

**OSHA MIGRANT WHISTLEBLOWER STAKEHOLDER MEETING**  
**October 13, 2021**  
**Minutes**

The OSHA Migrant Whistleblower Stakeholder Meeting was called to order by Rob Swick at 1:02 pm ET on Wednesday, October 31, 2021. The meeting was held via Teams and teleconference.

The following members of the public were present:

<b>FIRST NAME</b>	<b>LAST NAME</b>	<b>TITLE &amp; ORGANIZATION</b>
Charles	Avery	Investigator II, Iowa OSHA
Ta-Tanisha	Barrett	Quality and Compliance Analyst, Ohio State University
Christina	Bartley	Whistleblower Investigator, State of Virginia Department of Labor and Industry
SeaRay	Beltran	Facility Safety/Security Professional, PIRM Group International, LLC
Cristin	Bernhardt	Staff Attorney, Virginia Department of Labor and Industry
Gizele	Bombardier	Program Coordinator, Brazilian Worker Center
Timothy	Bubenik	Attorney, McMahon Berger
Valentine	Castaneda	Building Services Lead, Department of Transportation
Scott	Clausen	Associate, Morgan Lewis
Morgan	Davis	Student, The Ohio State University Moritz College of Law
Maria	De Lun	
Shawn	Dettman	EHS Manager, KFI
Jim	Falbo	Director of Workforce Development and Safety, AGC of Wisconsin
Samantha	Feinstein	Staff Attorney and Director, International Program, Government Accountability Project
Donald	Fleming	Attorney, D Fleming Law Office
Dana	Gold	Senior Counsel and Director of Education, Government Accountability Project
Debora	Gonzalez	NCSS, National Day Laborer Organizing Network
Debbie	Harrison	Senior Director, Cigna
Dustin	Haverkamp	Risk Manager, Prairie Band Casino Resort
Kristian	Hernández	Staff Writer, Stateline
Fatima	Hussein	Reporter, Bloomberg Law
Adelina	Invitado	
Timothy	Jarvis	Certified Safety Professional
Ashley	Johnson	Legal Fellow, American Civil Liberties Union

<b>FIRST NAME</b>	<b>LAST NAME</b>	<b>TITLE &amp; ORGANIZATION</b>
Steven	Kalani	Safety Director, Commercial Roofing & Waterproofing
Abigail	Kerfoot	Legal Fellow, Centro de los Derechos del Migrante
Charles	Landrum II	Institutional Safety and Health Lead, Science Applications International Corporation
Nancy	Lessin	Advisor, National Council for Occupational Safety and Health
Geoffrey	Luan	Principal Attorney, Luan Litigation Firm, PLLC
John	MacNeill	National Safety Director, Utility Workers Union of America
Lawrence	Mann	President, Alper & Mann
June	Meeks	Operations Analyst - VPP Safety Liaison, NuStar Energy
Noel	Mendoza	Human Trafficking Outreach Coordinator, Mosaic Family Services
Justin	Molocznik	Safety Director, JTM Construction
Lin	Nelson	Faculty, retired, Evergreen State College
Jorge	Palafox	H-2B Visa Worker, Centro de los Derechos del Migrante, Inc.
John	Pietuska	Discrimination (Whistleblower) Manager, Tennessee Occupational Safety and Health Administration
Christine	Pontus	Associate Director Health & Safety, Massachusetts Nurses Association
Ana	Popovich	Reporter, Whistleblower Network News
Lenita	Reason	Executive Director, Brazilian Worker Center
Kierstin	Reed	CEO, LeadingAge Nebraska
Jocelyn	Reyes	Directora de Promoción, Educación y Desarrollo, Centro de los Derechos del Migrante, Inc.
Courtlyn	Roser-Jones	Assistant Professor of Law, The Ohio State University Moritz College of Law
John	Ryan	
Maria	Sanchez	El Centro de los Derechos del Migrante, Inc.
Steven	Schrag	Regulatory and Legislative Analyst, ConnectiCOSH
Rebecca	Schumann	Risk Management Director, Olmsted County
Francisca	Sepulveda	Workers' Rights Organizer, The Welcome Project/Somerville Worker Center
Matthew	Spencer	Director of HR & Safety Programs, U.S. Poultry and Egg Association
Melanie	Stratton Lopez	Supervising Attorney, El Centro de los Derechos del Migrante, Inc.
Kelly	Trautner	Senior Director, Health Issues, American Federation of Teachers
Val		
Karissa	Waddick	Reporter, Inside Washington Publishers
Debra	Waters	Doctor of Nursing Practice Student, McKendree University
Teri	Watson	Senior Policy Analyst, Oregon OSHA
Timothy	White	Trainer, Hinds Community College

The following U.S. Department of Labor (DOL) staff were present:

<b>FIRST NAME</b>	<b>LAST NAME</b>	<b>AGENCY</b>	<b>TITLE</b>
Valeria	Treves	Office of the Secretary	Advisor for Worker Voice Engagement
James	Frederick	OSHA	Acting Assistant Secretary of Labor for OSHA, Office of the Assistant Secretary (OAS)
Ken	Beckstead	OSHA	Regional Investigator, Region VI
Schean	Belton	SOL	Attorney
Philippe	Blancato	OSHA	Acting Division Chief, Division of Policy, Planning, and Program Development, Directorate of Whistleblower Protection Programs (DWPP)
Anne	Bonfiglio	SOL	Attorney
Dwayne	Brown	SOL	Attorney
Jason	Brush	OSHA	Regional Supervisory Investigator, Region IV
Marlis	Burbick	OSHA	Bilingual Editor, Writer, Office of Communications (OOC)
Maureen	Cafferkey	SOL	Counsel, Region V
Dale	Caldwell	OSHA	Program Analyst, DWPP
Kristina	Carignan	OSHA	Regional Supervisory Investigator, Region VII
Martha	Collins	OSHA	Investigation Specialist, DWPP
Lily	Colon	OSHA	Assistant Regional Administrator for Whistleblower, Region IV
Kim	Darby	OSHA	Writer-editor, OOC
Nicholas	Ehr	OSHA	Regional Supervisory Investigator, Region I
Nichelle	Engard	OSHA	Regional Supervisory Investigator, Region IX
Megan	Guenther	SOL	Counsel for Whistleblower Programs
Ryan	Himes	OSHA	Assistant Regional Administrator for Whistleblower, Region X
Charna	Hollingsworth-Malone	SOL	Attorney
Shannon	Huffman	OSHA	Regional Investigator, Region VII
Jennifer	Huggins	SOL	Senior Attorney
Anthony	Incristi	OSHA	Division Chief, Division of Field Operations, DWPP
Heather	Johnson	SOL	Attorney
Marisa	Johnson	OSHA	Program Analyst
Denise	Keller	OSHA	Assistant Regional Administrator for Whistleblower, Region V
Jared	Klein	OSHA	Regional Investigator, Region IX
John	Laadt	OSHA	Special Assistant, OAS
Kelly	Lawson	SOL	Counsel for Civil Rights, Region I

<b>FIRST NAME</b>	<b>LAST NAME</b>	<b>AGENCY</b>	<b>TITLE</b>
Mark	Lerner	SOL	Senior Attorney
Jennifer	Levin	SOL	Attorney
Michael	Mabee	OSHA	Assistant Regional Administrator for Whistleblower, Region VI
Christina	Morgan	OSHA	Safety and Occupational Health Specialist, Directorate of Cooperative and State Programs
John	Murphy	OSHA	Regional Supervisory Investigator, Region II
Tiffany	Riddick	OSHA	Investigation Specialist
Anthony	Rosa	OSHA	Acting Director, DWPP
Kristen	Rubino	OSHA	Assistant Regional Administrator for Whistleblower, Region I
Denisa	Russell	OSHA	Secretary, Region II
Marisa	Schnaith	SOL	Attorney
Leigh Anne	Schriever	SOL	Attorney
Gina	Scott	OSHA	Deputy Director, OOC
Meghan	Smith	OSHA	Program Analyst, DWPP
Natalie	Starks	OSHA	Regional Supervisory Investigator, Region III
Christine	Stewart	OSHA	Acting Deputy Director, DWPP
Rob	Swick	OSHA	Investigation Specialist, DWPP
Marilyn	Velez	OSHA	Compliance Assistance Specialist, Region IV
Shawn	Vollrath	OSHA	Regional Supervisory Investigator, Region, VIII
Linda	Wiles	SOL	Attorney
Teri	Wigger	OSHA	Assistant Regional Administrator for Whistleblower, Region II

## **DOL Speakers**

### **Rob Swick, Moderator**

Mr. Swick opened the meeting and introduced James Frederick.

### **James Frederick, Acting Assistant Secretary of Labor, OSHA**

Mr. Frederick thanked the Directorate of Whistleblower Protection Programs (DWPP) staff for holding this stakeholder meeting in this virtual space. He also thanked everyone for attending this important meeting. The agency wants to hear from the public regarding issues and concerns about OSHA's Whistleblower Protection Program (WPP) nationwide. We spend a lot of time talking about how we are working proactively to help workers with workplace health and safety. The reality is that sometimes in those scenarios, things don't go as expected, planned, or desired, and that is one of the very important reasons for the protections under section 11(c) of the Occupational Safety and Health Act (OSH Act), as well as all of the other statutes that we

enforce. OSHA's WPP is a vital safety net when workers try to improve workplace health and safety, and it doesn't go as planned.

This is the eighth stakeholder meeting we've held looking for input from our whistleblower program community, and we truly appreciate everyone's participation today. As Rob indicated, the focus of this meeting is immigrant and migrant worker populations; we want to make certain that we are hearing and listening to the concerns that you raise. We know there are extraordinary challenges that people have faced, and we want to make certain the agency is responsive to those things. Hearing from you will help us learn how we should do our work and how we should make our work more readily available and more effective.

We have three goals today: we want to hear from you about how OSHA can deliver better customer service, which is important to all of us. The second goal is to hear from you regarding what kind of assistance OSHA can provide to help explain the agency's whistleblower laws to workers and employers. The third goal is, what can OSHA do to ensure workers are protected from being retaliated against for raising concerns related to the COVID-19 pandemic? The OSHA staff that is assembled today will be listening carefully to all the input. We do the best we can to capture the input in a series of notes that we utilize in the ongoing work of the whistleblower program directorate and the agency at large. Again, thank you very much for joining us today to be part of the process and to help us learn from your experiences as we move forward.

**Valeria Treves, Advisor for Worker Voice Engagement, Office of the Secretary**

Ms. Treves welcomed everyone to the stakeholder meeting. She noted that a big part of her job is to have her finger on the pulse of the needs, wants and desires of workers and their organizations, and to be able to communicate this back to the Office of the Secretary and to Secretary Walsh. At DOL, we are committed to upholding the rights of all workers. No matter your job or your immigration status, you are entitled to labor protections and freedom from discrimination. Across the Department, we are increasing our efforts to reach workers who may not know their rights or may not know what to do if they are mistreated. For example, the Wage and Hour Division has a new program called Essential Workers, Essential Protections. It's a way of focusing our outreach on the most vulnerable workers in the pandemic.

OSHA, too, is committed to listening sessions such as this one and other efforts. Unfortunately, the pandemic highlighted the disparities that many immigrant workers and migrant workers in particular face on the job. While many hailed workers in critical sectors as essential, as the Secretary says, they need more than our "thank you's"; they need our action. It is our duty to make sure their rights are protected. We are committed to ensuring employers and workers recognize dangers in their workplaces and prevent injuries and illnesses. We need to make sure every worker knows their rights and can speak up without fear of retaliation. If you believe your wages have been shortchanged, or your workplace is not safe, you can talk to us confidentially, in the language of your choice.

In addition to direct communication with affected workers across the country, community partnerships are also a key strategy for the DOL. We have partnerships with

consulates, legal services organizations, worker centers, labor unions, and more. If you have a concern, you can go to one of those trusted organizations and they can refer you to us. We understand that these organizations are trusted in the community; it helps us do our work better if we partner with them. Every worker deserves to go home safe at the end of the day and to have received their fair pay. We are here to partner with you to make sure that happens. Thank you.

### **Rob Swick, Moderator**

Mr. Swick provided the ground rules for the meeting. He noted that we are taking notes because we value your input. The notes will be available in docket [OSHA-2018-0005](#). We will also accept written comments until the close of business on October 27, 2021. Comments should be sent to [OSHA.DWWP@DOL.GOV](mailto:OSHA.DWWP@DOL.GOV). Documents for all stakeholder meetings are available on [regulations.gov](https://www.regulations.gov). Type the docket number OSHA-2018-0005 into the search bar to find the information.

Mr. Swick also mentioned improvements to the program that have occurred as a result of these stakeholder meetings, including improvements to the complaint filing webpage as a result of comments received at the trucking and rail stakeholder meeting, updated internal training based on comments from financial industries stakeholder meeting, and additional internal training on the deferral process, based on comments we received at the aviation stakeholder meeting, and the ideas for this meeting itself came from a prior stakeholder meeting. Mr. Swick explained that the agency is in listening mode and that each speaker has five minutes to provide comments.

### **Speakers:**

#### **Deborah Gonzalez, NCSS, National Day Laborer Organizing Network**

Ms. Gonzalez began by discussing the [memo](#) from the Secretary of Homeland Security, Alejandro Mayorkas, regarding a worksite enforcement strategy to protect the American labor market, workers, and worksite conditions. She stated that the memo speaks to the direct conflict between protecting workers rights and the threat of deportation under immigration laws. This directly affects workers' ability to speak out in terms of retaliation. Workers cannot tolerate the threat of deportation, and much more has to be done to protect worker rights. The memo is merely a first step. The threat of retaliation by Immigration and Customs Enforcement (ICE) is real. Families and workers are still under threat from the actions in 2019, and families are separated still because of the 2019 policy set by Donald Trump. Federal disaster response has marginalized migrant worker communities. In New Orleans and other places that have had disaster impact, it is important to help the community get vaccinated and avoid robbery and theft. Ms. Gonzalez thanked the agency for giving them the chance to participate.

#### **Melanie Stratton Lopez, Supervising Attorney, El Centro de los Derechos del Migrante, Inc.**

Ms. Lopez explained that she is a supervising attorney at Centro de los Derechos del Migrante, Inc. (CDM), which is the first binational migrant workers organization based both in Mexico and the United States. CDM submitted a [comment](#) on May 12, 2021 as part of this series of meetings,

and Ms. Lopez indicated that she appreciates OSHA continuing to solicit feedback on ways it can improve the whistleblower program, and by centering the voices of migrant workers today. CDM will be filing a supplemental comment that will be co-signed by Migrant Defense Committee (Comité). The Comité is a group of community leaders who organize and train migrant workers to defend their rights and educate their fellow workers. The Comité is composed of workers who are migrants and ex-migrants, and members of their families forming connections between Mexico and the United States with a permanent community presence among workers. Comité leaders train other migrants to become human rights defenders, empowering thousands of workers on both sides of the border to take initiative to end workplace abuses. Ms. Lopez noted that the next speaker, Jorge Palafox, is a Comité member and former migrant worker.

As Deborah mentioned, the Department of Homeland Security issued a [memo](#) yesterday. Ms. Lopez called on DOL and OSHA, by extension, to issue written guidance clarifying the process for workers to request affirmative immigration protection. Ms. Lopez looks forward to the guidance about this topic from both agencies. Once that guidance is formalized, it is important that OSHA publicize this process so that workers and representatives understand the types of immigration relief that is available to workers who participate in OSHA's safety and health investigation and/or whistleblower investigations. This is crucial to rebuilding trust in the communities.

Ms. Lopez also mentioned that the National Labor Relations Board (NLRB) issued guidance recently stating that they would seek make whole relief on behalf of workers who suffer retaliation. One way the NLRB plans to do this is by including a provision in its settlement agreements that would require employers to sponsor work visas on behalf of the workers that it unlawfully fired. We encourage OSHA to work with the Office of the Solicitor and seek similar relief in 11(c) cases when applicable.

### **Jorge Palafox, H-2B Visa Worker**

Mr. Palafox is an H-2B visa worker who came in 2003 to California. He has worked in a very unsecure situation in many different jobs and does not have job security. He works with over 100 volunteer immigrant workers that are working for the defense of immigrant worker rights in the United States. Even though they may be only 100 workers, they represent thousands of workers from Mexico and from all over Latin America in Mexico and the United States.

It is difficult to complain because there is a lot of fear that if you complain, they give you fewer hours, do not rehire, fire, or make it difficult to get work or make work difficult for you. One of the most problematic consequences is that it affects not just the worker but also the families and children back home and the economy of the home country when workers lose work in the US. Often living conditions are unsafe or unhealthy in the housing employers provide. They don't make repairs. Workers have to fix the gas or electric themselves, and they don't have the training. They don't have sufficient experience in the jobs they get assigned and don't have the proper protective equipment. Employers give us the minimum, sometimes an agricultural worker with no experience is assigned to work with chemicals or fumigation without protection. If workers keep speaking about the fear of retaliation, we experience if they speak up and their

visa is taken away, they have to leave the country and the complaint ends. Workers need a legal status that allows them to stay. If workers have an attorney, he has to have the word of many workers because otherwise it is just the word of one worker who can be sent home and not able to continue the complaint against a company with many lawyers. One problem Mr. Palafox has faced is lacking training to prevent injuries. If he could give one piece of advice to OSHA, there should be a direct connection with the agency that processes visas. The agency should send supervisors/inspectors unannounced because otherwise the employer by the time an inspector gets there, the employer makes everything look good and hides the problems. A dream we have is to have OSHA infiltrate as a worker and see what is going on.

### **Dana Gold, Senior Counsel and Director of Education, Government Accountability Project**

Ms. Gold began by stating that the Government Accountability Project (GAP) has been in existence since 1977 and is the leading whistleblower protection and advocacy organization that protects whistleblowers from making disclosures, works for justice if they suffer retaliation, and also works to ensure their disclosures make a difference. They have helped whistleblowers with food safety and integrity, harm to immigrant children and adults as well as immigration detention, nuclear weapons, environment danger, science censorship, fraud, national security. So, almost every scheme that OSHA has a law for, GAP has helped draft or enforce.

Ms. Gold went on to address the three questions posed by the agency, the first being how can OSHA deliver better whistleblower customer service? Ms. Gold noted that one thing that GAP has recently experienced is some confusion at the regional office level regarding protections for workers when they are represented by a lawyer and not by a union representative. Workers who file cases under the OSH Act may not know that they have rights to informal conferences, whether they are represented by a lawyer or union rep. The regions are not familiar because often workers don't have lawyers; they only have union reps. So, to the extent that is a customer service issue and an enforcement issue, Ms. Gold wanted to raise it in case anyone else has experienced some of those same problems as to those rights and how they're enforced.

Ms. Gold then addressed the question what kind of assistance can OSHA provide to help explain the agency's whistleblower laws to employees and employers? Ms. Gold noted that OSHA resources are a huge issue, perhaps the crux of some of the challenges, particularly in the context of workers raising safety and health issues under the OSH Act, though not necessarily the other laws that OSHA enforces. Frequent investigations are instrumental for not just finding violations but in communicating, educating, and ensuring the notices are posted. The agency needs to become a real presence to show that OSHA is here to enforce rights. Employers need to know it, and employees need to see it. That is a really instrumental effect beyond just finding violations. Simply having more presence can be a tool for education. Another thing for employers and employees to know, and maybe this is true for OSHA investigators, that they see constantly is that employers and employees don't realize that internal disclosures are protected typically, but not always as in the case of Dodd-Frank and other laws with similar exceptions. It's really important for employees and employers to know that their rights start when they start raising concerns and, unfortunately, experience the predictable experience of retaliation. Consequently, there may be a misperception that a person is only a whistleblower after they go outside or go public to the press or lawyer or public interest organization. That has real consequences,



certainly to rights, especially when there are things like the 30 days statute of limitations for when your rights perfect or expire. That whole issue of knowing that the overwhelming majority of whistleblowers report internally first, even if it's to coworker or line manager and that goes up, that's super important from an education perspective to help people understand the time involved and when their rights perfect. That piece of the actual experience of whistleblowing and how it happens on the ground is a really important tool for OSHA to do a good job educating both employers and employees about it.

Finally, Ms. Gold addressed the question regarding what OSHA can do to ensure that workers are protected from retaliation for raising concerns related to the pandemic. While noting this is not a forum for changing the law, Ms. Gold noted that GAP feels strongly that there needs to be a lot of improvements in OSHA's ability to conduct oversight and effective enforcement. People have already mentioned the recent announcement by ICE about its effort to not deport immigrants who blow the whistle on health and safety issues. It is a hugely problematic announcement, not because it's not well intentioned, but because there's a huge enforcement issue. So, like others said, seeing what the rulemaking looks like or how that actually works in practice when we've seen immigrants deported when they are whistleblowers or witnesses is key. GAP represented a witness who raised concerns, not under the department of labor context, but the witness raised concerns about medical mistreatment of women, and there was a huge intervention to make sure they were not deported due to them being witnesses. We've seen that in other contexts as well. The concern that ICE has a history of violating its own policy is based on experience. Ms. Gold didn't know if the edict does a lot to ameliorate the fear of one of the most extreme forms of retaliation, which is deportation, which others have expressed as a concern. Ms. Gold ended her comments and asked OSHA to work on its effort to preempt the chilling effect of whistleblowers, not just retaliation but also the chilling effect of the threat of retaliation. That would be a really important thing for OSHA to lean into, to encourage migrant workers to speak up and to also ensure they are not going to suffer retaliation and that OSHA will have their back.

### **Steven Schrag, Regulatory and Legislative Analyst, ConnectiCOSH**

Mr. Schrag explained that ConnectiCOSH represents a group of unions working with migrant workers. He explained the domino theory of safety. Most employers have no whistleblower policy. Most have policies for other things. OSHA should create and post a model employer whistleblower policy similar to OSHA's model Employer Bloodborne Pathogens policy. Employers should be encouraged to have a policy.

If employees don't have whistleblower protection, their other rights don't have teeth. Workers need to know that they have whistleblower rights so that they know they are safe to ask for the information that they have rights to, such as Material Safety Data Sheets. Employers are supposed to tell their workers they have rights. No employer tells their employees about this right annually. It's a crucial right.

Workers won't ask for appropriate personal protective equipment if they don't have whistleblower protection. For hazard communication to be effective, workers need to ask

questions. Most employers don't want this. If there's no atmosphere where it's safe to ask questions, that's another domino.

Migrant workers face workplace hazards and hazards in their community. OSHA should work with the Environmental Protection Agency (EPA) on joint enforcement. According to the Bureau of Labor Statistics, from 2013-2017, 1,000 migrant workers died every year on the job. How many were inspected? How many had a whistleblower policy? Every fatality requires an inspection.

Mr. Schrag finished with four recommendations for the agency:

1. OSHA should put a model whistleblower policy on its website.
2. OSHA should revise the worksite poster. The current poster is worse than the 1979 one. The 1979 version emphasized whistleblower protection.
3. OSHA should work with the Department of Justice to enforce policies on federal contractors.
4. OSHA should work with EPA for workers who work in environmental justice communities.

### **John MacNeill, National Safety Director, Utility Workers Union of America**

Mr. MacNeill began by noting that he is an immigrant from Scotland. He opined that many line and tree-clearing workers are migrant workers who don't have access to computers and don't report to worksites where they would see OSHA posters, thus they never learn about their whistleblower protections. He recommended that OSHA mandate that all employers have whistleblower policies and that employers be required to inform their workers of their whistleblower rights. Near-miss reporting should also be part of the whistleblower program and should be included on the OSHA website with whistleblower information.

### **SeaRay Beltran, Facility Safety/Security Professional, PIRM Group International, LLC**

Mr. Beltran noted that previous speakers already hit many of the points he wanted to make. He works in Guam, Micronesia, Saipan, etc. as a safety and security consultant. Retaliation is the biggest thing that happens where immigrants work. OSHA should do a campaign where they go to every employer to inform all workers of their whistleblower rights and other protections. OSHA should also tell all employers that whistleblower rights will be enforced with fines, penalties, jail time, etc. Migrant workers feel as though they have no protections if they report unsafe conditions. OSHA should also update the OSHA poster to emphasize OSHA whistleblower rights.

### **Dr. Timothy Jarvis, Certified Safety Professional**

Dr. Jarvis noted that he and his wife live in the Rio Grande Valley of Texas. Dr. Jarvis opined that there is no OSHA presence along the Texas/Mexico border. A large population of workers in the area are migrant workers and many employers take advantage of them. For example, he believes most employers don't report employee injuries or fatalities. He witnessed a situation where a helicopter dangled an employee in a makeshift boatswain swing. They flew along the

power grid, dodging trees and power lines along the way. Dr. Jarvis called all the OSHA offices in Texas. All the offices except Dallas never picked up the phone. Dallas answered, but just referred him on to another person in another OSHA office. Dr. Jarvis wondered why doesn't OSHA have a presence? It's OSHA's territory. They're responsible. If a worker is hurt, they are fired and put back on a bus to Mexico. There are no posters here. There's no OSHA presence whatsoever. OSHA needs to stand up and take responsibility.

**Courtlyn Roser-Jones, Assistant Professor of Law, The Ohio State University Moritz College of Law**

Ms. Roser-Jones indicated that she was speaking in her personal capacity, not on behalf of the Ohio State University. Ms. Roser-Jones noted that it's difficult to explain whistleblower rights, especially the right to refuse dangerous work. The work refusal right can only be applied in very limited circumstances. Ms. Roser-Jones believes OSHA should provide guidance in multiple languages and in plain language on how to assess situations in real time since work refusals are only valid after the employee has reported their concerns.

**Dustin Haverkamp, Risk Manager, Prairie Band Casino Resort**

Mr. Haverkamp works in human resources with tribal enterprises and government. The OSHA whistleblower program isn't transparent; for example, Mr. Haverkamp didn't know about the program until last year. OSHA should partner with the Society for Human Resource Management or the HR Certification Institute to get information to human resource professionals. The program should have model policies and have more information about whistleblower rights on the OSHA poster. OSHA should also conduct investigations faster since investigations currently can take too long for the complainant to hold out for a resolution. Mr. Haverkamp also recommended that all cases be docketed.

**Kelly Trautner, Senior Director, Health Issues, American Federation of Teachers**

Ms. Trautner spoke on behalf of the American Federation of Teachers (AFT), which also represents nurses. The need to protect the rights of healthcare workers has ever been more important. N95 masks are now sometimes locked up, forcing nurses to reuse their N95 masks. She opined that we've known for decades that nurses' conditions are related to patient outcomes. Nurses may not have faith that OSHA can offer much protection from retaliation. Many nurses are unaware of their whistleblower rights. OSHA should do more outreach. There is a critical staffing crisis in healthcare. Employers are now recruiting nurses from abroad. These nurses arrive in the US under highly restrictive contracts and the recruiters are often very underhanded. Nurses recruited from abroad must have contracts equal to those of US nurses. OSHA needs to conduct more outreach to employers and OSHA inspectors need better training to recognize when workers need whistleblower protections.

AFT submitted a written comment, which can be found in the [docket](#) for this meeting.

**Lawrence Mann, President, Alper & Mann**

Mr. Man represents railroad workers. Railroad employees are being retaliated against when taking time to get vaccinated or tested for COVID-19. A Court of Appeals ruled that Section 20109 does not apply if the worker is not on duty. It's difficult to determine if an employee contracted COVID-19 at work. The industry needs OSHA guidance on railroad workers' rights regarding whether 20109 is applicable or, if not, what regulation might be. When union representatives assist employees in the railroad industry, union representatives are retaliated against because the railroad contends that they are not protected employees under the whistleblower law.

**Val**

Val thanked the presenters and noted that this information is beneficial to him. He requested that the forum continue.