settlements or give up their claims. Workers can often wait up to a year between WCB hearings. Insurance companies then make unsubstantiated appeals, further delaying cases for years. Throughout these many years of delay, however, the WCB does not provide injured workers with either interim living expenses or urgently needed medical treatment. Maria Labuz, who was injured while cleaning buildings, survives only on the little money she gets from Social Security disability payments. She has waited 12 years without being able to receive proper medical attention or physical therapy.

[8] If injured workers do receive Workers’ Compensation benefits, they find that the weekly amount approved by the WCB is not nearly enough to support injured workers and their families. In New York State, injured workers can receive as little as U.S. \$40 a week, the state’s minimum weekly benefit rate. In 1994, private insurance companies in New York collected U.S. \$2 billion in Workers’ Compensation premiums and paid out only U.S. \$1 billion in wage replacement and medical costs; this difference was among the highest in the nation. By denying injured workers their benefits or forcing them to re-enter the workforce, the WCB is permitting insurance carriers to profit from destroying injured workers’ lives. Injured workers are left with little or nothing to live on, their health rapidly deteriorating, and their families ravaged by poverty and hopelessness.

### II. THE CONSEQUENCES

#### **A. Injured Workers’ Lives Are Destroyed**

*Injured workers’ health, dignity and lives are destroyed by the endless delays and denials of the benefits and medical treatment to which they have a right.*



[9] New York State's Workers' Compensation Board ruins the lives of injured workers in many ways. First, the Board deters countless injured workers from applying by maintaining a system that is notorious for its endless delays, inadequate benefits and inhumane treatment of working people. Thus, many people who are injured on the job choose to continue working, because they know they will have difficulty surviving if they wait for Workers' Compensation benefits.

[10] Injured workers who do apply for benefits must endure the heartless bureaucracy of this system, which not only fails to meet injured workers' needs, but exacerbates their health, financial and family problems. When seeking medical verification of their injury, many find that doctors do not recognize the injuries and illnesses acquired from jobs as medical disorders. Unacknowledged by both doctors and the Worker's Compensation Board, the injuries are left untreated and worsen over time until it ends only in death. Workers suffer a chain reaction of problems, including the destruction of their family—financially, emotionally, and physically. Their spouses and children take up more work to compensate for their loss of income. Often they succumb to dependence on public assistance or in the worst case, poverty and hopelessness.

### **B. Employers and Insurance Companies Are Unjustly Subsidized by New York State**

*New York State unjustly subsidizes employers and insurance companies by allowing them to escape liability for the injuries and illnesses workers suffer on the job, and then supporting injured workers and their families with government-funded public assistance.*

[11] By permitting the endless delays and denials of Workers' Compensation cases, the WCB allows employers and insurance companies to easily avoid taking responsibility for work-related injuries and illnesses. The WCB has let insurance companies walk away with billions of dollars in profits in the past several years alone; employers have also benefited from lower Workers' Compensation insurance premiums. Injured workers are forced to search for other sources of income, and often must rely on public assistance. As a result, New York State is left with the responsibility to provide government benefits for injured workers, allowing these companies to keep injured workers' unpaid benefits as their profits.

### **C. Working Conditions Worsen Drastically for all Workers**

*The WCB effectively sanctions further violation of labor law and the worsening of working conditions that lead to occupational injuries and illnesses by allowing employers and their insurance companies to escape liability for workers' injuries and illnesses.*

[12] In allowing employers and insurance companies to escape liability for workers who get hurt on the job, the WCB gives employers the green light to continue violating labor law. If the WCB actually protected injured workers by ensuring timely claim resolution and adequate living expenses, it would encourage employers to shorten hours and safer working conditions to avoid higher insurance premiums. Instead, New York State does not punish employers for exploiting their workers, but does reward them with lower premiums. Sanctioned by an employer-friendly WCB, bosses push workers harder, squeezing longer hours from their daily lives. Ironically, the WCB effectively allows employers to worsen conditions for all working people.

## III. THE SOLUTIONS

### **A. Prohibiting Mandatory Overtime**

*Workers in New York State must have the right to say "no" to overtime hours.*

[13] New York State must address the root causes of workplace injuries and illnesses—long hours and unsafe conditions. Employers must be prohibited from requiring an employee to work overtime. We must have the right to say "no" to exploitative employers that coerce us to labor the long hours that put us at risk of injury and even permanent disability.

### **B. Overhaul the Workers' Compensation Board**

*1. The WCB must process and resolve injured workers' cases quickly.*

[14] All injured workers must have the right to the timely resolution of their Workers' Compensation cases. Every injured worker must have the right to a hearing within thirty days of filing their compensation claim. Each claimant must have the right to the resolution of the claim within ninety days of filing.

*1. The WCB must provide interim benefits and medical treatment immediately.*

[15] Every injured worker should receive interim living expenses and adequate medical treatment within 1 week of applying for workers' compensation benefits.

1. *The WCB must increase the minimum benefit rate to an amount on which workers can live.*

[16] The current weekly minimum benefit rate of \$40 is not enough for any person—much less their entire family—to live upon. Every injured worker must have the right to a weekly minimum that is no less than forty times the New York State minimum hourly wage.

1. *The WCB must be held accountable for its compliance with all legislative changes.*

[17] New York State must implement initiatives that will rectify the lack of accountability of the WCB to injured workers and the general public. We must have the right to detailed information about the WCB's compliance with the current law and any legislative change.

The undersigned declare, under penalty of perjury, that the foregoing is true and correct to the best of their knowledge.

Executed this\_\_day of October 2001, in New York, New York.

JOANN LUM,  
*Director, NMASS.*

AREK TOMASZEWSKI,  
*Board Member, NMASS.*

Sworn and Subscribed before me this\_\_day of October, 2001.

SAMEER M. ASHAR,  
*Notary Public, State of New York, No. 02AS6056863,  
Qualified in the County of Kings, Commission expires 02/04/2003.*

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AFFIDAVIT OF MUSSA ABDULKADER

I, Mussa Abdulkader, hereby declare under penalty of perjury as follows:

1. I reside at 286 Fort Washington Avenue, Apt. 6C, New York, NY 10032.
2. I immigrated from Eritrea to the United States in February 1979.
3. I was a Custodian at Public School 126 in the Bronx, New York when I injured myself on the job on September 8, 1995.
4. I was lifting a trash bag that weighed approximately 45 pounds.
5. The wagon was broken and I had to carry this bag about a block and a half.
6. As I lifted the 45 pound trash bag, it got stuck, and I pulled harder.
7. At this point I heard a loud crack in my back and felt a great deal of pain in my lower back; I could not breathe and had to sit down.
8. My boss told me not to work the rest of the day but I said I wanted to go see a doctor.
9. The doctor I saw gave me pain killers which temporarily reduced the pain, but when the pain returned I went to the emergency room at Columbia-Presbyterian Hospital.
10. The doctor in the emergency room said I had a hernia, needed surgery, and that I should find a doctor who would accept Workers' Compensation.
11. On September 14, 1995, I filed a claim with the Workers' Compensation Board, case number 09555484.
12. I initially received \$400.00 per week from the Workers' Compensation Board from September 1995 to February 1996.
13. The weekly payment was reduced to \$200.00 from February 1996 to June 1997, after which I received nothing.
14. The insurance company doctor missed four scheduled hearings; when he did appear he proceeded to testify against me.
15. I appealed a decision of the Board dated October 19, 1998, denying coverage; the Board did not make a decision on my appeal until June 1, 2000.
16. I have not worked since the injury and not been able to support my family in Eritrea; I am the eldest son in my family and have many dependents.
17. I remain injured and in pain; when the weather changes the pain radiates down my right leg and I feel numb; my hips hurt a lot.

Dated: Brooklyn, New York, October\_\_, 2001,

MUSSA ABDULKADER.

Sworn and Subscribed before me this\_\_day of October, 2001.

## AFFIDAVIT OF ALEKSANDRA BARAN

- I, Aleksandra Baran, hereby declare under penalty of perjury as follows:
1. I reside at 320 Eckford Street, Apt. 3R, Brooklyn, New York 11222.
  2. I am 75 years old.
  3. I immigrated from Poland in December 1984 by myself.
  4. I worked as a home attendant for Family Home Care Services since June 1988. For the first five years in that job, I worked 24-hour shifts at approximately \$5.00 per hour. Later I worked 12-hour shifts at approximately \$7.00 per hour. I did not receive overtime pay.
  5. I was injured on January 27, 1994 while I was working. I was hit by a car as I was shopping for a client.
  6. I lost consciousness and received fractures in my knee and ankle, as well as injuries to my hand, left shoulder, back, neck and thumb.
  7. I was brought to my place of work by two women who picked me up out of the snow in the street. I then took a car service to the doctor's office.
  8. I filed a Workers' Compensation claim in early 1994.
  9. I recovered from my injuries at home and was not able to work after 1994.
  10. The first 6 months after I filed my Workers' Compensation claim I received \$300.00 per week. This was later decreased to \$250.00 per week and eventually \$180.00 per week.
  11. Three years after I filed my Workers' Compensation claim I stopped receiving any benefits. I don't know why my case was closed by the Workers' Compensation Board.
  12. My case was later reopened. My last hearing was in January 2001.
  13. Over time I used up the small saving I had to survive.
  14. I have children in Poland who I am unable to support.
  15. There was never any translation from English to Polish in any of the Workers' Compensation hearings that I attended.

Dated: Brooklyn, New York, October \_\_, 2001,

ALEKSANDRA BARAN.

Sworn and Subscribed before me this \_\_ day of October, 2001.

## AFFIDAVIT OF TOMAS CARRILLO

- I, Tomas Carrillo, hereby declare under penalty of perjury as follows:
1. I reside at 230 Suydam Street, Apartment 1L, Brooklyn, New York 11237.
  2. I was an auto mechanic working for A&G Auto Dismantlers when I was injured in 1994.
  3. I dismantled cars, taking parts out for sale and use, and worked six days a week and from 8 to 9 hours per day.
  4. I was taking a windshield out in 1994, when an auto part cut my right hand, severing nerves and causing me to lose movement in two of my fingers.
  5. I went back to work after this first accident but because my right hand was weak, I put more pressure on my left hand.
  6. I then had a second accident in which my left hand was cut and I injured another finger.
  7. I filed a Workers' Compensation claim after these two accidents in 1994, case file number 09450172.
  8. I received \$200.00 per week for three years until 1997, after which the payments were cut off.
  9. My case remains open and I have had approximately four hearings before the Workers' Compensation Board over six years.
  10. Both the insurance company doctor and my own doctor agreed on the record that I have a permanent impairment of my right hand.
  11. My health continues to deteriorate and I am unable to work.
  12. I have become very temperamental, I blow up easily, and my wife and I have had to start selling food in the park on the weekends in order to survive.

Dated: Brooklyn, New York, October \_\_, 2001,

TOMAS CARRILLO.

Sworn and Subscribed before me this \_\_ day of October, 2001.

## AFFIDAVIT OF LAU MEI CHAN

I, Lau Mei Chan, hereby declare under penalty of perjury as follows:  
 I live at: 5218 8th Avenue, Apt. 3F, Brooklyn, NY 11220.  
 I immigrated to the U.S. in 1989 and am a current green card holder.  
 I worked in the garment industry for eight years as a seamstress, in quality control, doing correction work on garments, and as a foreperson.  
 In 1997, I was injured when I was holding a bundle of clothes and slipped and fell on the factory floor.  
 I injured the right side of my body, specifically my leg, back, neck, and shoulder. I could neither sit nor stand at work due to my injuries. I was completely out of the workforce for one year due to my injuries.  
 I was afraid to tell my boss about the injury because he had fired an injured worker before I was injured at work.  
 I worked long hours, usually from 8:30 a.m. to 8:30 p.m. and sometimes until 12:00 midnight and longer. I usually worked six days each week. My co-worker was fired so I was performing two peoples' workload, which contributed to my injuries. The long hours contributed to my injuries.  
 I finally filed for Workers' Compensation in November 1997 after I realized that I could no longer work in the garment industry due to my injuries.  
 I have not received any Workers' Compensation benefits.  
 I have had approximately seven hearings over three years.  
 My husband has had to work two jobs, including a night shift from 12:00 midnight to 8:00 a.m., in order to support our family. However, his income was still inadequate to support the five of us; therefore, in 1999, I started working through a Chinatown Planning Council class, doing some light work as a home attendant. I work four hours a day, six days a week.  
 Dated: New York, New York, July \_\_, 2001,

LAU MEI CHAN.

Sworn and Subscribed before me this \_\_ day of July, 2001.

SAMEER M. ASHAR,  
*Notary Public, State of New York, No. 02AS6056863,  
 Qualified in Kings County, Commission Expires 04/02/2003.*

## AFFIDAVIT OF THE CHINESE STAFF &amp; WORKERS' ASSOCIATION (CSWA)

**CSWA's History and Mission**

[1] Chinese Staff & Workers' Association is a membership-based community organization and workers' center in New York City composed of workers of all trades, particularly from the garment, restaurant, domestic, and construction industries. Founded in 1979, we are one of the oldest workers' centers in the country. With over 1,300 members and two centers in Manhattan's Chinatown and Brooklyn's Sunset Park, we organize workers to advance our rights and dignity in the workplace and community, to speak as a voice that challenges sweatshop conditions, and to promote workers' leadership in our efforts for economic and social justice. Through our work over the past 22 years, we have: recovered nearly \$10 million in owed backwages, minimum wage, and overtime pay, particularly in the garment industry; won a landmark case against the City of New York to stop a luxury development from being built in Chinatown and that would have displaced low-income community members and local businesses; secured the first wage increase in almost ten years for New York's tipped employees; compelled government institutions to hold garment manufacturers responsible for the labor-law violations of their contractors contributing to the passage of a N.Y. State law in 1998 to that effect; and brought the issue of sweatshops to the forefront of the national agenda.

**Sweatshop Conditions Produce Injuries**

[2] We organize workers who are hardest hit by abusive and inhumane sweatshop conditions, such as long hours, low wages, unsafe working conditions, and a lack of worker protections. Sweatshop conditions, however, have proliferated so that not-yet-injured workers from all backgrounds and in all industries remain under constant risk of injury.

[3] According to the 2000 Census, Chinese immigrants make up one of the largest and fastest growing populations in New York City, growing 51 % over the last decade to an estimated 424,774. The vast majority of these immigrants are low-income, living or working in New York's Chinatowns. 50% of the residents never finish high school; almost 40% percent do not speak English very well or at all; and, 30% of

the area's families officially live below the federal poverty line. These percentages climb even more when we factor in the vast number of uncounted, undocumented immigrants who live and work in our communities.

[4] Chinese immigrants have been coming to the U.S., lured by images of wealth and opportunity promoted abroad. Many immigrants from China come to this country as indentured servants, owing \$30,000–\$60,000 to snakeheads (smugglers.) Instead of the promised wealth and opportunity, when they arrive they encounter a horrifying reality: the American sweatshop. They are immediately channeled into Chinatown's unregulated trades, such as garment, restaurant and construction. Under this unregulated system, they are routinely forced to work 70–100 hours a week or more, without receiving benefits, over-time pay or even minimum wage.

[5] In the garment industry alone, for example, over 30,000 Chinese immigrant women labor in New York City's garment factories, union and non-union alike. Almost all of them work at a breakneck pace for twelve to sixteen hours a day, six–seven days a week, and earn from two to four dollars an hour with no overtime pay or benefits. In one garment factory, workers were putting in up to 138 hours a week. In one week alone, they were able to produce 10,000 pieces each. Many garment factories are dusty, unventilated, rat-infested and poorly lit. Fire escapes, exits, and stairwells are blocked and sometimes locked. Fabric is treated with formaldehyde and chemical dyes before being sent to the shops to be sewn and assembled. Garment workers bend over sewing machines and strain to see in poor lighting, while performing endless repetitive motions. Other garment workers operate dangerous machines to steam and iron clothes or to hang and package garments, standing on their feet for 12 hours at a stretch, sometimes longer. In one factory where workers were making clothes for the Donna Karan label, bathrooms were padlocked and no drinking water was available.

[6] Conditions in the restaurant industry are not much better. Thousands of Chinese immigrant men and women toil six days a week in New York City restaurants and daily face a host of abusive working conditions. Waiters, dim sum waitresses, busboys, and cooks work long hours with no breaks while constantly on their feet, yet receive no overtime pay or medical benefits. Restaurant workers severely disable their backs or their legs or endure arm, neck, and shoulder pain from carrying heavy trays, linens, crates of food or supplies. Others endure critical burns from kitchen stoves and from handling hot pans. Cuts on their fingers and hands occur from working with knives and kitchen machinery. Respiratory problems and even lung cancer are becoming more and more apparent as workers breathe in hot grease and smoke while working under intense temperatures in the kitchen. The high stress environment leads to ulcers and high blood pressure. Bunions and sore feet, varicose veins, and numbness in legs are the result of standing all day. Workers often labor without food throughout an entire shift. In one of the biggest banquet parlors in Chinatown, women workers must get permission to go the bathroom, and management shamelessly demands that they wait as long as a half an hour before being able to relieve themselves. In addition to the many health-related problems, restaurant workers cite the affects that working conditions have had on their emotional health. In particular, restaurant workers' shifts are highly irregular and often the opposite of most people's working hours. The outcome is that workers relationships with family are often severed. They are rarely able to spend time with their families and engage in their children's development during their time off.

[7] In these and other industries, numerous workplace injuries are caused and compounded by mandatory overtime. Long hours, together with the speed-up in the intensity of work, guarantee that workplace accidents and injuries, toxic poisonings, and occupational health diseases will afflict hundreds of thousands of workers in New York State alone. These conditions are widespread in the service and white-collar industries as well. Workers develop painful skin rashes, asthma, tuberculosis and other respiratory problems, repetitive stress disorders such as carpal-tunnel syndrome, debilitating leg and foot injuries, chronic neck and back pain, recurring bouts of dizziness, and vision problems. Some injuries are so severe that workers are maimed and become permanently disfigured. In addition to the irreparable damage to workers' physical health, dehumanizing work in sweatshops also leads to mental debilitation and destruction of one's family life.

#### **New York Workers' Compensation Board: Undue Delays & Inadequate Payments**

[8] After sustaining injuries produced by sweatshop conditions, injured workers must deal with the failings of the New York Workers' Compensation (WC) system. The WC Board, whose primary purpose is supposedly to monitor the WC system, disregards workers' rights and allows insurance companies and employers to control their lives and ultimately their deaths.

[9] In order to force injured workers to return to work, the WC system imposes extreme delays that forestall the resolution of thousands of cases. There are two types of delay in the process: delays between hearings and delays caused by groundless appeals from insurance companies and employers. Workers wait months or even up to a year between hearings, ultimately dragging their cases out for years on end. No matter how unjustified, appeals by insurance companies further extend the process as injured workers repeat the same testimony again and again in hearing after hearing. Many of our injured members have not received a penny after waiting from two up to even ten years. In the meantime, the WC provides no payments to cover immediate living expenses or urgently needed medical treatment. In New York State alone, there are over 180,000 open workers' compensation cases.

[10] The excessive delays pressure and intimidate injured workers to give up their cases. When insurers deny payments to injured workers, this often means the end or severe curtailment of their medical care. Constant pain, poverty, and the destruction of their family lives are a daily part of life for injured workers. The unwarranted delays in the Workers' Compensation system often force injured workers to work while debilitated which, of course, exacerbates existing injuries. Oftentimes, our injured workers members must borrow from their families and friends, forcing family members and children to enter the paid workforce or take on an additional job, and straining or sometimes destroying their relationships and support networks. Delays thus cause a downward slide in the circumstances of injured workers, as they lose their homes and sink into poverty and despair, or even attempt suicide. Many times, after years of waiting, injured workers find their cases dismissed.

[11] While injured workers pay a high price for their injuries, insurance companies and employers evade accountability. They are not penalized for unwarranted appeals that put injured workers' lives at risk. In some cases, our members report that their employers attempt to influence their doctors by calling them and telling them to send injured workers back to work. Insurance companies extend the delays by insisting that injured workers see insurance-approved or employer-approved doctors located far from where injured workers live.

[12] Beyond the problem of delays, the benefit rate in New York State is far too low. Even when workers are awarded payments, they are often slashed to the state minimum of \$40 a week—not enough for anyone to live on. As one of the most expensive places to live in this country, New York has one of the lowest state minimums in the country. In comparison, Pennsylvania, its neighboring state, has a minimum benefit rate of \$357.78. The \$40 minimum causes delays in injured workers' cases by offering insurance companies a profitable incentive to drag out cases until workers are forced out of desperation to accept the lowest settlement possible. In addition to the rate being too low, there is no legal time limit for delays or provisions to provide immediate relief written into the law. These examples demonstrate the abusive nature of WC laws as they currently exist and the failure of the law to provide equitable, just treatment to injured workers.

[13] WCB hearings reflect the disregard for workers' rights. At hearings, translation for nonEnglish speaking workers is inconsistently and infrequently provided. When translation is provided, only questions to and responses from injured workers are translated, while the remainder of the proceedings is not. Even worse is the prevailing disbelief in workers being legitimately injured on the job. Workers who suffer internal injuries either through repetitive motions or exposure to chemicals have a particularly hard time getting their injuries acknowledged. Even workers with the most obvious injuries are told they are not truly injured.

[14] Instead of relief for workplace injuries, workers gain nothing but the misery and humiliation of navigating a deceptive system. As the only remedy for injured workers, Workers' Compensation in New York State is clearly failing them.

#### **Our Efforts to Change the Workers' Compensation System**

[15] Even the power of the insurance companies has not been enough to stop the slew of stories in the media in the past few months exposing the severity of the problem of workplace injuries and deaths and the failure of the WCB to deal with them in New York State (see articles in the Daily News and New York Newsday). These articles are a reflection of the work we have done to organize injured workers to call for immediate change of the WCB.

[16] In November of 1997, we met with the Chair of the WCB, Robert Snashall to bring these problems to his attention. When no effort was made to address the problems, we launched the "It's About TIME!: Campaign for Workers' Health and Safety" together with the National Mobilization Against SweatShops (NMASS) and Workers' Awaaz (WA). The campaign was started and is led by Chinese injured workers, as well as many injured workers of other races and ethnicities, and demands a total overhaul of the Workers' Compensation system. We have organized

street actions and public rallies outside the WCB offices beginning in December of 1999, at which we have collected over 7000 names on petitions to press for the overhaul of the WCB system. We have met with many state politicians such as Catherine Nolan, Labor Committee Chair of the New York State Assembly. Our demands to reform the WCB were recently translated into legislation. Assemblyperson Nolan has introduced proposed legislation (Bill Number A09270) in the Assembly to (1) require a hearing within thirty days of filing for workers' compensation, and the resolution of a claim within ninety days of the filing of the original claim, (2) provide immediate interim living expenses within one week of filing a claim, (3) increase the minimum weekly benefit to 40 times the New York State hourly minimum wage, (4) to prohibit an employer from requiring an employee to work overtime to prevent further injuries as a result of long hours, (5) to implement initiatives that will correct the WCB's lack of accountability to injured workers and the general public. The equivalent Labor Committee Chair in the Senate, however, has refused thus far to introduce similar legislation.

[17] Despite all of our organizing efforts, injured workers remain caught in the limbo of gratuitous and extreme delays. Without timely resolution to their cases, injured workers will continue to suffer the injustices and humiliations of a larger system that allows mandatory overtime and sweatshop conditions to rob them of their dignity and health.

The undersigned declare, under penalty of perjury, that the foregoing is true and correct to the best of their knowledge.

Executed this\_\_day of October 2001, in New York, New York.

WING LAM,

*Director, Chinese Staff & Workers' Association.*

Sworn and Subscribed before me this day of October 2001.

SAMEER M. ASHAR,

*Notary Public, State of New York, No. 02AS6056863,*

*Qualified in the County of Kings, Commission expires 02/04/2003.*

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AFFIDAVIT OF JUAN FLORES

I, Juan Flores, hereby declare under penalty of perjury as follows:

1. I reside at 35 21st Street, Apartment 1A, Long Island City, New York 11106.
2. I am 68 years old.
3. I had been working as a car mechanic for eleven years when I was involved in a workplace accident on June 30, 1992 at F. Gomez Service Station in Brooklyn, New York.
4. On that day I was doing an inspection of a car when it started rolling and I was hit by the car from behind and pinned between the car and a worktable.
5. Due to that accident, I received injuries to my neck, lower back, and both legs.
6. I have worked sporadically after the accident.
7. I filed a Workers' Compensation claim in June 1992, marked case number 09256974.
8. The case remains open and there have been approximately ten hearings over nine years.
9. I received Workers' Compensation benefits in the total amount of \$2000.00 between June 1992 and January 1993, though I was supposed to receive a total amount of \$5760.00 over a 28 week period on the basis of the conclusion of the Board that I had a "Permanent Partial Disability."
10. My current doctor has indicated, upon a reading of my most recent MRI report, that I have a chronic case of spinal stenosis, which is a degenerative condition requiring physical rehabilitation and pain control therapy.
11. I cannot afford physical rehabilitation or pain control therapy and I continue to suffer pain in my lower back, spine, legs, and neck.
12. My Workers' Compensation medical benefits were cut off in 1997 or 1998.
13. My only income is from Social Security Disability, which I use to support myself and my mother.
14. The Workers' Compensation Board has not provided translation services at some of my hearings.

Dated: Brooklyn, New York October\_\_, 2001,

JUAN FLORES.

Sworn and Subscribed before me this\_\_day of October, 2001.

## AFFIDAVIT OF EVA HERRERA

I, Eva Herrera, hereby declare under penalty of perjury as follows:

1. I live at 415 Suydam Street, Apartment 2L, Brooklyn, New York, 11217.
1. I arrived in the United States in August of 1981 from Mexico. I became a permanent resident of the U.S. in 1988.
1. I was a full-time garment worker silk-screening clothes from 1985 to 1998. During this time, I worked at J.M.L. Productions in Brooklyn, New York.
1. I worked an average of 72 hours per week, six days a week. I was paid in both cash and by check. I was never paid overtime for the extra hours I worked, even though I was forced to work overtime.
1. My work was very demanding. I arrived in the morning to clean and prepare the printing machines before I spent the day printing the designs onto clothes. This process was extremely difficult. I had to constantly inhale the fumes of the printing chemicals and cleaning solvents, as well as the smoke emitting from the machines. When chemicals spilled, we had to stop our work, clean the spill, and then work twice as fast to make up for lost time. The pace was inhumane, resulting in frequent injuries and strains.
1. The employers did not recognize how hard the work was. They did not understand that the heavy workload they forced upon us was killing us. They thought only about finishing more work, so they could earn more money. We needed time to rest, but instead were forced to work constantly.
1. On July 15, 1998, I filed a Workers' Compensation claim, after years of injuries and illnesses incurred on the job. My case was opened as #09845057.
1. I was suffering and continue to suffer from neurological damage, respiratory problems, and back and spinal injuries due to the dangerously long and intense hours that I worked.
1. I have attended nearly 10 hearings in three years but have yet to receive any benefits. Each time I went to a hearing, I was treated terribly. The judges and insurance company representatives did everything they could to prevent me from speaking. When I was questioned, they only tried to confuse me. The judges often shouted at me, and pressured my lawyer to end the hearing as quickly as possible.
1. The judges changed from hearing to hearing, and none of them ever understood my occupational illnesses well. None of them have ever understood the complexity and severity of my health condition.
1. I am depressed and constantly facing pressure from family members to return to work. I find it difficult even to walk for more than a few minutes.
1. The Workers' Compensation Board, in my experience, protects employers and insurance companies, not injured workers.

Dated: Brooklyn, New York, October \_\_, 2001,

EVA HERRERA.

Sworn and Subscribed before me this \_\_\_ day of October, 2001.

## AFFIDAVIT OF HUANG SHENG KU

I, Huang Sheng Ku, hereby declare under penalty of perjury as follows:

1. I live at: 41 Avenue A, Apt. 2B New York, NY 10009
2. I am a United States citizen. I immigrated from Shanghai, China in 1987.
3. From 1987 to 1993, I worked in garment factories and as a housekeeper.
4. In 1993, I started working at Dana Alexander, Inc. I worked there five days a week for 40 to 50 hours a week.
5. I suffered a workplace injury on September 30, 1993 in which I broke my left leg, lower back, and two of the fingers on my left hand.
6. I was walking backwards, helping a co-worker named Wilson Then move a tall pile of potato chip boxes that were loaded onto an automatic lifting cart. The boxes were unsafely prepared without the required plastic wrap to secure them together. I fell backwards into a protruding machine part that was on the factory floor.
7. I was on the floor and screaming due to the pain. Wilson Then came over and moved the machine part to the side to make it seem as if I had fallen on my own. One manager named Jack came over to me, but he had not witnessed my fall.
8. I went to the emergency room at Beth Israel Hospital in Manhattan by myself. I was put under medication and taken in for surgery on my left hand. Despite my other injuries, the doctors only treated my fractured middle left finger. I pointed at my other injuries and said, "hurt!" to the nurse, but she ignored me. I was in tremendous pain when I awoke.
9. After the accident, I saw a doctor named Dr. Levy at Beth Israel Hospital and a physical therapist named Debbie Brienza, recommended by the hospital. I had a



series of short visits with Dr. Levy, during which he ignored my indications of back problems. On December 22, 1993, he told me he would not give me a doctors' note for work leave and that I should go back to work, but continue to see the physical therapist. In January 1994, Debbie, the physical therapist, told me to go back to work. I asked her if the boss had called her and asked her to tell me this. She said yes, but that he promised he would give me light work.

10. On January 17, 1994, I returned to work at the factory. The boss did not give me lighter work, as he had told the physical therapist he would do. My back started to hurt again. After work, I slipped in the snow and fell in front of the factory. I was brought back inside the factory by co-workers. The manager asked my co-worker, Yin Chan, to check if I had any injuries. She discovered that my hip was red and swollen.

11. In April 1994, I filed for Workers' Compensation benefits.

12. I received \$181.00 per week for approximately three months.

13. I have had approximately 21 Workers' Compensation hearings over seven and a half years.

14. At my sixth hearing on April 9, 1996 at the Workers' Compensation Board, the judge closed the case on my back because he thought my back injuries were due to the second fall I had which was an off-work premise injury. But my back was injured from the original September 30, 1993 workplace fall. At this hearing, Wilson Then lied about the fall I had by saying I had not fallen on the machine part (which he later moved) but had fallen on the floor. After this hearing, the judge mistook the testimony of my boss, Alexander Dzieduszycki, for that of a doctor.

15. Though I was in attendance at the sixth hearing, I did not understand what was happening even though there was a translator. This was because the translator only translated questions directed to me and then translated my responses, but did not translate anything else for me.

16. All of the hearings since then have served no purpose and there have been no further decisions forthcoming.

17. There has been Mandarin interpretation at only four of the 21 hearings I have attended. For the first 13 hearings, there was only one time when a translator was provided. Two of my hearings were canceled because the court had not provided a translator.

18. A short time after my injury, my daughter-in-law and grandson immigrated to the United States. I have been forced to depend on them for survival because I am injured and can no longer work.

19. Other than for three months, the Workers' Compensation Board has not given me one penny.

20. I feel that I have been treated like a criminal by my employer, their insurance company, and the Workers' Compensation Board.

21. The Workers' Compensation Board is on the side of the employers and their insurance companies and gives their words greater weight than that of injured workers.

22. I have suffered a great deal of mental and physical pain after my workplace injury, and this is so partly because of the unfairness and delays in the adjudication of my Workers' Compensation claim.

Dated: New York, New York July\_\_, 2001,

HUANG SHENG KU.

Sworn and Subscribed before me this\_\_day of July, 2001.

SAMEER M. ASHAR,

*Notary Public, State of New York, No. 02AS6056863,  
Qualified in Kings County, Commission Expires 04/02/2003.*

AFFIDAVIT OF STANISLAWA KOCIMSKA

I, Stanislaw Kocimska, hereby declare under penalty of perjury as follows:

1. I have no permanent residence.
2. I was a Home Attendant for eight years when I injured myself on the job on March 17, 1994.
3. I injured my back and my knee when I caught my patient as he was falling down from his bed to the floor.
4. I was unable to move my back and knee after receiving this injury.
5. I went to see a Dr. Sorokin.
6. The doctor filled out a disability form and one and a half years after the accident, I received disability payments for six months.

7. Shortly after my accident, I also filed a Workers' Compensation claim, case number 09437140.

8. I have never received any payments from the Workers' Compensation Board and 3 months after the accident stopped receiving payments for medical treatment.

9. The Workers' Compensation Board repeatedly schedules hearings over one year apart.

10. I waited for over four and a half years for a ruling and in this time have lost my apartment and am now homeless, relying on different friends to provide me with shelter each night.

11. The case is now closed.

12. I have not worked since March 1994 and I now beg for money at Polish churches to provide for my own basic needs.

13. My health has been deteriorating and I have limited mobility in my back; I have difficulty walking and bending down.

14. Additionally, when I went to the offices of the Workers' Compensation Board to speak with other injured workers, I was physically and verbally threatened by a security guard employed by the Board; he stepped on my foot and pushed my shoulder.

15. At the few hearings at which the Workers' Compensation Board provided translation services, the translation was incompetent and inadequate.

Dated: Brooklyn, New York, October\_\_, 2001,

STANISLAWA KOCIMSKA.

Sworn and Subscribed before me this\_\_day of October, 2001.

AFFIDAVIT OF MARIA LABUZ

I, Maria Labuz, hereby declare under penalty of perjury as follows:

1. I reside at 155 Greenpoint Avenue, Apartment 6, Brooklyn, New York 11222 by myself.

2. I am a 68-year old immigrant to the United States from Poland and have no family in the United States.

3. I had an accident while serving as a cleaner at an office on February 28, 1988 when I slipped and hit my head on the floor.

4. I hit my head on the floor after I had waxed the floor of the office and was going home at the end of a shift and I returned to finish a task.

5. I lost hearing in my left ear and hurt my back and neck. I have only limited movement of my neck.

6. I filed a Workers' Compensation claim and started receiving \$300.00 per week over an eight-month period.

7. Then, the doctor I went to after my accident told me to go back to work, so I stopped receiving Workers' Compensation benefits and worked for three more years.

8. I had a second injury in 1991, when I was hit by a loaded cart.

9. I worked for three months after the second injury and then asked my supervisor for a part-time job, because I could not undertake the full-time work with my injuries.

10. I worked in a part-time job for one week after which a new company took over, and the new supervisor fired me immediately.

11. I have been without a job since 1991 and I am barely surviving.

12. My Workers' Compensation case has been open since June 1991 and I have not been receiving any benefits during this period.

13. There have been approximately 20 hearings in my case over 10 years, many of them short, and many for the purpose of asking for production of medical records.

14. The Workers' Compensation Board has treated me inhumanely; they ignore my questions and do not tell me of the status of my claim.

15. I have used up my savings and am borrowing money to survive and to receive medical treatment for my injuries.

16. The Workers' Compensation Board did not provide translation services at approximately one-half of my hearings.

Dated: Brooklyn, New York, October\_\_, 2001,

MARIA LABUZ.

Sworn and Subscribed before me this\_\_day of October, 2001.

## AFFIDAVIT OF ZHI HUA QIAN

I, Zhi Hua Qian, hereby declare under penalty of perjury as follows:

1. I live at: 41-07 42nd Street, Apartment 5D, Sunnyside, New York 11104.
2. I arrived in the United States in May of 1992 from China. I became a naturalized citizen of the U.S. in 2000.
3. I worked intermittently as a waiter at restaurants in Florida and New York from 1992 to 1994.
4. I started work at the Marriott Marquis Hotel in Manhattan, New York in January 1995. There was no union at the Marriott.
5. In 1996, the manager put me in an unfair situation where I worked about 31 hours and five days per week as a full-time worker. The situation was unfair because management gave the other workers seven hours' time and wages to do the same quantity and quality of work that they required me to do in only six hours' time and for only six hours' wages. The managers also put me to work every Sunday, Sunday being the day when there were the most bags of linen to lift of the entire week. None of the other workers were willing to work on Sundays. When I worked on Sundays, I had to do two persons' share of work. Although the manager sometimes asked another worker to come to help work overtime on Sundays (usually for three to four hours), that worker usually went home whenever he wanted and did not work from the beginning of the shift until all the work was completed. After about two hours of this heavy, fast-paced work, I would get extremely tired, but would have to continue working, which would make me even more exhausted.
6. The work was very hard because there was a lot, and I had to work very fast. I had to continually lift piles of linens and bags from one metro-cart and move them to another or pick them up from the floor and put them into the metro-carts. We also had to get into the carts and jump down on the linen, and then put in more linens until the carts were full. We also had to push the carts, which were extremely heavy once they were filled.
7. Management did not understand how difficult and heavy the work was and that workers needed time to recuperate, because the managers never did this work themselves, not even for one day.
8. Because I had one less hour to do the same amount of work as the other workers, I had to work more quickly than they did. So, I suffered repetitive stress injuries in my legs, lower back, hands, and wrists.
9. On March 3, 1998, after I found that my hands were both numb and in severe pain from these injuries, I was unable to work and I left the job.
10. I applied for Workers' Compensation on May 28, 1998.
11. I have had seven hearings over the last three years. In the seventh hearing, the judge was new to my case. She did not know the previous situation. There are two parts to my case: one for my hands and wrists and another for my legs and lower back. My lawyer added my leg and back injuries to my case in April of 1999. The judge mistakenly used the date of the seventh hearing (September 1, 2000) to make the decision. But there had already been three hearings to discuss the portion of my case regarding my legs and lower back. Based on the incorrect date, and because she did not know about the earlier hearings, the judge thought the two-year statute of limitations had expired on the portion of my case regarding my legs and lower back. On October 5, 2000, I filed an appeal of the judge's decision (regarding my legs and lower back). I had an eighth hearing scheduled for December 13, 2000 to discuss my hand and wrist injuries. When I went to that hearing, the Workers' Compensation Board canceled the hearing because part of my case (regarding my legs and lower back) was already being appealed.
12. Translation was provided at only some of the hearings for my case, not at all of them.
13. Over the last three years, I have only received limited living expenses for a period of 19.6 weeks from March 4, 1998 to July 20, 1998. Since then, for almost three years, I have received nothing and do not know when I will receive any benefits to support my family.
14. I do not receive Workers' Compensation for my living expenses. I have continued to get medical treatment but, for over two years, my doctors say they have not received payment from the insurance company. So, I am only able to see the physical therapist twice a month when before I was going three times a week. Even though they are seeing me, the doctors do not know when or if they will be paid. Seeing the physical therapist only twice a month is not enough to help me deal with the pain.
15. I have not been able to work since March 1998. I have a wife, one daughter under a year old, and another daughter who is three years old, all of whom I have been unable to support.

Dated: New York, New York, August \_\_, 2001,

ZHI HUA QIAN.

Sworn and Subscribed before me this \_\_ day of July, 2001.

SAMEER M. ASHAR,  
*Notary Public, State of New York, No. 02AS6056863,  
 Qualified in Kings County, Commission Expires 04/02/2003.*

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AFFIDAVIT OF AGUEDA SANTANA

I, Agueda Santana, hereby declare under penalty of perjury as follows:

1. I reside at 1687 Linden Street, Apartment 3, Ridgewood, New York 11385.
2. I was injured while working as a Home Attendant with Institute Home Care Services on September 24, 1996.
3. I was caring for a 75-year old client with Alzheimer's Disease when she pushed me down the stairs.
4. I was six months pregnant at the time and was unable to leave my bed for three months after the injury, until I went to the hospital for the birth of my baby.
5. I filed a Workers' Compensation claim shortly after the birth of my baby and my case number is 09660096.
6. I received approximately \$1300.00 from 1996 to April 1999 and my case remains open.
7. The Workers' Compensation Board continues to schedule hearings at which the insurance company doctors are to testify about my injuries.
8. I have had approximately 15 Workers' Compensation hearings over five years in my case.
9. I suffer from permanent injuries to my legs, shoulder, back, and arm and have been unable to work.
10. I have lost my apartment, have been forced to move in with my parents, and my brother is the only person who is working in our household.
11. I am depressed and in constant pain; I find it very difficult to even walk.
12. The Workers' Compensation Board has not provided translation services at any of my hearings.

Dated: Brooklyn, New York, October \_\_, 2001,

AGUEDA SANTANA.

Sworn and Subscribed before me this \_\_ day of October, 2001.

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AFFIDAVIT OF ARKADIUSZ TOMASZEWSKI

I, Arkadiusz Tomaszewski, hereby declare under penalty of perjury as follows:

1. I am a resident at 70 E. 8th Street, Apartment 213, Brooklyn, New York 11218-1818.
2. I immigrated to the United States from Poland in November 1986.
3. In 1988, I started working in the asbestos removal business. I started work at R&S Brothers Insulation, Inc. in October 1992.
4. My job was to cover the ceilings, walls, and floors of rooms in which we were removing asbestos with sheets of plastic using different types of glues. I applied the glue from cans to the walls using a brush.
5. In my job at R&S, I started at 7 a.m. and worked into the evening.
6. I was injured at my workplace on September 15, 1992. At around 11 a.m. I started to feel nauseous, began vomiting, and my vision was blurred. My supervisor told me to cut the plastic sheets and get out of the space. He refused to call an ambulance.
7. We had been complaining about the health and safety conditions at this site without any response from our employer.
8. An inspector from the Occupational Safety and Health Administration had earlier inspected that site and mentioned that there was inadequate ventilation due to the fact that plastic covered every opening in the space.
9. A co-worker was suffering from similar symptoms and together we struggled to get to the local hospital. There we were checked in through the emergency room for 24 hours and given oxygen.
10. After my injury, I started getting headaches, breaking out in sweats, remained out of breath, and got rashes on my hands.
11. I ran the New York Marathon in 1988 and was rendered unable to even train for another marathon.

12. I tried to return to work after a few weeks, however I was unable to keep a job in the field of asbestos removal for longer than a few days. I started to get rashes on my face on the second or third day of work and developed an allergy to latex for the first time in my life.

13. I filed for Workers' Compensation benefits in 1993, case number 09271614.

14. In 1994, I received approximately \$4000.00 in a lumpsome payment of Workers' Compensation from the insurance company. I faced eviction and borrowed money from friends because I was unable to work for longer than 2 to 3 days at any job. I never received any Workers' Compensation benefits other than the single lumpsome payment.

15. There have been approximately 30 hearings in my case over a seven year period.

16. There was confusion over whether my employer was self-insured or had an outside insurance carrier, and the Workers' Compensation Board took a number of years to determine which entity is liable for my injuries.

17. In 1998 I received a favorable decision from the Workers' Compensation Board, which was subsequently appealed by the insurance company. I have still not received any benefits.

18. I also serve as a volunteer with the NMASS Health and Safety Committee.

19. As a volunteer with NMASS, I have come into close contact with a significant number of Workers' Compensation claimants, all of whom face delays in the adjudication of their claims, pending from 3 months to over 20 years.

20. The average delay suffered by claimants with whom I work is approximately 6 years.

21. The Workers' Compensation Board is not responsive to our requests for assistance and allows insurance companies to delay payment of claims.

22. It is clear to me that the Board is on the side of the insurance companies and employers, and gives more credence to the testimony of their doctors and lawyers. I believe that many of the administrative law judges employed by the Board are former insurance company lawyers.

23. The recent reforms initiated by the Pataki administration and the Board create even more incentives for insurance companies and employers to delay adjudication of claims; because of long delays, workers in need of money are forced into the Section 32 expedited decision-making part, through which they receive significantly less money than they are entitled to.

Dated: New York, New York, October \_\_, 2001,

ARKADIUSZ TOMASZEWSKI.

Sworn and Subscribed before me this \_\_ day of October, 2001.

#### AFFIDAVIT OF THE WORKERS' AWAAZ (WA)

##### **WA's History and Mission**

[1] Workers' Awaaz is a membership-based community organization of South Asian women workers of, particularly domestic workers, in New York City. Founded in 1997, we are one of the first South Asian workers' centers in the country. We organize workers to advance our rights and dignity in the workplace and community, to expose sweatshop conditions, and to build worker leaders to fight for economic and social justice. During our work in the past few years, we have organized what has so far been an invisible workforce of domestic workers—hidden behind the closed doors of employers' private homes. Through our campaigns we have exposed the brutal and exploitative conditions of work that many domestic workers face and won settlements for back wages and damages.

##### **Sweatshops in Private Homes**

[2] We organize workers who are hardest hit by abusive and inhumane sweatshop conditions, such as long hours, low wages, unsafe working conditions, and a lack of worker protections.

[3] According to the 2000 Census, South Asian immigrants make up one of the largest and fastest growing populations in New York City. Many of these newly arrived immigrants are low-income, living or working in different industries across New York City. A large, underestimated number of South Asian workers are undocumented, working off the books in low-wage, hazardous jobs.

[4] Like other sweatshop jobs that South Asians work in, domestic workers work 6–7 days a week, 14–18 hours a day for about \$142 per hour in private homes in NYC and its suburbs. Most South Asian domestic workers are live-in domestic workers. Almost all of them, whether documented or undocumented, are paid in cash by

employers who do not record hours, withhold or pay taxes, or provide workers compensation insurance for them. Since domestic workers live with their employers for most or all of the week, the biggest problem they experience is extremely long hours and no control over their time. They spend their days working on an endless cycle of chores—scrubbing pots and pans, washing clothes, vacuuming, cleaning floors and cooking. When required to take care of small children, they are on call 24 hours a day. Many times, they do not have enough time to eat their meals, take a shower or rest briefly during the day. Sometimes, they sleep in basements that are not adequately heated in the winter. In addition, most experience stress and harassment daily. Some don't receive time off; most don't receive minimum wage; and all are required to work overtime without overtime wages, benefits or any kind of protection. The long hours mean that domestic workers do not get enough time to rest, eat, sleep and take care of their health. Most domestic workers, after working in the industry for several years, develop chronic back, neck or shoulder pain and other stress related illnesses due to the intense pace of work and long hours.

#### **New York Workers' Compensation Board**

[5] One of the few protections that injured domestic workers are supposed to have is workers compensation insurance.

[6] However, it is well-documented through the testimony of injured workers and reported in the media that the WC system imposes extreme delays that forestall the resolution of thousands of cases. Workers wait months or even up to a year between hearings, ultimately dragging their cases out for years on end. In the meantime, the WC provides no payments to cover immediate living expenses or urgently needed medical treatment.

[7] The excessive delays pressure and intimidate injured domestic workers to continue working at their sweatshop jobs. Almost all domestic workers, whether documented or undocumented, are paid off the books, in cash by employers who do not withhold taxes for them or buy workers compensation insurance. If domestic workers file a Workers Comp claim, they must still continue to live and work with their employer, while they wait for the claim to be processed. Filing a workers compensation claim makes her working and living situation impossible for the domestic worker. Additionally, the nature of their injuries—repetitive stress syndrome and chronic muscular pain—make domestic workers' claims more difficult to be recognized by the WCB. Many domestic workers who have been screened by occupational physicians are told to continue taking painkillers because the physicians are not optimistic about workers compensation claims for repetitive stress and other injuries due to sheer long hours and mandatory overtime. Most workers chose to continue working, making their injuries worse, than file a claim that may take years to be resolved.

#### **Our Efforts to Change the Workers' Compensation System**

[8] Recognizing the need to reform the WC system, we came together with the National Mobilization Against SweatShops (NMASS) and the Chinese Staff and Workers' Association (CSWA) to launch the "It's About TIME!: Campaign for Workers' Health and Safety".

[9] The campaign demands a total overhaul of the Workers' Compensation system. We have organized street actions and public rallies outside the WCB offices and petition drives to press for the overhaul of the WCB system. We have met with many state politicians such as Catherine Nolan, Labor Committee Chair of the New York State Assembly. Our demands to reform the WCB were recently translated into legislation. Assemblyperson Nolan has introduced proposed legislation (Bill Number A09270) in the Assembly to (1) require a hearing within thirty days of filing for workers' compensation, and the resolution of a claim within ninety days of the filing of the original claim, (2) provide immediate interim living expenses within one week of filing a claim, (3) increase the minimum weekly benefit to 40 times the New York State hourly minimum wage, (4) to prohibit an employer from requiring an employee to work overtime to prevent further injuries as a result of long hours, (5) to implement initiatives that will correct the WCB's lack of accountability to injured workers and the general public. The equivalent Labor Committee Chair in the Senate, however, has refused thus far to introduce similar legislation.

[10] Despite all of our organizing efforts, injured workers' claims remain subject to long and unnecessary delays. Without timely resolution to their cases, injured workers will continue to suffer the injustices and humiliations of a system that allows mandatory overtime and sweatshop conditions to rob them of their dignity and health, indeed their life.

The undersigned declare, under penalty of perjury, that the foregoing is true and correct to the best of their knowledge.

Executed this\_\_day of October 2001, in New York, New York.

SHAHBANO ALIANI,  
Board Member, Workers' Awaaz.

SATWANT KUKREJA,  
Staff, Workers' Awaaz.

Sworn and Subscribed before me this\_\_day of October 2001.

AFFIDAVIT OF JINEN ZHOU

I, Jinen Zhou, hereby declare under penalty of perjury as follows:

1. I live at: 1665 Cornelia St., Apt. 3L, Ridgewood, NY 11385.
2. I immigrated to the United States with my son in 1989. I currently have a green card. I have had my citizenship interview but have not had my swearing-in ceremony yet.
3. While in the U.S., I have not worked anywhere other than at Sing Tao newspaper.
4. I worked for the Sing Tao newspaper company from 1990 to 1996, where I loaded newspaper bundles into the backs of the trucks and delivered them to stores and newsstands.
5. I worked seven days a week, approximately eight to nine hours a day. I was not given any breaks during the day, while the workers in the office got one-hour lunch breaks. I was forced to work very fast. The working conditions were unsafe. I had to sit in the back of the moving truck with the newspapers. Even though I worked seven days a week, I was only paid for six days of work.
6. One night, on October 19, 1996, it was raining. The floor of the truck was wet and slippery from the rain. I was in the back of the truck. At one point, the truck made a sharp turn and I fell onto the floor of the truck.
7. When I got up, I felt very dizzy. I had injured my head, my neck, my back, and both knees. I went to a Chinese doctor to get herbs to relieve the pain because the Western doctor's office was closed over the weekend. On Monday October 21, 1996, I was still in a lot of pain so I went to see a Western doctor named Dr. Shen.
8. I had a previous workplace injury in 1993 when a truck door smashed my thumb. At that time, my boss had gone with me to the doctor and I had an x-ray taken of my thumb, but my boss took the x-ray and never gave it back to me. A doctor performed surgery on my thumb and I saw that doctor approximately four times. Before my thumb was healed and while I was still under the care of this doctor, my boss called me and said there was a lot of work for me and that I must come back to work right away or he would fire me. This is why, when I had my second injury, I did not immediately go to the hospital. I was afraid my boss would threaten me again, or fire me.
9. I filed for Workers' Compensation in October of 1996.
10. I received \$279.00 a week from October 20, 1996 to June 9, 1997. From June 9, 1997 to August 21, 1998, my payments were reduced to \$170.00 a week. From August 21, 1998 to July of 2000, my payments were again arbitrarily reduced to \$160.00 a week.
11. In July of 2000, my payments were suspended. There is a mistake in my medical history records from when Dr. Shen asked me about my first Workers' Compensation injury. For some reason, he wrote down that I had injured my knee, when I had injured my thumb. When my former employer's insurance company applied for a suspension of my payments in February of 2000, they used this mistake to claim my right knee injury was a pre-existing injury, which it was not.
12. The insurance company and their doctor (Dr. Hudak) continue to refuse to acknowledge any of my workplace injuries, including the damage to my right knee.
13. Since February of 2000, there has been no hearing to discuss the suspension. My last hearing was on December 14, 1999.
14. I have had approximately nine hearings over four and a half years.
15. Due to my head injuries, I remain dizzy and get intense migraine headaches. I suffer from memory loss, insomnia, and severe neck and shoulder pain. I have painful cramps and also numbness in my legs, and a lot of pain in both knees. In June of 1997, I had to have surgery on my left knee.
16. I am unable to afford any medical treatment for these conditions. Despite the insurance company's appeal, Dr. Chao still sees me twice a month. Dr. Chao has not been paid since the insurance company's appeal.
17. I have a son and a daughter who I cannot support due to my injuries. I am borrowing money from family and friends in order to make ends meet.

18. The delay of Workers' Compensation has destroyed my mental health and my relationships with my family members. My self-esteem as a providing father and husband has been destroyed. I suffer from severe depression still and have been suicidal at times.

Dated: New York, New York, July\_\_, 2001,

JINEN ZHOU.

Sworn and Subscribed before me this\_\_day of July, 2001.

SAMEER M. ASHAR,

*Notary Public, State of New York, No. 02AS6056863,  
Qualified in Kings County, Commission Expires 04/02/2003.*

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PREPARED STATEMENT OF THE UNITED FOOD AND COMMERCIAL WORKERS  
INTERNATIONAL UNION (UFCW)

On behalf of the 1.4 million members of the United Food and Commercial Workers International Union (UFCW), we are glad to present testimony on the important issue of workplace safety and health for immigrant and low wage workers. The UFCW is North America's largest private sector union, nearly a million and half people working together to improve their lives and their communities. UFCW members are in many different industries, but are concentrated in retail food, meat packing, poultry, and other food processing industries.

Whenever American families sit down to share a meal, chances are, most of what they'll eat has passed through the hardworking hands of the UFCW members who work in these industries. Thousands of other UFCW members work in the health care industry, in department stores, and in the garment manufacturing, distillery and winery, chemical, and textile trades.

Our industries have been affected by the same demographic changes as the rest of the nation. In many of our industries—poultry processing, meat processing, and garment manufacturing—there are great numbers of immigrant workers. We work to service, organize, and represent these workers to the best of our ability, but there are challenges. For example, legal documentation is a continuing challenge for employers, both in verifying documents and avoiding discrimination in the process. While this hearing will not focus on the issues regarding legalization and documentation, it is important to note that undocumented workers are often at the mercy of unscrupulous employers. Workers' fear of speaking up for themselves means that they face additional job hazards.

We offer here a cautionary tale as an example of this phenomenon. On October 11, 2000, Santos Morales (his name has been changed to protect his identity), a young man from Guatemala in his early twenties, reported to work, as usual, in the middle of the night. His job was to clean the hash gut grinder and other equipment at a pork plant in a small town in Minnesota so that the equipment would be sanitized for the day shift.

Like every other day, Mr. Morales put on his boots and his hard hat and set off to clean the machine—which meant actually climbing inside of the hash gut grinder. At approximately 4:15 A.M., Mr. Morales became caught up to his knees in the grinder. The machine, it turned out, was still running. Flailing his arms and screaming in pain, it was a full ten minutes before help arrived. When the local fire and rescue department was unable to extract him from the grinder, surgeons from a hospital in Sioux City, Iowa were flown in. After welding through the machine, they determined that it would be necessary to amputate both legs below the knees in order to free him from the screw auger of the grinder. Mr. Morales had worked at the plant for only six months before the tragedy occurred. Like other recent immigrants on the night cleanup crew, he had received only a single hour of training before being sent out on the floor. Lock-out, tag-out procedures for stopping the flow of electricity while machinery is cleaned or serviced were posted only in English not in Spanish. No hands-on training was conducted in Spanish. As hard as it may be to believe, no one ever explained the hazards of the job to Mr. Morales. He was not even employed by the company, but worked for a contractor who performed the work.

Mr. Morales' story is shared by many immigrant workers. They are pushed to do their jobs under high pressure in order to meet production requirements; they are fearful that if they complain they will be fired, threatened with deportation, or, in some cases, actually deported. Cleanup in meat packing and food processing plants has always been one of the most dangerous jobs, left to the most vulnerable workers. Today, this almost always means the work is done by recent immigrants from Latin and Central America.



Mr. Morales now lives in a nursing home. He may never see his wife in Guatemala again. The loss of his legs, his livelihood, and his dreams rests on all of us.

This tale is true, and what makes it most regrettable, is that it was avoidable. Under the auspices of a grant from the U.S. Department of Labor, the UFCW has been engaged in training workers to prevent workplace injuries and, most importantly, to train workers to train others. This “train the trainer” method has helped us to replicate and expand our ability to make workplaces safer. Central to our most recent grant is a Latino Outreach Program that specifically targets Hispanic workers with Spanish language training and materials. Our work is often collaborative with the companies that employ our members and has focused primarily on the most hazardous industries—meat packing and poultry processing. We are working to prevent exactly the kind of accident that took the legs and livelihood of Santos Morales. Unfortunately, despite our successful execution of the grant as intended, the Occupation Safety and Health Administration has informed us that our four-year grant has been cut back to only two years and that our funding for this year has been decreased by 25 percent. There is no question that vulnerable, low wage, immigrant workers will suffer as a result of this proposed action.

The members of this Subcommittee are doing a real service to the nation by shining a bright light on a topic that is not well known by the American public. Late tonight, in communities all over this nation, Mr. Morales’ former co-workers will continue to do the dangerous but necessary work that America needs to have done. They should not do so in fear, without the protections of our laws, or without the opportunity to collectively organize to improve their workplace if they so choose. There is no doubt that their safety is inextricably bound with ours, both as consumers, as well as workers. There are numerous policy changes that Congress could make to improve their safety, and several of them are within the purview of this Subcommittee.

First, Congress should insist that OSHA continue to fund the Susan Harwood Training Grant Program to continue the successful work in training workers to recognize workplace hazards and thus reduce occupational injuries and illnesses. For OSHA to reduce the funding and, therefore, the effectiveness of this program, would be a tragic mistake.

Second, increase OSHA’s budget authority so that it can appropriately enforce the law and prevent workplace tragedies.

Third, promulgate an ergonomic standard. Immigrant workers are disproportionately impacted by ergonomic injuries and those injuries continue unabated while the Department of Labor “considers” other approaches.

Fourth, improve OSHA’s whistle-blower protection for immigrants and others filing OSHA complaints. This would ensure that workers would not have to hide in the shadows or accept substandard treatment due to their immigrant/documentation status. While workers have the right to file 11(c)—discrimination—cases with OSHA it is rare that they are successful, as substantiating such claims is quite difficult (particularly for immigrant workers). This small step alone would encourage employers to ameliorate some of their most egregious behavior and would save the lives and limbs of countless immigrant workers.

Fifth, OSHA must hire more people from immigrant communities in order to ensure compliance with the law. UFCW will continue to develop culturally appropriate materials and training, but it is critical that the agency charged with protecting the health and safety of all workers is truly accessible to all workers.

Mr. Chairman, the problems and challenges of immigrant workers will continue after this hearing. Mr. Morales will not regain his legs, and unfortunately, others will suffer similar fates. We must do all that we can to prevent these avoidable tragedies. We at the UFCW pledge our assistance to immigrant workers. Thank you for the opportunity to present this testimony and we would be glad to respond to written inquiries.

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION  
(UFCW),  
UFCW LOCAL 789,  
February 25, 2002.

Hon. PAUL WELLSTONE,  
U.S. Senate,  
Washington, DC 20510.

RE: Dakota Premium

DEAR PAUL: On February 18, 2002, I met with your aide, Marge Baker. We talked at length about a number of issues. At the center of the discussion was worker safety/ergonomics but the issues reached much broader matters. It was clear the in-

creasing numbers of immigrant workers (documented and undocumented) were driving the failures of worker safety.

There is perhaps no better example of that fact than Dakota Premium. It's a packing house in South St. Paul, Minnesota and the lone remnant of a once thriving industry in that town. It's also a plant that has gone from a predominantly Anglo workforce to one with 95% Latinos.

What makes the plant different from so many is the unique chain of events that have occurred since June of 2000. To hear the story, is to say it's not possible. For that reason, we have elected to recant several of the incidents. I apologize in advance. Most of the information will be anecdotal. By the time we finish, you will understand why workers elect to remain nameless.

It is significant to understand for purposes of this narrative there are several undocumented workers in the plant. Let me be clear, we've never asked nor do we care. Having said that, it makes an enormous difference in what has happened. Any actions taken always increase the risk and exposure of their legal status. It will become apparent, this employer and others rely on that to contain costs.

During the spring of 2000, workers at Dakota Premium found themselves being taken advantage of. Wage rates ranged from \$8.00 to \$10.00 an hour. While this is well below industry standards, it was another factor driving the anger. Workers were being hurt. Once they were injured, it was not unusual for the employer to tell the worker, they had no work for them. Most often, they just left. Collectively, they saw what was happening and started talking. It was fairly easy to see the higher rate of injury was directly related to the higher line speed.

On June 1, 2000 workers on the processing side presented a list of demands to the employer. Mind you, there is no Union presence at this point. Their primary concern was worker safety. The employer told them to get to work or get out of the plant. The majority of the workers walked out.

One worker walked to our Union hall and asked for help. At the same time, leaders of the "strike" were invited back into the plant to present their list of demands. A return to work agreement was reached, with the most important feature, a safe line speed number that would be monitored by the workers.

UFCW Local 789 signed over eighty authorization cards that day. In the next month, an additional sixty cards were signed. The Union asked for voluntary recognition, the employer demanded an NLRB election. A date was set for July 21. Both sides ran aggressive campaigns.

The Union won the election, 112 to 71. Within days, the employer filed objections to the election. The charges covered everything from the Union bribing workers (\$10,000.00 per vote) to threatening to have workers deported if they voted against the Union. One allegation, centered on a ballot produced by the Union without our name on it. After a lengthy hearing, the Union was absolved of any wrong doing.

The owner, Rosen Industries, continued the appeals to Washington. In each case they have been denied. On August 28, 2001, the NLRB certified UFCW Local 789 as the bargaining representative for the Dakota Premium Workers. The Union requested negotiations begin. The employer refused; sending yet another appeal to the NLRB. The Union filed charges against the employer for failure to bargain. The employer appealed and 10 charges against the Company are pending a hearing over their appeal.

All of this says nothing to the tragedy that has unfolded in the workplace. For purposes of simplifying and to accentuate the abuses workers have suffered, we have extracted the incidents in numerical order below. You will note the lack of detail because workers are afraid. The employer told workers they would never win. They boldly stated their employer would never sit and negotiate a contract. A year and eight months later, those threats have had a chilling effect on workers who took an enormous risk to demand plant safety, a little dignity and a living wage. Here are, the incidents:

In Solidarity,

BILL PEARSON,  
*President, UFCW Local 799.*

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION  
(UFCW),  
UFCW LOCAL 789,  
February 29, 2002.

Hon. PAUL WELLSTONE,  
U.S. Senate,  
Washington, DC 20510.

RE: Dakota Premium

DEAR SENATOR: These are some examples of the many incidents that occur in Dakota Premium. Not too long ago, a female worker got into an accident at work resulting in the loss of half of the ring finger and the tip of the middle finger. The response of the company was to take her to the company's clinic and send her home with no information at all. She didn't know anything about worker's comp, her insurance coverage or anything. She was out of work before she called us and asked what to do. After she obtained legal counsel, she finally got fair treatment and lost wages. There are many cases like this. Unfortunately many workers don't report injuries for fear of retaliation or termination.

Another horrible situation is that there are no bathroom breaks, so many workers resort to peeing on the floor. Amazingly this is a common practice at this plant. You can't blame the workers this is a natural function of the body. When they don't have access to bathroom breaks, they are forced to do this; no matter how disgusting it sounds. It is strange though, that the only person who has been punished for doing this was a Union Sympathizer.

A third case that shows the horrible things that workers have to go through happened about a month ago. A worker was suspended and was to be replaced by another worker, who happens to be the husband of the HR manager. He refused to do the job and asked someone else to do it for him. When that person said no he was terminated, nothing happened to the husband of the HR manager.

A final example happened about a year ago. A mistake made by the cleaning crew left an excess of ammonia in the plant. Workers knew that something was wrong but they didn't know what to do until a worker that didn't know Spanish tried to push everyone outside. The level of intimidation in the plant was so high that most of the workers wouldn't leave their position; even with their health at risk. It took seeing one of the female workers pass out from the fumes to convince them to leave the building. This is a good indication of the lack of training for management and lack of concern for the workers. It is obvious that in this plant workers are not seen as human beings.

Respectfully,

BILL PEARSON,  
President, UFCW Local 789.

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WESTERN GROWERS ASSOCIATION (WGA),  
IRVINE, CA 92614,  
March 12, 2002.

Hon. PAUL WELLSTONE,  
U.S. Senate,  
Washington, DC 20510.

DEAR MR. CHAIRMAN: Western Growers Association (WGA) would like to comment for the record of the subcommittee hearing on "Workplace Safety and Health for Immigrant and Low Wage Workers" on February 27, 2002. WGA requests that this letter be submitted for the hearing record.

WGA is an agricultural trade association established in 1926 whose over 3,500 members grow, pack and ship 90% of the fresh vegetables and nearly 70% of the fresh fruit and nuts grown in Arizona and California. This constitutes about one-half of the nation's supply of fresh produce.

WGA shares your worthy goal of ensuring that all agricultural workers have safe and healthy working conditions and environments in which to work. Moreover, WGA also agrees with you that immigrant workers should be treated fairly and with respect in all aspects of the employer/employee relationship. WGA joins you in condemning any abuses of federal labor law committed by a very small minority of employers that adversely impact immigrant farmworkers. WGA welcomes the opportunity to work with members of Congress on prudent legislative initiatives to improve working conditions in agriculture.

One of the areas in which WGA seeks to work with members of Congress, farmworker advocates, the Bush Administration and other interested parties on a bipar-

tisan basis is in the area of adjustment-of-status and guest worker legislation. WGA supports legislation to provide undocumented workers who are already working in agriculture with the ability to earn legal status through future work in agriculture. We believe that so-called "adjustment-of-status" legislation is in the best interests of both immigrant workers and agricultural employers who have no way of telling whether employment documents presented by workers are authentic or not. Such legislation would greatly reduce the problem of undocumented immigrants "working in the shadows," which all too often subjects them to unfair or even dangerous treatment.

WGA believes that a viable agricultural guest worker program is also in the best interests of both immigrant farmworkers and agricultural employers. WGA supports legislation to streamline and reform the current H-2A guest worker program so that alien workers have the opportunity to work in agriculture in the United States on a temporary basis if they so choose. The current H-2A program is extremely bureaucratic and inefficient, and often cannot match workers with growers on a timely basis, which is essential for harvesting highly perishable fruit and vegetable crops before they spoil. The current inefficiencies in the H-2A program benefit neither immigrant workers nor employers, and WGA urges Congress to enact legislation to establish a workable guest worker program.

WGA has long been interested in ensuring that both domestic and immigrant farmworkers have access to affordable health insurance coverage. In order to achieve this goal, WGA has sponsored an association health plan for our member employers for over 40 years. Our association health plan enables agricultural producers to provide affordable health benefits to workers that generally are not available through the commercial insurance industry. We provide a wide array of benefit options, including PPO, HMO and traditional indemnity plans, which are designed to meet the specific needs of working families employed in agriculture. Our association health plan provides coverage to Mexican workers who reside in Mexico on a permanent basis but are employed in California and Arizona agriculture on a seasonal basis, and provides coverage for them to be treated in Mexico. We believe our health plan has been very successful in expanding affordable health benefits to immigrant farmworkers over the past 40 years.

WGA remains committed to working with employers and workers to ensure that all agricultural workers have safe and healthy working environments, as well as affordable and secure health benefits. WGA appreciates your consideration of our views and looks forward to working together on health and safety issues for agricultural workers in the future.

Sincerely,

DONALD G. DRESSLER,  
*President—Insurance Services.*

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[Whereupon, at 4:26 p.m., the subcommittee was adjourned.]