

**United States Senate**  
WASHINGTON, DC 20510

December 21, 2020

Loren Sweatt  
Principal Deputy Assistant Secretary of Labor  
Occupational Safety and Health Administration  
200 Constitution Ave NW  
Washington, DC 20210

Dear Assistant Secretary Sweatt:

We are writing to address your agency's negligent failure to protect worker safety during this still-escalating pandemic. Two months ago, we sent a letter to you criticizing the Occupational Safety and Health Administration's (OSHA) delayed and ineffective response to coronavirus disease 2019 (COVID-19) outbreaks occurring at meatpacking facilities across the U.S. that have sickened and killed many workers.<sup>1</sup> Your response to that letter wrongly asserted, without evidence or analysis, that enforceable, emergency health and safety standards are "not necessary at this time."<sup>2</sup> This is the same claim the Department of Labor (DOL) made in April,<sup>3</sup> when there were half a million COVID-19 cases in the United States and 18,600 deaths.<sup>4</sup> Currently, there are more than 16.6 million cases and over 300,000 deaths,<sup>5</sup> and a newly released study by public health experts has explicitly identified meatpacking facilities "as [COVID-19] transmission vectors into the surrounding population [that] accelerate the spread of the virus" and are associated with hundreds of thousands of excess cases and thousands of excess fatalities.<sup>6</sup> Given these ongoing concerns, we would like to know whether you plan to take any action while you are still in office to protect workers and communities during this surge in the pandemic, or if you plan to end your tenure by continuing to fail the workers you are sworn to protect.

**COVID-19 Infections in Meatpacking Facilities Have Continued to Spread**

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<sup>1</sup> Letter from Senators Elizabeth Warren and Cory Booker to Principal Deputy Assistant Secretary of Labor Loren Sweatt, September 22, 2020,

<https://www.warren.senate.gov/imo/media/doc/Letter%20from%20Senators%20Warren,%20Booker%20to%20OSHA%209-22-20.pdf>.

<sup>2</sup> Letter from Department of Labor Deputy Assistant Secretary Joe Wheeler to Senator Elizabeth Warren, October 26, 2020, <https://www.warren.senate.gov/imo/media/doc/10-26-2020%20Warren%20RE-OSHA%20ETS.pdf>.

<sup>3</sup> Letter from Department of Labor Deputy Assistant Secretary Joe Wheeler to Senator Elizabeth Warren, April 10, 2020, on file with the office of Senator Elizabeth Warren.

<sup>4</sup> CBS News, "Coronavirus updates: More than half a million people have tested positive in the U.S.," April 11, 2020, <https://www.cbsnews.com/live-updates/coronavirus-pandemic-covid-19-latest-news-2020-04-10/>.

<sup>5</sup> Johns Hopkins University & Medicine, Coronavirus Resource Center, Accessed on December 15, 2020, <https://coronavirus.jhu.edu/map.html>.

<sup>6</sup> Proceedings of the National Academy of Sciences, "Livestock plants and COVID-19 transmission," Charles A. Taylor, Christopher Boulos, and Douglas Almond, November 19, 2020, <https://www.pnas.org/content/early/2020/11/25/2010115117>.

Amid OSHA's continued refusal to engage in substantive enforcement of worker protections or to issue an Emergency Temporary Standard (ETS) requiring enforceable worker safety protections specific to the pandemic, COVID-19 outbreaks at meatpacking plants have worsened. Since our previous letter to your agency, dated September 22, 2020, an additional 8,974 meatpacking workers have tested positive for COVID-19 and 54 workers have died of COVID-19 across another 69 meatpacking plants.<sup>7</sup> Since the start of the pandemic, over 50,000 meatpacking workers have tested positive for COVID-19 and over 260 workers have died of COVID-19 at more than 560 meatpacking facilities, as of December 15, 2020.<sup>8</sup>

Rather than taking significant action to protect worker safety in meatpacking facilities, DOL has instead reduced transparency surrounding employers found to have violated workers' rights.<sup>9</sup> A September 24, 2020 memo on which you are copied instructs DOL to "not issue news releases" before achieving one of a narrow set of least-likely case outcomes, effectively halting the issuance of public information about citations of employers.<sup>10</sup> This change meaningfully weakens OSHA's enforcement capacity given that "to achieve the same improvement in compliance as achieved with a single press release," a study found that "OSHA would need to conduct 210 additional inspections."<sup>11</sup> Tellingly, the stated rationale for this change is to protect the reputation of companies. The memo states that "news releases are effective ways of communicating with the American public, but also have the potential to create an online record that is prominent in search results regarding a particular company or labor union."<sup>12</sup> Your agency's job is not to protect the brand identity of negligent businesses – it is to protect workers.

### **Meatpacking Employers Are Failing to Protect Workers**

In the absence of protections and enforcement, workers' health and safety are left to the whims of employers who know there isn't a cop on the beat, as is evidenced by repeated outbreaks at the same large meat-processing plants operated by the same industry giants. For example, JBS Foods, Inc. in Greeley, Colorado – the site of a worksite and community outbreak that left six workers dead earlier this year<sup>13</sup> – is in the midst of another COVID-19 outbreak. The

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<sup>7</sup> Food & Environment Reporting Network, "Mapping Covid-19 outbreaks in the food system," Leah Douglas, Accessed on December 18, 2020, <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/>.

<sup>8</sup> *Id.*

<sup>9</sup> The New York Times, "Labor Department Curbs Announcements of Company Violations," Noam Scheiber, October 23, 2020, <https://www.nytimes.com/2020/10/23/business/economy/labor-department-memo.html>.

<sup>10</sup> Memorandum from the Deputy Secretary of Labor on "Guidance on Enforcement Agency News Releases," September 24, 2020, <https://int.nyt.com/data/documenttools/labor-department-memo-on-announcing-violations/f6fa97e7c3989622/full.pdf>.

<sup>11</sup> Matthew S. Johnson, *Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws*, 110 American Economic Review 1866 (2020), available at <https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.20180501>.

<sup>12</sup> Memorandum from the Deputy Secretary of Labor on "Guidance on Enforcement Agency News Releases," September 24, 2020, <https://int.nyt.com/data/documenttools/labor-department-memo-on-announcing-violations/f6fa97e7c3989622/full.pdf>.

<sup>13</sup> Washington Post, "He fled Congo to work in a U.S. meat plant. Then he – and hundreds of his coworkers – got the coronavirus.," Robert Klemko and Kimberly Kindy, August 6, 2020, [https://www.washingtonpost.com/national/he-fled-the-congo-to-work-in-a-us-meat-plant-then-he--and-hundreds-of-his-co-workers--got-the-coronavirus/2020/08/06/11e7e13e-c526-11ea-8ffe-372be8d82298\\_story.html](https://www.washingtonpost.com/national/he-fled-the-congo-to-work-in-a-us-meat-plant-then-he--and-hundreds-of-his-co-workers--got-the-coronavirus/2020/08/06/11e7e13e-c526-11ea-8ffe-372be8d82298_story.html).

state health department “has reported 32 infections among workers at the plant,” and “separately counted 46 positive cases among workers at JBS’s corporate offices in another outbreak.”<sup>14</sup> Yet “the plant still does not conduct facility-wide testing,”<sup>15</sup> and two whistleblowers recently came forward and accused JBS of “charging its uninsured employees \$100 in cash for those tests.”<sup>16</sup> Across 18 states, at least 4,159 positive cases and 18 worker deaths have been tied to 21 JBS facilities.<sup>17</sup>

Smithfield Packaged Meats Corporation in Sioux Falls, South Dakota was another site of a deadly worksite and community outbreak that left four workers dead earlier this year. As of September 2020, nearly a third of the plant’s workforce had been infected by COVID-19.<sup>18</sup> Across 10 states, at least 2,440 positive cases and seven worker deaths have been tied to fifteen Smithfield Foods facilities.<sup>19</sup>

And just last month, the details of a wrongful death lawsuit emerged alleging that supervisors at a Tyson Foods’ pork processing plant in Waterloo, Iowa placed bets on worker safety, including management “organizing a cash buy-in, winner-takes-all betting pool for supervisors and managers in mid-April to guess how many plant employees would test positive after being forced to report for work.”<sup>20</sup> At that facility alone, over one thousand workers contracted COVID-19<sup>21</sup> and at least six employees have died<sup>22</sup> from COVID-19. Reports stated that in March and April, “plant supervisors falsely denied the existence of any confirmed cases or positive tests for COVID-19 within the plant, and allegedly told workers they had a responsibility to keep working to ensure Americans didn’t go hungry as the result of a shutdown” but “as the pandemic spread across Iowa, managers at the Waterloo plant reportedly

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<sup>14</sup> The Wall Street Journal, “Meatpacker JBS Removed At-Risk Workers from Beef Plant Amid Covid-19 Surge,” Jacob Bunge, December 4, 2020, <https://www.wsj.com/articles/meatpacker-jbs-removed-at-risk-workers-from-beef-plant-amid-covid-19-surge-11607087090>.

<sup>15</sup> BuzzFeed News, “The Coronavirus Outbreaks In Meatpacking Plants Were Likely Much Worse Than Official Numbers Show,” Karen Wang and Albert Samaha, November 27, 2020, <https://www.buzzfeednews.com/article/karensiqiwang/meatpacking-coronavirus-outbreaks-testing>.

<sup>16</sup> The Counter, “Whistleblower says JBS asked employees to pay \$100 for Covid-19 tests. Shocker: few participated.” H. Claire Brown, October 27, 2020, <https://thecounter.org/covid-19-testing-jbs-greeley-colorado-meatpacking/>.

<sup>17</sup> Midwest Center for Investigative Reporting, “Tracking Covid-19’s impact on meatpacking workers and industry,” Sky Chadde, April 16, 2020, <https://investigatamidwest.org/2020/04/16/tracking-covid-19s-impact-on-meatpacking-workers-and-industry/>.

<sup>18</sup> The Counter, “‘It’s a national tragedy’: What a devastating Covid-19 outbreak at a California slaughterhouse reveals about the federal government’s failed pandemic response,” Nick Roberts and Rosa Amanda Tuirán, <https://thecounter.org/covid-19-outbreak-meatpacking-safety-osha-california/>.

<sup>19</sup> Midwest Center for Investigative Reporting, “Tracking Covid-19’s impact on meatpacking workers and industry,” Sky Chadde, April 16, 2020, <https://investigatamidwest.org/2020/04/16/tracking-covid-19s-impact-on-meatpacking-workers-and-industry/>.

<sup>20</sup> Huffington Post, “Tyson Foods Accused Of Betting Money On How Many Workers Would Contract COVID-19,” Sanjana Karanth, November 18, 2020, [https://www.huffpost.com/entry/tyson-foods-iowa-wrongful-death-lawsuit-betting-accusation-coronavirus\\_n\\_5fb5f1f7c5b664958c7d9414?ncid=engmodushpmg00000004](https://www.huffpost.com/entry/tyson-foods-iowa-wrongful-death-lawsuit-betting-accusation-coronavirus_n_5fb5f1f7c5b664958c7d9414?ncid=engmodushpmg00000004).

<sup>21</sup> *Id.*

<sup>22</sup> Associated Press, “Family of 4<sup>th</sup> dead worker sues Tyson over Waterloo outbreak,” August 10, 2020, <https://apnews.com/article/lawsuits-virus-outbreak-iowa-waterloo-6ef15c4c35c169e6852f336d95a59b06>.

began avoiding the plant floor for fear of contracting the virus.”<sup>23</sup> There have been at least 12,156 positive cases and 44 worker deaths at 48 Tyson Foods facilities spanning 19 states.<sup>24</sup>

Throughout the industry, meat and poultry workers continue to risk their health to protect their jobs, because OSHA has failed to fulfill its mission and assure their safety.

### **Meatpacking Facilities Are Seeding COVID-19 Outbreaks**

At the start of the pandemic, “the meatpacking industry emerged as an early and shocking hot spot.”<sup>25</sup> Just last month, a new study published in the Proceedings of the National Academy of Sciences reached a disturbing conclusion that the health risks from meatpacking plants extend far beyond the threats posed to workers. The authors “estimate the total excess COVID-19 cases and deaths associated with proximity to livestock plants to be 236,000 to 310,000 (6 to 8% of all US cases) and 4,300 to 5,200 (3 to 4% of all US deaths), respectively, as of July 21, 2020, with the vast majority likely related to community spread outside these plants.”<sup>26</sup> The study’s authors conclude “that these plants may act as transmission vectors into the surrounding population and accelerate the spread of the virus.”<sup>27</sup> This new research dramatically highlights the extent to which OSHA’s failure to set emergency standards and issue strong enforcement guidance leaves the agency complicit in exacerbating the ongoing COVID-19 public health crisis across the country.

Under your leadership, OSHA has completely failed to fulfill its mission “to ensure safe and healthful working conditions for working men and women by setting and enforcing standards”<sup>28</sup> in meatpacking facilities across the nation. Your persistent failure to act continues to endanger these workers and the communities where they live, work, and play. It has been clear since the onset of this pandemic that OSHA must promulgate an ETS to guarantee enforceable health and safety protections for workers specific to this pandemic. The agency’s failure to take action under your watch is disgraceful, and workers, their families, and their communities deserve better.

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<sup>23</sup> Iowa Capital Dispatch, “Lawsuit: Tyson managers bet money on how many workers would contract COVID-19,” Clark Kauffman, November 18, 2020, <https://iowacapitaldispatch.com/2020/11/18/lawsuit-tyson-managers-bet-money-on-how-many-workers-would-contract-covid-19/>.

<sup>24</sup> Midwest Center for Investigative Reporting, “Tracking Covid-19’s impact on meatpacking workers and industry,” Sky Chadde, April 16, 2020, <https://investigatamidwest.org/2020/04/16/tracking-covid-19s-impact-on-meatpacking-workers-and-industry/>.

<sup>25</sup> BuzzFeed News, “The Coronavirus Outbreaks In Meatpacking Plants Were Likely Much Worse Than Official Numbers Show,” Karen Wang and Albert Samaha, November 27, 2020, <https://www.buzzfeednews.com/article/karensiqiwang/meatpacking-coronavirus-outbreaks-testing>.

<sup>26</sup> Proceedings of the National Academy of Sciences, “Livestock plants and COVID-19 transmission,” Charles A. Taylor, Christopher, Boulos, and Douglas Almond, November 19, 2020, <https://www.pnas.org/content/early/2020/11/25/2010115117>.

<sup>27</sup> *Id.*

<sup>28</sup> U.S. Department of Labor, Occupational Safety and Health Administration, “OSHA’s Mission” on the About OSHA page, <https://www.osha.gov/aboutosha>.

Sincerely,



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Elizabeth Warren  
United States Senator



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Cory A. Booker  
United States Senator

CC: Chris Lu, Team Lead, Biden-Harris Transition, Department of Labor