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Re: Foundation Food Workers Are Fearful of Retaliation Based on Immigration Status and their Cooperation with Federal Investigators

The undersigned represent the Georgia Immigrant Rights Alliance and our allies from worker rights, immigrant rights, and civil rights organizations from across our state and the country. We are heartbroken and deeply concerned as the aftermath of the fatal liquid nitrogen leak unfolds. On Thursday, January 28, 2021 at the Foundation Food Group's ("Foundation Food") poultry processing plant (the "Plant") in Gainesville, Georgia, formerly known as Prime Pak Foods, six workers lost their lives after being poisoned by toxic levels of liquid nitrogen. Our community stands with the families of the victims, the survivors, and their loved ones to seek justice.

I. Foundation Food must not intimidate, harass, or retaliate against workers or their families.

We are compelled to write this letter due to serious concerns that the workers and their families at Foundation Food will be threatened and intimidated if they cooperate with federal or state investigators, or that they will be further discouraged from seeking necessary medical care after exposure to hazardous liquid nitrogen. Already we have received reports of workers fearing retaliation by Foundation Food if they seek medical treatment or speak to investigators.

We demand that every Foundation Food worker have the opportunity to fully cooperate with any and all investigations without fear of retaliation or reprisal. We write to remind Foundation Food of its legal duty to refrain from intimidating,

harassing, or retaliating against workers pursuant to Section 11(c) of the Occupational Safety and Health Act of 1970 (“OSH Act”). In addition, workers are protected from retaliation under the Clean Air Act’s Whistleblowing Statute found at 42 U.S.C. § 7622. Workers have an unequivocal right to speak to federal investigators, share information, and cooperate. We remind Foundation Food that telling workers not to speak with investigators, asking workers what was said to investigators, insisting on being present during interviews, or coercing workers into signing joint representation agreements constitutes harassment.

At the time of writing this letter, at least six people have died and at least eight workers remain hospitalized due to their exposure to toxic levels of liquid nitrogen. Foundation Food employs approximately 130 workers at the Plant. Several workers reported that they were kept inside the Plant, were not permitted to leave the Plant while there was an active nitrogen leak, and were actively discouraged by Plant management from talking to investigators or from getting immediate pulmonary testing. We have also received reports that workers are being asked to sign documents provided by the employer that are in English, even though many of these workers are limited English proficient. We have serious concerns that these documents that they are signing will waive their rights, including their right to informant’s privilege. Rather than bringing workers to a hospital for evaluation, the workers were transported to a church for medical evaluations organized by Foundation Food –not independent health professionals. We have received reports that at this church, workers were told not to speak with federal investigators or the press. They were further discouraged from speaking to attorneys.

Unfortunately, immediately after this emergency, Foundation Food sowed distrust and fear of unlawful retaliation within its workforce. Therefore, we reiterate that any form of retaliation or reprisal taken against a worker for participating in the Occupational Safety and Health Administration (“OSHA”) investigation, or any other federal investigation, would be in direct violation of their whistleblower protections under Section 11(c) of the OSH Act and the whistleblower provisions under the Clean Air Act.

II. The U.S. Department of Labor, the U.S. Department of Justice, and the Equal Employment Opportunity Commission must conduct a full and comprehensive investigation.

The workers who perished or were exposed to toxic levels of liquid nitrogen are often referred to as “essential workers,” especially during this pandemic because they continue to perform grueling, necessary work that puts food on Americans’ tables. Last week, workers and Foundation Food were poisoned by a likely preventable gas leak. As early as Wednesday, January 27, 2021, workers were reporting concerns of a possible gas leak. Foundation Food chose not to halt production to investigate workers’ safety and health concerns. We do not believe these are not isolated incidents, and we fear that other labor abuses were likely occurring. We demand a thorough investigation from OSHA as well as other agencies within the U.S. Department of Labor, including the Wage and Hour Division. The Equal Employment Opportunity Commission should also investigate possible violations of Title VII. We further demand that the U.S. Department of Justice (“DOJ”) conduct a complete analysis as to whether any violations of the OSH Act constitute willful, criminal violations.

OSHA must be fully prepared to investigate whistleblower violations under the Clean Air Act and Section 11(c) of the OSH Act. We have already heard reports that workers have been discouraged from talking to OSHA investigators and that they are being coerced into signing documents they do not fully understand. Both actions constitute possible witness tampering and obstruction of justice. These workers survived a harrowing ordeal in the middle of a deadly pandemic that has disproportionately impacted Latinx food processing workers. Foundation Food workers put their lives on the line, and some lost their lives. The survivors should not have to fear that their livelihoods are at risk if they cooperate with OSHA and other agencies.

Accordingly, OSHA must affirmatively protect workers and their families from retaliatory actions, including threats of deportation, witness tampering, and obstruction of justice. OSHA should seek injunctive relief and appropriate criminal sanctions, if warranted. If workers are threatened, OSHA must act quickly to prevent Foundation Food from creating a chilling environment and suppressing workers' statutory right to participate in safety and health investigations. Workers were killed, and the voices of their colleagues and survivors deserve to be heard and protected by federal investigators.

III. The U.S. Department of Homeland Security, Immigration & Customs Enforcement must be prohibited from carrying out any enforcement activity during this investigation against any Foundation Food workers, their families, or the immigrant communities in the region.

As you are aware, in recent years, there have been numerous Immigration and Customs Enforcement (“ICE”) raids of meat packing facilities during or immediately following inspections by OSHA, the Department of Labor’s Wage and Hour Division, or the Equal Employment Opportunity Commission, including Koch Foods in Mississippi and Fresh Mark in Ohio. These raids had a chilling effect on immigrant workers and their communities and hampered investigations into serious health and safety violations. During a recent investigation of women who suffered violent medical abuses at the Irwin County Detention Center, in Ocilla, Georgia, some potential witnesses were deported before having the opportunity to fully cooperate with the investigation due to a lack of coordination between ICE and DOJ. These Foundation Food workers, their families, and other immigrant communities in the region should not be targeted or subject to a similar fate. These workers represent potential witnesses in an ongoing safety and health investigation that claimed the lives of six workers, and their ongoing availability is vital to understanding the cause of the incident.

Finally, regardless of their legal status, these workers are not enforcement priorities under the Biden Administration. On January 20, 2021, Acting U.S. Department of Homeland Security Secretary David Pekosky issued a department-wide memo on the “Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities,” which identified limited categories of individuals whom ICE should be prioritizing for removal. These priorities include:

- a. National security risks, including terrorism and espionage
- b. Border security, specifically individuals arrested at borders since November 2020
- c. Public safety, individuals currently incarcerated and convicted of an aggravated felony.¹

¹ Note that these priorities and their implementation are not affected by the Temporary Restraining Order issued by Judge Tipton of the Southern District of Texas of January 26, 2021.

None of these categories are applicable to Foundation Food workers, nor to the vast majority immigrant communities in the area. Not only is there a need for full cooperation by workers regardless of immigration status, ICE's own directives discourage immigration enforcement of these employees, their families, and their communities.

We stand ready to assist the agencies involved in conducting a comprehensive investigation to bring safety and justice to the individuals harmed by the deadly and hazardous release of liquid nitrogen gas. To Foundation Food, we urge your timely cooperation and transparency with all investigations and remind you of your statutory and regulatory obligations to create a workplace free from retaliation, harassment, intimidation, and workplace hazards. To the workers, our organizations and allies are monitoring this situation closely and organizing mutual aid and support to the families affected. If you or your family has been impacted by this emergency, please call: 678-532-8418.

Sincerely,

159 Georgia Together
9to5 Georgia
Asian Americans Advancing Justice - Atlanta
Asian American Advocacy Fund
Asian Youth for Civic Engagement
Athens Immigrant Rights Coalition
Atlanta Democratic Socialists of America CAIR
Georgia
Centro de Derechos del Migrante, Inc. Coalición
de Líderes Latinos
Coalition for the People's Agenda
Coalition of Refugee Service Agencies Common
Cause GA
Congregation Bet Haverim
Dignidad Inmigrante en Athens
Farmworker Association of Florida
Feminist Women's Health Center
GA Familias Unidas
Georgia AFL-CIO
Georgia Association of Latino Elected Officials
Georgia Budget & Policy Institute
Georgia Conservation Voters
Georgia Detention Watch
Georgia Latino Alliance for Human Rights
Georgia NAACP
Georgia State AFL-CIO
Haitian Farm Workers and Migrants
Independent Legal Practitioners
Individual Activists
Indivisible Georgia Coalition

Innovation Law Lab
Inspiritus
International Rescue Committee Atlanta
JCRC of Atlanta
Justice in Motion
LAA Advocacy Committee
Labor Council for Latin American Advancement Latin
American Association
League of United Latin American Citizens
Middle Georgia Immigration Coalition
National Employment Law Project
National Immigration Law Center
Necessary Trouble Indivisible
New Sanctuary Movement of Atlanta
Poder Latinx
Progress Georgia
Project South
Reform Georgia
Refugee Women's Network
Represent GA Action Network
Showing Up for Racial Justice – Atlanta
Southeast Immigrant Rights Network
Southern Center for Human Rights
Southern Poverty Law Center
Sur Legal Collaborative
The Georgia Coalition for Higher Education in Prison
The Labor Forum program, WRFG 89.3FM
The New Georgia Project Action Fund
Women Watch Afrika

