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June 24th, 2020

Peter Robb, General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Dear General Counsel Robb:

During the COVID-19 pandemic, frontline workers who serve our communities at great risk to their own safety are joining together to demand improved protections on the job. Too often, these workers are reprimanded, punished or even fired by their employers for raising concerns or asking for improvements to increase workplace safety. The National Labor Relations Board (NLRB) must comply with its legislative mandate by taking immediate action to prioritize the workers' exercise of their rights to organize to protect their safety and health. We ask that you act decisively by swiftly pursuing injunctive relief to reinstate workers who were fired for engaging in any organizing or other protected activities as a response to the COVID-19 pandemic.

Many workers face high risks of contracting COVID-19 on the job

Frontline workers are the most exposed and most vulnerable to COVID-19. An estimated 10 percent of U.S. workers are exposed to disease or infection once a week or more.ⁱ A substantial number of these workers are employed in low-pay, high risk professions.ⁱⁱ Women and people of color are especially vulnerable on the job. Seventy-three percent of health care providers diagnosed with COVID-19 were women.ⁱⁱⁱ People of color are also overrepresented in jobs with high COVID-19 exposure risks.^{iv} These frontline workers have paid a very high price, experiencing disproportionately high rates of hospitalization and death from COVID-19.^v As some states lift stay-at-home orders, more and more workers will face the risk of COVID-19 exposure in their workplace.

Corporations are punishing and firing workers who join together and organize for safer working conditions

Many frontline workers report that they are subject to high levels of COVID-19 exposure on the job but are not being given adequate safety guidance, information about on-the-job infections or equipment to help them stay safe. In a COVID-19 survey of nurses, fewer than half had been briefed about COVID-19 by supervisors;^{vi} and only 19 percent reported that their employer had a policy to address employees with suspected or known exposure to novel coronavirus.^{vii} Both worker organizations and the former head of Occupational Safety and Health Administration (OSHA) have raised concerns about inadequate COVID-19 worker safety standards for frontline workers.^{viii}

Workers have reported to your agency that they are being punished when they speak up about unsafe working conditions. Examples include the following:

- Essential workers in the food supply chain in Yakima, WA report that when they asked for improved safety provisions and other COVID-19 related improvements to their working conditions, they were interrogated and threatened by their employer.^{ix}
- Food service workers in Colorado report that they were fired after joining together to ask for improved safety precautions prior to returning to work.^x
- Poultry plant workers in Delaware report that their wages were reduced to fund payments for personal protective equipment, and that they were forced to attend anti-union meetings in small, cramped spaces – leaving them especially vulnerable to COVID-19 transmission.^{xi}
- Crawfish processing workers in Crowley, Louisiana report that after they developed COVID-19 symptoms, their supervisor forbade them from leaving employer-owned housing and then fired them for going to the hospital to seek medical attention.^{xii}
- A fast food worker in Chicago, IL reports that he was fired for participating in a lawsuit alleging unsafe working conditions, including inadequate PPE and failures to inform workers when co-workers tested positive for COVID-19.^{xiii}

Left with inadequate protections, workers have joined together to raise workplace safety concerns – despite facing chilling effects to organizing caused by high unemployment

Fortunately, the National Labor Relations Act (NLRA) protects the right to engage in concerted activity,^{xiv} and prohibits employers from interfering with employees' exercise of that right.^{xv} As noted on the NLRB website, this right includes “participating in a concerted refusal to work in unsafe conditions.”^{xvi} But many of these workers have then been retaliated against or even fired for their activities in violation of the NLRA. Workers who have been fired or punished by employers after organizing for improved safety include warehouse workers,^{xvii} healthcare workers,^{xviii} factory workers,^{xix} veterinary workers and workers throughout the food supply chain. Still more workers report that their employers are using the COVID-19 pandemic to send them intimidating letters, hold captive audience meetings, or even fire and replace workers who are organizing - all to discourage workers from raising safety concerns or organizing unions.^{xx} This is especially disturbing since research shows that more densely unionized workplaces have a lower rate of workplace fatalities^{xxi} – something that should be the goal of every employer.

When corporations discipline or fire workers who organize in the midst of a pandemic, those actions send a clear message: workers who speak up will be punished, and those who speak up are expendable. The potential for employer retaliation to create a chilling effect is exacerbated because U.S. unemployment is at unprecedented levels, with 20.5 million jobs lost in April, a 14.7 percent unemployment rate and millions more workers whose hours have been cut.^{xxii} Due to these Depression-era unemployment rates, workers are at an extreme disadvantage in terms of bargaining power.

Workers are vulnerable to both illness and to the dangers of being unable to find other employment if they are fired, and any retaliation provides a stark reminder of that fact. During this crisis, a single act of retaliation can so effectively chill an organizing drive that, by the time the NLRB has finished the normally extensive and lengthy process of processing the case, the drive would be irreparably destroyed. We expect the NLRB to safeguard workers' exercise of their rights to the fullest extent possible.

The NLRB must use 10(j) petitions to seek injunctive relief for workers

As the NLRB's General Counsel, you have a strong tool at your disposal to address retaliation against workers during COVID-19: the petition for injunctive relief under Section 10(j) of the NLRA. After a worker has filed an unfair labor practice charge with the NLRB, the Board has explicit authority to authorize the General Counsel to petition a United States district court for injunctive relief to protect the employee while the case is pending before the NLRB.^{xxiii} Courts have found that such petitions are in the public interest to ensure that unfair labor practices do not succeed^{xxiv} and are also essential to address the chilling effects of anti-union activities.^{xxv}

You have stated in a memo that "in certain cases, temporary injunctive relief under Section 10(j) provides the only means of ensuring the protection of employees' Section 7 rights and the NLRB's remedial processes."^{xxvi} Cases that you identified as appropriate for 10(j) injunctive relief include situations in which the employee faces "a threat of remedial failure" as they wait for the NLRB to process their case. An employee who is suspended or fired for engaging in COVID-19-related concerted activity would almost certainly face this threat of remedial failure in cases where the General Counsel does not seek 10(j) relief.

However, according to the NLRB's website, only five 10(j) petitions have been authorized in 2020 – only three of which were authorized since President Trump declared a national emergency on March 13, 2020.^{xxvii} The NLRB has the authority to file for temporary injunctive relief, and the COVID-19 pandemic has created the circumstances in which this relief is especially warranted.

Requests to the NLRB

We therefore request that you immediately take steps to work with the Regional Directors and the Board to pursue 10(j) injunctions in every unfair labor practice case where there is reasonable cause to believe that the charging party suffered retaliation for engaging in union organizing or concerted activity in response to the COVID-19 pandemic. This is appropriate since your agency has asserted that "[u]nfair labor practice charges continue to be accepted and investigated. There has also been no change to priority of investigations or time targets^{xxviii}." In this dire moment, the

NLRB has a choice: either proactively act to ensure the nation's frontline workers are safe, or do little or nothing—which is tantamount to condoning the use of scare tactics and retribution by corporations, and which ensures that frontline workers will sicken and die in higher numbers.

In the interest of workers, consumers and the general public, we also request a detailed explanation of the following by July 1, 2020:

1. Whether and how the NLRB is using 10(j) injunctions to comply with the agency's statutory mandate to "protect[...] the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing" during the COVID-19 pandemic. Please provide specific examples.
2. Please provide a copy of any directives that the NLRB has issued asking Regional Offices to:
 - a. Protect worker health and safety by prioritizing Unfair Labor Practice charges involving health and safety issues.
 - b. Determine whether Unfair Labor Practice charges involving health and safety issues could be appropriate for injunctive relief.

If the NLRB has not provided any such directives, please explain why not, and what the agency is doing to ensure that Regional Offices are prioritizing Unfair Labor Practice claims related to health and safety.

3. Please provide the following:
 - a. A list of cases where the charging party has requested injunctive relief since March 12, 2020, and the status of that request.
 - b. A list of cases, by name and case number, in which the General Counsel has requested approval from the Board to petition for a 10(j) injunction since March 12, 2020. If the General Counsel has not sought injunctive relief for employees over the course of the pandemic, please explain why.
 - c. A complete list of all 10(j) injunctions sought and/or received by the Board since March 12, 2020, if there are any such cases not listed on the NLRB's website.
 - d. A list of all cases settled prior to and following the NLRB's filing for 10(j) in federal district court over the last four months.
 - e. A list of cases by name and number in which the Regional Office has requested authorization to seek 10(j) relief and the list of cases in which the General Counsel has requested approval from the Board to seek 10(j) relief.

- f. A list of cases that the Regional Offices sua sponte flagged as potentially meritorious of 10(j) injunctive relief since March 12, 2020, and the status of each case.
- g. A list of cases involving Section 8(a)(1) discharge cases and Section 8(a)(3) discharge cases filed since March 12, 2020; whether the party is seeking 10(j) relief; whether the Region has otherwise made a recommendation to the General Counsel that injunctive relief is appropriate; and the status of the 10(j) authorization.

We look forward to working with you to ensure that the law is upheld, the National Labor Relations Board properly carries out its mandate, and workers and the public are protected.

Sincerely,



PRAMILA JAYAPAL
Member of Congress



MARK POCAN
Member of Congress

Also signed by:

/s/
Alma S. Adams, Ph.D.
Member of Congress

/s/
Frederica Wilson
Member of Congress

/s/
Jesús G. “Chuy” Garcia
Member of Congress

/s/
Andy Levin
Member of Congress

/s/
Alan Lowenthal
Member of Congress

/s/
Suzanne Bonamici
Member of Congress

/s/
Rashida Tlaib
Member of Congress

/s/
Bennie G. Thompson
Member of Congress

/s/
Barbara Lee
Member of Congress

/s/
Eleanor Holmes Norton
Member of Congress

/s/

Mark DeSaulnier
Member of Congress

/s/

Steve Cohen
Member of Congress

/s/

Raúl M. Grijalva
Member of Congress

/s/

Katie Porter
Member of Congress

/s/

Brian Higgins
Member of Congress

/s/

Marcy Kaptur
Member of Congress

/s/

Susan Wild
Member of Congress

/s/

Linda T. Sánchez
Member of Congress

/s/

Henry C. “Hank” Johnson, Jr.
Member of Congress

/s/

Tim Ryan
Member of Congress

/s/

Donald Norcross
Member of Congress

/s/

Lori Trahan
Member of Congress

/s/

Ilhan Omar
Member of Congress

/s/

Jamie Raskin
Member of Congress

/s/

Sheila Jackson Lee
Member of Congress

/s/

David N. Cicilline
Member of Congress

/s/

Josh Harder
Member of Congress

/s/

Peter A. DeFazio
Member of Congress

/s/

Gilbert R. Cisneros, Jr.
Member of Congress

/s/

Yvette D. Clarke
Member of Congress

/s/

Lucille Roybal-Allard
Member of Congress

/s/

Adriano Espaillat
Member of Congress

/s/

Marcia L. Fudge
Member of Congress

cc: Chairman of the House Committee on Education and Labor, Congressman Bobby Scott; NLRB Deputy General Counsel, Alice Stock; NLRB Injunction Litigation Branch Chief, Richard Lussier

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- ⁱ PLOS ONE, “Estimating the burden of United States workers exposed to infection or disease: A key factor in containing risk of COVID-19 infection,” (April 28, 2020) <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0232452> (“Based on our analyses, approximately 10% (14.4 M) of United States workers are employed in occupations where exposure to disease or infection occurs at least once per week. Approximately 18.4% (26.7 M) of all United States workers are employed in occupations where exposure to disease or infection occurs at least once per month. While the majority of exposed workers are employed in healthcare sectors, other occupational sectors also have high proportions of exposed workers. These include protective service occupations (e.g. police officers, correctional officers, firefighters), office and administrative support occupations (e.g. couriers and messengers, patient service representatives), education occupations (e.g. preschool and daycare teachers), community and social services occupations (community health workers, social workers, counselors), and even construction and extraction occupations (e.g. plumbers, septic tank installers, elevator repair)...”)
- ⁱⁱ Visual Capitalist and the World Economic Forum, “These are the occupations with the highest COVID-19 risk,” (4/20/20) <https://www.weforum.org/agenda/2020/04/occupations-highest-covid19-risk/>
- ⁱⁱⁱ Centers for Disease Control, “Characteristics of Health Care Personnel with COVID-19 — United States, February 12–April 9, 2020,” (April 17, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6915e6.htm?s_cid=mm6915e6_w (“Of 9,282 U.S. COVID-19 cases reported among HCP, median age was 42 years, and 73% were female, reflecting these distributions among the HCP workforce. HCP patients reported contact with COVID-19 patients in health care, household, and community settings. Most HCP patients were not hospitalized; however, severe outcomes, including death, were reported among all age groups.”)
- ^{iv} World Economic Forum, “These are the occupations with the highest COVID-19 risk” (4/20/20); BLS, Labor Force Statistics from the Current Population Survey, Excerpts from. [“Table 11. Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity”](#); Dyer, Owen. (Apr. 2020). “Covid-19: Black people and other minorities are hardest hit in US,” *British Medical Journal* (“The current issue of the Morbidity and Mortality Weekly Report, compiled by the Centers for Disease Control and Prevention (CDC),² shows that its reporting system has gathered racial data on just 534 covid-19 patients admitted to hospital, of about 40 000 admitted so far around the country. Of these, 261 (45.0%) were non-Hispanic white and 192 (33.1%) were non-Hispanic black, in a country where black citizens comprise less than 13% of the population...Although the CDC has no comparable data on covid-19 deaths, data from localities that do report patients’ race suggest an even worse disparity in that metric. In Chicago, black residents have been three times as likely to have the disease diagnosed as their white counterparts—and nearly six times as likely to die from it. In Milwaukee County, Wisconsin, and in hard hit Louisiana, black people account for 70% of the dead but for just 26% and 32% of those populations, respectively...Many black people in the US work in essential jobs or in jobs that require in-person human interaction or cannot be done from home.”)
- ^v CQ, [Transport workers give low marks to federal virus protection](#) (4/24/20) (“Roughly 100 workers for local transit systems have died since the pandemic swept across the country...); Washington [Post.com](#), “‘It feels like a war zone’: As more of them die, grocery workers increasingly fear showing up at work,” (“At least 41 grocery workers have died so far...More than 1,500 supermarket workers throughout the country have tested positive for the coronavirus...”); Midwest Center for Investigative Report, [Tracking Covid-19’s impact on meatpacking workers and industry](#) (4/16/20); “As of April 24, there have been at least 3,773 reported

positive cases tied to meatpacking facilities at 66 plants in 24 states, and at least 17 reported worker deaths at 8 plants in 8 states”); New York Magazine, The Cut, [Every Food and Delivery Strike Happening Now](#) (4/21/20) (“More than 130 warehouse employees have reportedly tested positive for coronavirus, says United for Respect.”); Forbes, “First Known Amazon Warehouse Worker Dies From COVID-19,” (April 15, 2020) <https://www.forbes.com/sites/rachelsandler/2020/04/14/first-known-amazon-warehouse-worker-dies-from-covid-19/#ada2ebd4e515>; NBC Boston, “Swampscott Whole Foods Employee Dies From Coronavirus,” (last checked on April 17, 2020) <https://www.nbcboston.com/news/local/swampscott-whole-foods-employee-dies-of-coronavirus/2109335/>.

^{vi} National Nurses United, “NNU COVID-19 Survey Results,” (March 16, 2020) https://act.nationalnursesunited.org/page/-/files/graphics/0320_NNU_COVID-19_SurveyResults_Updated_031920.pdf

^{vii} National Nurses United, “Updated COVID-19 survey of registered nurses shows little improvement and worsening availability of personal protective equipment,” (March 20, 2020) https://www.cdc.gov/mmwr/volumes/69/wr/mm6915e6.htm?s_cid=mm6915e6_w <https://www.nationalnursesunited.org/press/updated-covid-19-survey-registered-nurses-shows-little-improvement-and-worsening-availability>

^{viii} The Atlantic, “What Trump Could Do Right Now to Keep Workers Safe From the Coronavirus,” (March 2, 2020) <https://www.theatlantic.com/ideas/archive/2020/03/use-osha-help-stem-covid-19-pandemic/607312/>; AFL-CIO, “A Petition to Secretary Scalia for an OSHA Emergency Temporary Standard for Infectious Disease,” (March 6, 2020) <https://aflcio.org/statements/petition-secretary-scalia-osha-emergency-temporary-standard-infectious-disease>.

^{ix} Columbia Legal Services, “Striking Yakima-Valley Apple Packinghouse Workers File Complaint with National Labor Relations Board,” (May 21, 2020) <https://columbialegal.org/striking-yakima-valley-apple-packinghouse-workers-file-complaint-with-national-labor-relations-board/>; Unfair Labor Practice charge document, filed May 19, 2020, https://columbialegal.org/wp-content/uploads/2020/05/2020-05-21-NLRB-Charge-Allan-Brothers_Amended.pdf

^x Bloomberg Law, “NLRB Gets Covid-Related Unfair Labor Practice Charges,” (May 21, 2020) <https://news.bloomberglaw.com/daily-labor-report/nlrb-gets-covid-related-unfair-labor-practice-charges>

^{xi} Bloomberg Law, “NLRB Gets Covid-Related Unfair Labor Practice Charges,” (May 21, 2020) <https://news.bloomberglaw.com/daily-labor-report/nlrb-gets-covid-related-unfair-labor-practice-charges>

^{xii} Huffington Post, “Guest Workers Describe Coronavirus Nightmare On Louisiana Crawfish Farm,” (June 17, 2020) https://www.huffpost.com/entry/migrant-workers-describe-coronavirus-nightmare-on-louisiana-crawfish-farm_n_5ee926fac5b67912c6a870b3

^{xiii} Bloomberg, “McDonald’s Accused of Firing Worker Who Sued Over Covid-19 Claims,” (June 18, 2020) <https://www.bloomberg.com/news/articles/2020-06-18/mcdonald-s-accused-of-firing-worker-who-sued-over-covid-claims>

^{xiv} 29 U.S.C. § 157 (“Employees shall have the right to self-organization...and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection...”).

^{xv} 29 U.S.C. § 158(a) (“It shall be an unfair labor practice for an employer...to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title..”)

^{xvi} NLRB, “About NLRB, Concerted Activity” (last checked May 8, 2020) <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/employees/concerted-activity>.

^{xvii} Washington Post, “Workers protest at Instacart, Amazon and Whole Foods for health protections and hazard pay,” (March 30, 2020) <https://www.washingtonpost.com/technology/2020/03/30/worker-strike-instacart-amazon-whole-foods/> (“About 50 workers walked out Monday, according to Chris Smalls, a worker at the warehouse who helped organize the action... At the end of the workday, Amazon fired Smalls, a process assistant who worked for the company for five years.”); BuzzFeed News, “Amazon Fired An Employee Involved in Workplace Organizing In Minnesota, Sources Say,” (April 14, 2020); <https://www.buzzfeednews.com/article/carolineodonovan/amazon-fired-employee-involved-in-workplace-organizing-in> (“The fired worker, Bashir Mohamed, said that in addition to organizing workers to advocate for better working conditions, he had begun pushing for more rigorous cleaning and other measures to protect against the transmission of the coronavirus. Mohamed, who worked at the warehouse for three years, said he believes that his workplace advocacy is why he was fired.”). *See also* pre-COVID-19 reports of retaliation against workers for organizing and other protected concerted activity, including Washington Post,

“Amazon employee says he was fired for calling for unionization and safer working conditions,” (March 21, 2019)

^{xviii} BuzzFeed News, “A Detroit Nurse Was Fired After Speaking Out About Her Hospital’s Handling Of The Coronavirus Outbreak. Now She’s Fighting Back,” (April 21, 2020)

<https://www.buzzfeednews.com/article/emmaloop/detroit-nurse-fired-lawsuit-coronavirus-sinai-grace>;

Seattle Times, “ER doctor who criticized Bellingham hospital’s coronavirus protections has been fired,” (March 27, 2020) <https://www.seattletimes.com/seattle-news/health/er-doctor-who-criticized-bellingham-hospitals-coronavirus-protections-has-been-fired/>

^{xix} LaborNotes, “Auto Union Official Fired for Warning about COVID-19,” (April 10, 2020)

<https://labornotes.org/blogs/2020/04/auto-union-official-fired-warning-about-covid-19>

^{xx} The Guardian, “Trader Joe’s and other US firms suppress unionization efforts during pandemic,” (April 23, 2020) <https://www.theguardian.com/world/2020/apr/23/labor-unions-trader-joes-workers-coronavirus-us>

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Occup Environ Med, “Does ‘right to work’ imperil the right to health? The effect of labour unions on workplace fatalities,” (October 2018) <https://www.ncbi.nlm.nih.gov/pubmed/29898957>; *see also Socio-Economic Review*, “The effects of labour market reforms upon unemployment and income inequalities: an agent-based model” (December 2017) <https://academic.oup.com/ser/article/16/4/687/4739737> (Higher rates of unionization correlate to improvements to income inequalities and unemployment rates).

^{xxii} Reuters, “Explainer: Why 14.7% unemployment rate doesn’t capture the true state of the coronavirus economy,” (May 8, 2020) <https://www.reuters.com/article/us-usa-economy-unemployment-data-explain/explainer-why-fridays-us-jobless-figures-wont-capture-the-true-state-of-the-coronavirus-economy-idUSKBN22K0HW>

^{xxiii} 29 U.S.C. § 160(j); *see also* Cox, Bok, Gorman and Finkin, *LABOR LAW: CASES AND MATERIALS* (“Upon issuance of a complaint the Board may petition the district court, under Section 10(j) of the Act, for appropriate interlocutory relief preventing continuance of an unfair labor practice.”)

^{xxiv} “In § 10(j) cases, the public interest is to ensure that an unfair labor practice will not succeed . . .” *Frankl v. HTH Corp.*, 650 F.3d 1334, 1365 (9th Cir. 2011) (quotation omitted).

^{xxv} *See, e.g.*, *Sharp v. Webco*, 225 F.3d 1130, 1134-35 (10th Cir. 2000); *Pascarella v. Vibra Screw, Inc.*, 904 F.2d 874, 881 (3d Cir. 1990); *Kaynard v. Palby Lingerie, Inc.*, 625 F.2d 1047, 1053 (2d Cir. 1980); *Kobell v. Menard Fiberglass Prods., Inc.*, 678 F. Supp. 1155, 1167-1168 (W.D. Pa. 1988).

^{xxvi} General Counsel Memorandum 18-05 (June 20, 2018).

^{xxvii} NLRB, “10(j) Injunction Activity at the National Labor Relations Board,” (last checked June 24, 2020)

<https://www.nlr.gov/what-we-do/investigate-charges/10j-injunctions>

^{xxviii} NLRB, “COVID-19 Operational Status Update,” (April 17, 2020) <https://nlrb.gov/news-outreach/news-story/covid-19-operational-status-update>