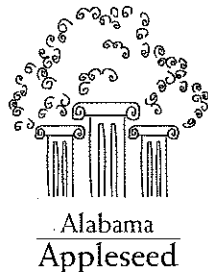


# UNSAFE AT THESE SPEEDS

*Alabama's Poultry Industry and its Disposable Workers*

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## About the Southern Poverty Law Center

The Southern Poverty Law Center, based in Montgomery, Ala., is a nonprofit civil rights organization founded in 1971 and dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of society.

For more information about  
**THE SOUTHERN POVERTY LAW CENTER**  
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## About Alabama Appleseed Center for Law & Justice

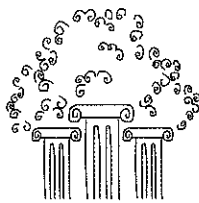
Alabama Appleseed Center for Law & Justice, Inc., a nonprofit, nonpartisan public interest advocacy organization, was formed in 1999. It is part of a network of 17 state centers affiliated with the Appleseed Foundation in Washington, D.C. Alabama Appleseed's mission is to work for systemic change that achieves justice and fairness for low-income and other under-represented and vulnerable populations that have little, if any, voice in developing or changing policies that impact their lives.

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*Alabama's Poultry Industry and its Disposable Workers*

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Alabama  
Appleseed



SPLC Southern Poverty Law Center

A REPORT BY THE SOUTHERN POVERTY LAW CENTER AND ALABAMA APPLESEED

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# Table of Contents

EXECUTIVE SUMMARY .....	4
SECTION ONE	
Injuries and Illnesses Extremely Common .....	7
SECTION TWO	
Worker Silence in the ‘House of Pain’ .....	15
SECTION THREE	
Worker Safety a Low Priority.....	21
SECTION FOUR	
OSHA Offers Few Protections for Poultry Workers.....	30
SECTION FIVE	
Alabama’s HB 56 Contributes to Climate of Fear.....	37
RECOMMENDATIONS .....	41
SURVEY METHODOLOGY .....	49

## Executive Summary

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Every day in Alabama, thousands of people report to work at vast poultry processing plants.

Inside these frigid plants, workers stand almost shoulder-to-shoulder as chicken carcasses zip by on high-speed processing lines. Together, small teams of workers may hang, gut or slice more than 100 birds in a single minute. It's a process they'll repeat for eight hours or more in order to prepare birds for dinner tables and restaurants across America.

This grueling work serves as the foundation of a lucrative industry that supplies the country's most popular meat, a protein source that Americans devour at a rate of more than 50 pounds per person every year.

Alabama produces more than 1 billion broilers per year – ranking it third among states behind Georgia and Arkansas. It's an industry with an \$8.5 billion impact on the state – generating about 75,000 jobs and 10 percent of Alabama's economy – and one that plays a vital economic role in numerous small towns.<sup>1</sup>

But it all comes at a steep price for the low-paid, hourly workers who face the relentless pressure of the mechanized processing line.

Nearly three-quarters of the poultry workers interviewed for this report described suffering some type of significant work-related injury or illness. In spite of many factors that lead to undercounting of injuries in poultry plants, the U.S. Occupational Safety and Health Administration (OSHA) reported an injury rate of 5.9 percent for poultry processing workers in 2010, a rate that is more than 50 percent higher than the 3.8 percent injury rate for all U.S. workers.<sup>2</sup>

Poultry workers often endure debilitating pain in their hands, gnarled fingers, chemical burns, and respiratory problems – tell-tale signs of repetitive motion injuries, such as carpal tunnel syndrome, and other ailments that flourish in these plants.

The processing line that whisks birds through the plant moves at a punishing speed. Over three-quarters of workers said that the speed makes their work more dangerous. It is a predominant factor in the most common type of injuries, called musculoskeletal disorders. But if the line seems to move at a pace designed for machines rather than people, it should come as no surprise. Plant workers, many whom are immigrants, are often treated as disposable resources by their employers. Threats of deportation and firing are frequently used to keep them silent.

But workers speaking freely outside of work describe what one called a climate of fear within these plants. It's a world where employees are fired for work-related injuries or even for seeking medical treatment from someone other than the company nurse or doctor. In this report, they describe being discouraged from reporting work-related injuries, enduring

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1 Alabama Poultry Producers, *Changing with the Times*, <http://www.alfafarmers.org/commodities/poultry.phtml> (last accessed Aug. 31, 2012).  
2 OSHA's official data for 2010 list recordable nonfatal injuries and illnesses rates of 5.9% among the United States' 225,000 poultry processing workers, and 5.8% among the nation's 35,000 poultry and egg production workers, both of which are higher than the rates for all U.S. workers (3.8%) and for all private sector workers (3.5%). Bureau of Labor Statistics, *Incidence Rates of Nonfatal Occupational Injuries and Illnesses by Industry and Case Types, 2010*, <http://www.bls.gov/iif/oshwc/osh/os/ostb2813.pdf>; see also Bureau of Labor Statistics, *Highest Incidence Rates of Total Nonfatal Occupational Illness Cases 2010*, Table SNR12, October 2011, <http://www.bls.gov/iif/oshwc/osh/os/ostb2812.pdf>.

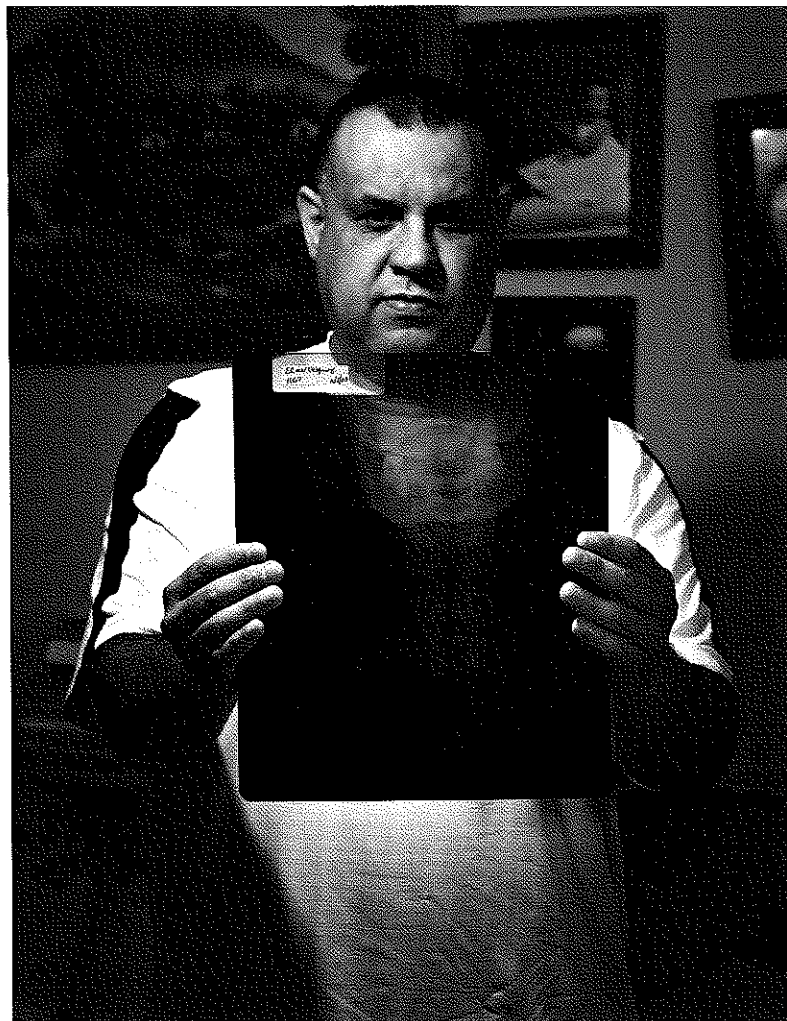
constant pain and even choosing to urinate on themselves rather than invite the wrath of a supervisor by leaving the processing line for a restroom break.

The stories in this report were collected by the Southern Poverty Law Center and Alabama Appleseed from interviews with 302 workers currently or previously employed in Alabama's poultry industry. These workers are among the most vulnerable in America.

OSHA, which regulates the health and safety of workers in this country, has no set of mandatory guidelines tailored to protect poultry processing workers. Workers cannot bring a lawsuit to prevent hazardous working conditions or even to respond to an employer's retaliation if they complain of safety hazards or other abusive working conditions. Many live in rural areas and have no other way to make a living, which means they must accept the abuse or face economic ruin.

Making matters worse, the U.S. Department of Agriculture is poised to enact a new regulation that will actually allow poultry companies to *increase* the speed of the processing line – from a maximum of 140 birds per minute to 175. The rule is part of the agency's overhaul of its food safety inspection program, changes that have been harshly criticized by food safety advocates. There is no state or federal line speed regulation designed specifically to protect the safety of workers who produce the food.

This is the face of the modern poultry industry in Alabama – an industry unfettered by serious regulation and blessed with a vulnerable workforce that has lacked a voice in the halls of government and has little power to effect change. This report presents survey findings and examines how flawed policy, lack of oversight and weak enforcement has allowed this exploitation to thrive. It also offers recommendations to end it.



Juan (not his real name) was told to get back to work after falling while lifting an 80-pound box of chicken. X-rays later showed two fractured vertebrae. He was fired, and the employer has not paid any of his medical bills.





“Little did I know I was harming myself in the process. They don’t warn you that this can happen.”

— OSCAR

## SECTION ONE

# Injuries and Illnesses Extremely Common

When Oscar heard that a poultry processing plant in Alabama was looking for workers, he thought he could apply the skills he learned from studying mechanical engineering in Cuba. “I thought maybe ... that I could work with the machinery, given my abilities and my hands,” he said.

But after the 47-year-old arrived in Alabama from Miami, his hopes were dashed. He was denied two positions where he could apply his mechanical skills and instead was asked to fold chicken wings on the production line.

As bird carcasses sped by him on the line, Oscar had to grab the wings and twist them into the position the company wanted, folding fast enough to meet a quota of approximately 40 chicken wings per minute – or roughly 18,000 wings per day.

“I did my job well,” he said. “But little did I know I was harming myself in the process. They don’t warn you that this can happen.”

As he repeated this motion thousands of times, it put pressure on his hands and wrists. After about a month, he developed serious hand and wrist pain, which he had never experienced before starting work at the plant. Oscar was diagnosed with tendinitis and carpal tunnel syndrome. When his injuries made him no longer useful to the company, he was fired.

“They don’t tell you the part that if you become sick, they’ll fire you from the job,” he said.

Oscar’s story is all too common within the poultry processing industry.

Seventy-two percent of the participants in this survey of 302 current and former poultry workers in Alabama described suffering a significant work-related injury or illness while working in the industry.

The injury rates found in this survey – and in other studies that relied on direct contact with workers – dwarf the official reported rates compiled by the U.S. Occupational Safety and Health Administration (OSHA), partly because of OSHA’s narrow standard for recording injuries.<sup>3</sup> But even the OSHA data show that poultry workers are still much more likely to be hurt on the job than workers in the private workforce as a whole: 5.9 percent versus 3.5 percent in 2010.<sup>4</sup>

# 72%

of respondents describe suffering significant work-related injury or illness.

Oscar (at left) developed serious wrist and hand pain while working in a poultry plant. He was diagnosed with tendinitis and carpal tunnel syndrome – common injuries among poultry workers. He was fired.

3 OSHA’s official data for 2010 list recordable nonfatal injury and illness rates of 5.9% among the United States’ 225,000 poultry processing workers, and 5.8% among the nation’s 35,000 poultry and egg production workers, both of which are higher than the rates for all U.S. workers (3.8%) and for all private sector workers (3.5%). Bureau of Labor Statistics, *Incidence Rates of Nonfatal Occupational Injuries and Illnesses by Industry and Case Types, 2010*, <http://www.bls.gov/iif/oshwc/osh/os/ostb2813.pdf>. In addition to injuries, occupational illnesses are also more common among poultry processing workers than for the workforce as a whole. The Bureau of Labor Statistics reported total nonfatal occupational illnesses among poultry processing workers in 2010 of 133.6 per 10,000 full-time workers, compared to only 21 per 10,000 workers across all industries. Bureau of Labor Statistics, *Highest Incidence Rates of Total Nonfatal Occupational Illness Cases 2010*, Table SNR12, October 2011, <http://www.bls.gov/iif/oshwc/osh/os/ostb2812.pdf>.

4 Bureau of Labor Statistics, *Workplace Injury and Illness Summary*, Oct. 20, 2011, available at <http://www.bls.gov/news.release/osh.nr0.htm>.

“They don’t tell you the part that if you become sick, they’ll fire you from the job.”

— OSCAR

Consistent with the results of this survey, many medical studies have found high rates of injuries among poultry workers, especially repetitive motion and other musculoskeletal disorders (MSDs) such as carpal tunnel syndrome, where muscles or tendons develop chronic pain, swelling and numbness from overuse and the repetition of strenuous cutting, hanging and other motions.<sup>5</sup>

Two-thirds (66 percent) of the workers interviewed in this survey described suffering from hand or wrist pain, swelling, numbness or an inability to close their hands – symptoms of long-term repetitive motion-related musculoskeletal disorders.

This rate was even higher among workers doing the jobs most affected by the speed of the processing line – jobs that require workers to repeat strenuous motions thousands of times a day. Workers in these jobs who described such pain included:

- 86 percent of workers cutting wings;
- 80 percent of workers deboning chicken carcasses;
- 76 percent of workers doing deboning, cutting and trimming jobs; and
- 74 percent of workers doing hanging jobs.

Musculoskeletal injuries and disorders extend beyond the symptoms of carpal tunnel syndrome and other hand and wrist pain. About one-third of the workers surveyed identified pain or injuries to their back, shoulder or arm.

### Processing line speeds blamed

The workers in our survey attribute much of their pain and injuries to the speed of the processing line; 78 percent of workers surveyed said that the line speed makes them feel less safe, makes their work more painful and causes more injuries.<sup>6</sup> Few of these workers knew of instances where the line was slowed to address such concerns.

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- 5 E.g., Mark R. Schulz, et al., *Upper Body Musculoskeletal Symptoms of Latino Poultry Processing Workers and a Comparison Group of Latino Manual Workers*, *Am. Journal of Indus. Medicine* 1-9 (July 2012); Michael S. Cartwright, et al., *The Prevalence of Carpal Tunnel Syndrome in Latino Poultry-Processing Workers and Other Latino Manual Workers*, 54 *Journal of Occupational and Environmental Medicine* 198-201 (Feb. 2012); Antonio J. Marin, et al., *Evidence of Organizational Injustice in Poultry Processing Plants: Possible Effects on Occupational Health and Safety Among Latino Workers in North Carolina*, 52 *Am. Journal of Indus. Medicine* 37, 38 (2009); Nebraska Appleseed, *The Speed Kills You: The Voice of Nebraska's Meat-packing Workers* 26-30 (2009), available at [http://www.neappleseed.org/docs/the\\_speed\\_kills\\_you\\_ne\\_appleseed\\_100709.pdf](http://www.neappleseed.org/docs/the_speed_kills_you_ne_appleseed_100709.pdf); Series by Peter St. Onge, Franco Ordoñez, Kerry Hall & Ames Alexander, "The Cruellest Cuts: The Human Cost of Bringing Poultry to Your Table," *Charlotte Observer* (2008), available at <http://www.charlotteobserver.com/poultry/>; Sara A. Quandt, et al., *Illnesses and Injuries Reported by Latino Poultry Workers in Western North Carolina*, *American Journal of Industrial Medicine*, 49:343-351 (2006); Human Rights Watch, *Blood, Sweat, and Fear: Workers' Rights in U.S. Meat and Poultry Plants*, (Jan. 25, 2005), available at <http://www.hrw.org/reports/2005/01/24/blood-sweat-and-fear>; U.S. Government Accountability Office, *Workplace Safety and Health: Safety in the Meat and Poultry Industry*, GAO-05-96 (January 12, 2005), available at <http://www.gao.gov/products/GAO-05-96>; William G. Whittaker, *Labor Practices in the Meat Packing and Poultry Processing Industry: An Overview*, Congressional Research Service Report for Congress at 46-48 (July 20, 2005); Wendi A. Latko, et al., *Cross-Sectional Study of the Relationship Between Repetitive Work and the Prevalence of Upper Limb Musculoskeletal Disorders*, 36 *Am. Journal of Indus. Medicine* 248-259 (1999); Eric Bates, "The Kill Line," *Southern Exposure*, at 225 (Fall 1991); Thomas Armstrong, et al., *Investigation of Cumulative Trauma Disorders in a Poultry Processing Plant*, 43(2) *Am. Indus. Hygiene Ass'n J.* 103-116 (Feb. 1982).
- 6 Many studies have found correlations between rates of repetition of a task and development of musculoskeletal disorders and cumulative trauma injuries. See, e.g., Schulz, *supra* note 5; GAO-05-96, *supra* note 5; Latko, *supra* note 5; Poul Frost, et al., *Occurrence of Carpal Tunnel Syndrome among Slaughterhouse Workers*, 24 *Scandinavian Journal of Work, Environment, & Health* 285 (1998); Nat'l Inst. for Occupational Safety & Health, *Musculoskeletal Disorders & Workplace Factors: A Critical Review of Epidemiological Evidence for Work-Related Musculoskeletal Disorders of the Neck, Upper Extremity, & Low Back*, NIOSH No. 97-141 (1997), available at <http://www.cdc.gov/niosh/docs/97-141/>.

## Poultry is King in Alabama

Poultry is the No. 1 farm commodity in Alabama, making up 68 percent of the state's commodity receipts and 48 percent of its agricultural exports.<sup>1</sup>

With 2,417 poultry operations, the state produced slightly more than 1 billion broiler chickens in 2009 – ranking third among states<sup>2</sup> – with a value of \$2.5 billion.<sup>3</sup> This represents about 12 percent of the broilers raised in the United States.<sup>4</sup>

Alabama's production first topped 1 billion broiler chickens in the year 2000, having doubled its production in just 20 years and having quintupled its production in 40 years.<sup>5</sup>

The industry generates 75,000 jobs in the state and has an \$8.5 billion economic impact – about 10 percent of the state's economy, according to the Alabama Poultry Producers, a trade association.<sup>6</sup> Nationwide, about half of poultry workers are Latinos, and more than half are women.<sup>7</sup>

There are about 25 major poultry processing plants in Alabama. The major companies are Tyson Foods, Pilgrim's Pride, Wayne Farms, Koch Foods, AlaTrade Foods, Cagle's and Equity Group. Participants in this survey worked in 20 different plants.



1 Ala. Dep't of Agric. & Indus., *Alabama Agriculture: A Guide to the State's Farms, Food and Forestry* (2012).

2 Georgia and Arkansas were first and second, respectively. USDA Econ. Research Serv., *Poultry & Eggs: Statistics & Information*, <http://www.ers.usda.gov/topics/animal-products/poultry-eggs/statistics-information.aspx>, (last updated May 28, 2012). Georgia, Arkansas, Alabama, Mississippi, and North Carolina combine to make up 57 percent of the U.S. broiler chicken industry. See *id.*

3 Alabama Agricultural Experiment Station, *Alabama Agriculture and Forestry: Special Rept. No. 9* (Sept. 2010).

4 USDA Econ. Research Serv., *supra* note 2.

5 USDA Nat'l Agric. Statistics Serv. & Ala. Dep't of Agric. & Indus., *Alabama Agricultural Statistics: Bulletin 52* at 35 (2010).

6 Alabama Poultry Producers, *Changing with the Times*, <http://www.alfafarmers.org/commodities/poultry.phtml> (last accessed Aug. 31, 2012).

7 United Food & Commercial Workers, *Injury & Injustice: America's Poultry Industry*, [http://www.uusc.org/files/programs/econjustice/pdf/injury\\_and\\_injustice.pdf](http://www.uusc.org/files/programs/econjustice/pdf/injury_and_injustice.pdf) (last accessed Jan. 4, 2013).

Injury rates for poultry workers interviewed for this survey and other studies dwarf official rates. Many workers said they had to work even when seriously hurt.

Some workers recalled incidents in which other workers were fired or threatened for asking to slow the line (8 percent), and some (12 percent) said that supervisors actually *sped up* the line when workers asked to slow it down.

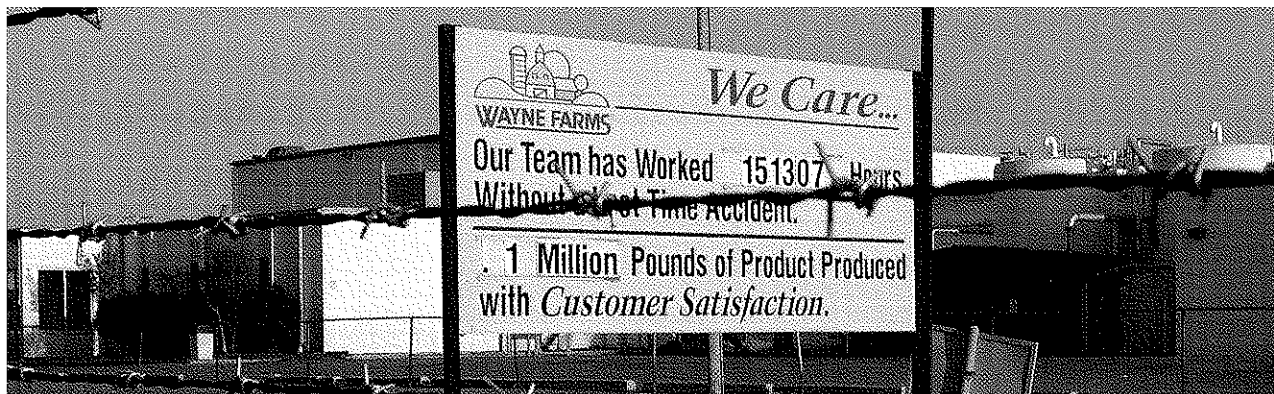
Though many plants have a lever, button or string that workers can use to stop the line during an emergency, several workers reported being disciplined for stopping it when they were injured. Carlos, a 43-year-old Latino charged with deboning meat and removing chicken skin, stopped his line once when he was in excruciating pain. His supervisor threatened to fire him if he ever did it again.

That kind of message is not lost on workers. When workers were asked if they had any opportunity to influence the line speed, the answer was a resounding no; nearly 99 percent said they could not.

This response also explains the desperation they feel. One worker described how line speeds became so fast that workers began jamming chicken bones into the machinery to stop the processing line. It was the only way they could get some relief from the frantic pace.

OSHA dedicated years of study to ergonomic risk factors and found that employers could take important steps to protect workers from musculoskeletal issues “by reducing the amount of time the employee performs repetitive motions, by reducing the speed at which the employer performs the tasks, or by eliminating certain repetitive tasks during recovery.”<sup>7</sup>

Ergonomics programs have been effective in reducing risk, decreasing exposure and protecting workers against work-related MSDs.<sup>8</sup> Unfortunately, few poultry workers find such programs in their workplace. In 2001, in the waning days of the Clinton administration, OSHA issued ergonomics regulations aimed at protecting workers from MSDs. But those standards were repealed by Congress early the next year.



<sup>7</sup> Ergonomics Program: Proposed Rule, 64 Fed. Reg. 65,767, 65,846 (Nov. 23, 1999).

<sup>8</sup> *Id.* at 65769-70.

### Workers suffer cuts and gashes

The fast speed of the processing line also increases the risk of cuts and gashes for workers handling knives, scissors and saws. These workers often stand virtually shoulder-to-shoulder, putting them at risk of cutting not only themselves, but co-workers as well.

This survey found that 17 percent of workers performing deboning, cutting and trimming

## The Process

Poultry processing corporations are known in the industry as “integrators” because of their role in all aspects of the process. They typically operate hatcheries to raise eggs into chicks and then deliver chicks to henhouses owned by contract growers who are subject to exclusive agreements with the integrator.<sup>1</sup> Six weeks later, chicken catcher crews arrive to load the chickens onto trucks for shipping to slaughtering and processing plants.

Jobs inside the slaughtering and processing plants begin with live hangers, who hang birds by their feet to be slaughtered. Most plants today use mechanized slaughtering systems, but some still employ a “killer” to slit the throat of birds that survive the primary slaughter process.

Then, birds are eviscerated and inspected by the U.S. Department of Agriculture (USDA). Carcasses enter a chiller to lower their temperature. Workers “rehang” the carcasses onto cones or shackles to hold them in place as the line brings the birds to their next destination. Depending on the plant’s end product, the birds may next go to wing folders, who twist and tie chicken wings into position for sale as whole broilers; to workers on deboning lines, including skin pullers; to wing cutters, who use saws or scissors to remove chicken wings;

or to deboners, who use knives and scissors to cut thigh, breast, and other meat from carcasses. Some plants include tables where workers pull or slice chicken tenders by hand.

At the end of the line, packers fill boxes and bags with chickens and meat, workers label boxes, and stackers lift the boxes onto pallets for shipping to supermarket or restaurant chains.

Many plants run full slaughtering and processing operations for two shifts a day, five to seven days a week. Such plants send crews of sanitation workers into the plant each night. They spray chemicals to clean blood, chicken parts and juices, and other waste from the machines.

Workers inside the plants endure cold air temperatures, usually below 40 degrees Fahrenheit,<sup>2</sup> making it difficult for their muscles to move and react quickly. Plant floors are often wet and slippery from dripping blood, guts, and the “chicken juices” found throughout the facility. Chemicals such as ammonia, chlorine, phosphoric acid, and sodium hydroxide are common. Outside a plant, the air may include high concentrations of feathers and dust from the loads of chickens arriving in trucks from henhouses scattered throughout surrounding counties.

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<sup>1</sup> Dan L. Cunningham, *Guide for Prospective Contract Broiler Products*, University of Georgia Cooperative Extension, [http://www.caes.uga.edu/publications/pubDetail.cfm?pk\\_id=6271](http://www.caes.uga.edu/publications/pubDetail.cfm?pk_id=6271) (Oct. 23, 2009). Cunningham notes that “[i]t is virtually impossible to be in the broiler production business today without contracting with a poultry integrator.” *Id.*

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<sup>2</sup> See 9 C.F.R. § 381.66(b)(1) (2012).

“When I was in so much pain that I had to stop, I asked for breaks, but the company told me I had to keep working. I can’t use my arms, wrists and hands the way I could before I worked in the poultry plant.”

— CARLOS

jobs had suffered a cut serious enough to require some medical attention. Company nurses often just gave workers Band-Aids for lacerations and sent them back to the processing line.

One worker said that after such an experience, the “chicken water” – water that is on the bird carcasses and found throughout the processing plants – would get into his bandage, keeping his cuts wet and eventually dislodging his bandage as he worked. His cuts became infected and continued to bleed weeks after his initial injury.

Other workers also relayed stories that show they are expected to suffer in silence.

“These jobs were very repetitive,” said Carlos, who cut chicken wings and breasts. “My hands swelled up and were extremely painful. When I was in so much pain that I had to stop, I asked for breaks, but the company told me I had to keep working. Because of the pressure to work fast, I can’t use my arms, wrists and hands the way I could before I worked in the poultry plant.”

Carlos eventually quit his job.

“I was afraid that I would lose my hands completely,” he said. “I am 43 years old. I have four kids, and I have to support a family. And the only thing I know how to do for work is with my hands. And I can barely use them now.”

### **Invisible Injuries**

It’s difficult to determine the real number of injuries in the poultry industry because data compiled by OSHA often underreports the frequency and severity of injuries and illnesses in all workplaces.

One study suggests that Bureau of Labor Statistics data on workplace injuries, which is based on OSHA reports, missed between 33 percent and 69 percent of all workplace injuries in 2009 and that undercounting is likely an ongoing problem.<sup>9</sup>

Employers are supposed to log worker injuries on a *Log of Work-Related Injuries and Illness* (Form 300), also known as OSHA 300 logs. They are instructed to include work-related injuries and illnesses that result in death, loss of consciousness, days away from work, restricted work activity or job transfer, or medical treatment beyond first aid. They also must include any work-related injuries and illnesses that are significant<sup>10</sup> or meet any of OSHA’s additional criteria.

Such injuries are often omitted, whether accidentally or intentionally, by employers.<sup>11</sup> This

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9 J. Paul Leigh, et al., *An Estimate of the U.S. Government’s Undercount of Nonfatal Occupational Injuries*, 46 *Journal of Occupational & Environmental Medicine* 1, 16 (Jan. 2004). Other studies have similarly found that BLS data may miss significant numbers of injuries because it only relies on samples from employers rather than on multi-source medical data. See Bruce Rolfsen, *Two-Thirds of Michigan Burn Cases Not Counted in BLS Survey, Study Finds*, 42 O.S.H. Rep. 512 (BNA), June 7, 2012.

10 “Significant” is defined by OSHA as any injury or illness that is diagnosed by a physician or other licensed health care professional. 29 C.F.R. § 1904.7. Employers must record any work-related injuries involving chronic irreversible disease, a fractured or cracked bone. *Id.*

11 U.S. Gov’t Accountability Office, *Workplace Safety and Health: Enhancing OSHA’s Records Audit Process Could Improve the Accuracy of Worker Injury and Illness Data*, GAO-10-10 (Oct., 2009), available at <http://www.gao.gov/new.items/d1010.pdf>.

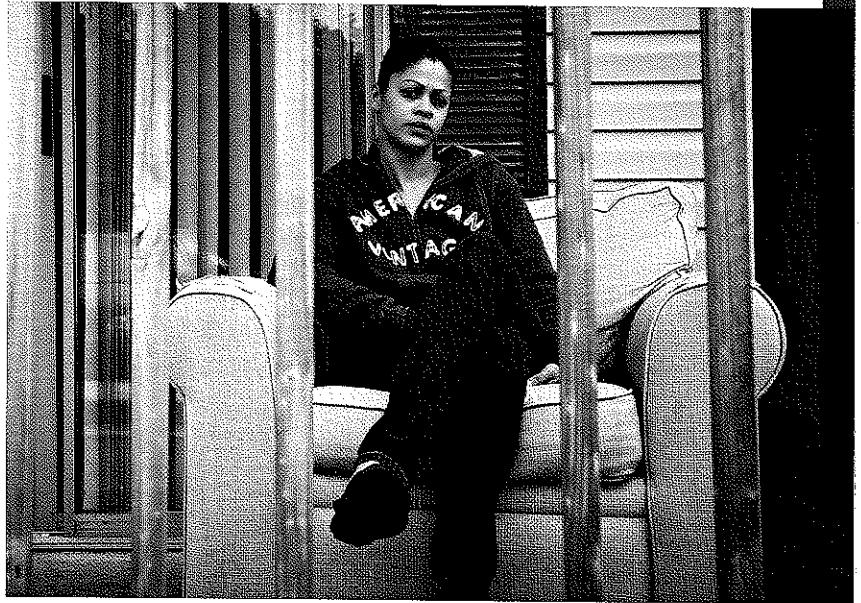
underreporting on OSHA 300 logs is due in part to worker fear of retaliation.<sup>12</sup>

This survey found that 66 percent of participants believed workers were scared or reluctant to report injuries, and that 78 percent of respondents attributed this reluctance to fear of being fired.

Other studies have noted that employers have incentives to underreport workplace injuries. This practice can keep workers' compensation insurance premiums low, avoid triggering OSHA inspections, and promote an image as a safe workplace in order to avoid paying the higher wages workers might demand for hazardous work.<sup>13</sup> Many workers interviewed in this survey said they were required to work even when seriously hurt – a tactic that can help an employer keep the number of reportable lost-time injuries low.

On top of these incentives for companies to underreport injuries, there is little incentive to report them accurately. Among the 20 inspections of Alabama poultry processing plants conducted by OSHA since October 2007, six plants were cited a total of 16 times for record-keeping violations, but 10 of these citations were either deleted or the fines for the citations were reduced to zero.<sup>14</sup>

These factors render many of the injuries experienced by poultry workers invisible – at least in terms of official injury records. Even worse, musculoskeletal injuries, which plague workers in this industry, aren't tracked by OSHA. The agency doesn't even have a check box on the OSHA 300 injury logs to indicate a musculoskeletal injury.<sup>15</sup>



Workers like Gabriela find their employers have incentives to underreport injuries to OSHA.

12 See, e.g., *id.* at "What GAO Found." "According to stakeholders interviewed and the occupational health practitioners GAO surveyed, many factors affect the accuracy of employers' injury and illness data, including disincentives that may discourage workers from reporting work-related injuries and illnesses to their employers and disincentives that may discourage employers from recording them." *Id.*

13 See, e.g., Leigh, *supra* note 9, at 11.

14 Some OSHA inspection data is publicly available and may be searched using various criteria. See OSHA, *Statistics & Data*, <http://www.osha.gov/oshstats/index.html>. The SPLC reviewed inspection data for Alabama poultry processing plants from October 2007 through October 2012.

15 See Occupational Injury and Illness Recording and Reporting Requirements: Notice of Limited Reopening of Rulemaking Record, 76 Fed. Reg. 28,383, 28,384 (May 17, 2011) (to be codified at 29 C.F.R. pt. 1904).

“No line shut down for a human, but it’d shut down for a bird.”

— NATASHIA

## Workers Endure Pain, Race Against Machines

Natashia Ford had been a healthy person all her life.

But after spending six years deboning chickens at a poultry processing plant in North Alabama, she’s a different person.

She’s been diagnosed with histoplasmosis, a lung disease similar to tuberculosis that’s caused by breathing airborne spores at the plant. Eight nodules are growing within her lungs, and they cannot be removed.

The company she worked for resisted paying for any of her medical expenses, such as her inhaler and medications.



When she worked, Natasha was always coughing inside the frigid plant. She said the company didn’t provide her or her co-workers with face masks as they worked on the processing line. Chicken juices would get into Natasha’s ears, nose and mouth.

“You couldn’t pay me to go back there,” she said.

Workers would process 30,000 to 60,000 birds per shift as they raced to keep pace with the mechanized line. If a chicken became lodged in the machinery, the line would stop so it could be dislodged.

Hurt workers couldn’t count on the same mercy.

The processing line never slowed or stopped for them, she said. It didn’t matter if they were cut, hurt or sick. It didn’t matter if a worker’s muscles stiffened and locked from standing and repeating the same motions for hours. The machinery kept churning – even when Natasha was so sick that she had to be picked up and carried off.

Natashia eventually sued her employer, a rare occurrence in this industry. The company ultimately paid for some of her medical bills, but not all of them. Today, Natasha can’t stand for more than 15 minutes. She wears knee and back braces and walks with a cane.

“No line shut down for a human, but it’d shut down for a bird,” she said.

Her husband, Mark Matthews, who met Natasha as a co-worker in the plant, agreed.

“Your body will seize up, but that doesn’t matter,” he said. “They won’t let the line slow down.”

He knows what motivates the poultry plants to treat their employees this way: “They are doing it just for production. It’s all about profit, all about gain to them.”

But it’s the employees who feel the pain long after they quit their jobs. Mark and Natasha are proof. Natasha’s body is in so much pain that Mark can’t even hold her at night.



“Your body will seize up, but that doesn’t matter.  
They won’t let the line slow down.”

— MARK

## SECTION TWO

# Worker Silence in the ‘House of Pain’

When Diane\* was diagnosed with severe carpal tunnel syndrome, her doctor was clear about what caused the condition – her work at the poultry processing plant.

It was news her employer didn’t want her to hear. In fact, Diane knew she could be fired if her employer learned she had sought treatment from her own doctor instead of the company doctor or nurse.

Her boss had made it clear how she should deal with her pain.

“My supervisor let me know that if my hands hurt and I go see the nurse, I should tell her that the pain comes from something that happened at home,” the 38-year-old African-American woman said. “I shouldn’t say it’s work-related. If I say my pain comes from something I did at work, then I will be laid off without pay and three days later get fired. So, when I go to the nurse I tell her that I hurt my hands at home.”

But Diane knew the treatment recommended by the nurse – taking a Tylenol and soaking her hands in water – wouldn’t be enough to address a serious injury.

So, she secretly saw a doctor and was diagnosed with carpal tunnel syndrome.

Diane’s story is not unique. Company policies requiring workers to see plant nurses first, even threatening discipline if workers initially seek outside treatment, are prevalent throughout the industry. Company doctors and nurses often deter workers from seeking their own treatment or workers’ compensation.

Yet, if these workers see the company nurse too often, they’re fired. Workers in this survey told of at least two plants with unwritten but rigid practices that result in the termination of any worker believed to have sought medical attention from the plant nurse too often.

Given these working conditions, it’s not surprising that 66 percent of survey respondents believe their co-workers were scared or reluctant to report injuries. Seventy-eight percent of those respondents attributed it to fear of being fired.

Plant employees are often worked until they can bear no more and then tossed aside. Because workers know they are essentially disposable, it is difficult – if not impossible – for them to take a stand to improve their safety.

Roberta,\* a young Latina in South Alabama, went to her plant nurse’s office three times to seek relief from the aches in her hands and wrists. After the third visit, she was told that she had gone to the nurse too many times. She was fired.

Kendrick, a young African-American man, developed carpal tunnel syndrome as he worked the deboning line at a plant. When he asked the nurse for a lighter work assignment, she let him know there were consequences for such a request.

“Do you want your job?” she asked him.

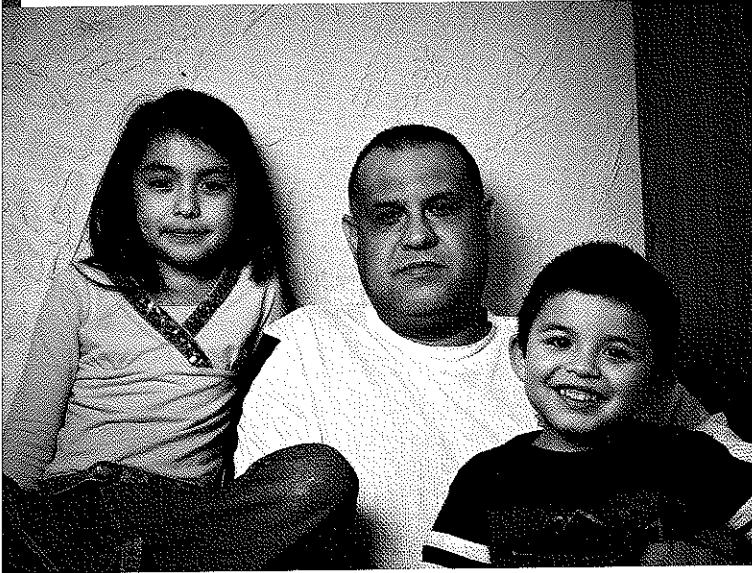
Samantha,\* a 24-year-old African-American woman, was fired because she supposedly visited the plant nurse one too many times about the pain and swelling in her wrists.

70% of respondents believe

66%

of respondents believe co-workers were scared or reluctant to report injuries.

\* Not her real name.



Juan (not his real name), pictured here with two of his children, has received no compensation or help with medical bills after injuring himself at work.

otherwise disciplined for being injured, missing work or seeing a doctor.

Many workers who did report their injuries noted serious problems with access to medical care and recovery time. Of the workers who reported any injury to the company:

- 33 percent described the medical treatment received from company nurses as inadequate (only 22 percent of reported injuries were met with adequate in-plant medical treatment);
- 45 percent were sent right back to their same job without access to treatment or time to recover when they tried to get medical care from the company;
- 14 percent were given time off from work to heal;
- 82 percent noted they were never sent to a doctor; and
- 50 percent of the time workers saw a doctor, they said that the decision of when they returned to work was made by the poultry corporation rather than the treating doctor or injured worker.

When workers manage to visit the plant nurse, they often described the nurse providing temporary remedies such as a Band-Aid, a warm-water hand wash, or instructions to buy pain medication from a vending machine in the employee break room. Workers are then, routinely, sent back to their assignment without rest or relief. The nurses, enforcing company policies, discourage workers from seeking their own treatment.

One survey participant recalled a nurse who quit working at a poultry plant because of the company's disregard for worker health. According to the worker, she said, "These people are going to make me lose my license because of the way they make me treat people."

Juan,\* a Latino father of three living in Alabama since 1999, worked for six years in a poultry plant. He worked primarily in stacking jobs that required him to lift, carry and stack two 80-pound boxes of chicken a minute. While lifting a box of chicken, he became dizzy, slipped, and fell to the floor. He was told to go right back to working despite being in great pain.

Juan's back pain worsened and the swelling became constant. He was unable to sleep. When he was finally able to get X-rays, they revealed that he had two lumbar vertebrae fractures from the fall. He was eventually fired. Juan has yet to recover. His employer never paid

"They shouldn't have a nurse's office at all if they don't want you to go to it," she said.

Three years after being fired, Samantha's hands still swell and become so numb that she cannot move them.

In total, this survey found that about 40 percent of injuries went unreported to the company. About one-fourth (24 percent) of all injuries discussed in the interviews went unreported because of the worker's fear of being fired or disciplined for reporting the injury, missing work to heal, or seeking medical treatment.

This fear is well-founded. Almost one-tenth (9 percent) of workers who reported an injury were fired or

\* Not his real name.

“They shouldn’t have a nurse’s office at all if they don’t want you to go to it.”

— SAMANTHA

for any medical treatments.

Another worker, Fernanda,\* described losing her breath from the pace of the line where she deboned chicken carcasses. She told her supervisors that she felt that she was going to faint. They would not allow her to take a break or slow the line. She fainted. Co-workers caught Fernanda before she hit the floor. She was unconscious for several minutes. After she was revived, Fernanda was given less than 30 minutes to rest before being ordered back to the line.

Even if a company doesn’t create obstacles for workers seeking outside treatment, a lack of insurance can prevent them from receiving medical care. More than one-third (38 percent) of workers participating in the survey didn’t have health insurance. Only 16 percent had health insurance fully paid by their employer.

Wilfrido, who has worked in the poultry industry for a dozen years, said that in the plants where he has worked, if a worker has a doctor’s excuse assigning light duty, the company just sends the worker home without pay or even fires the worker.

Many doctors practicing near the plant appear to be aware of this situation. Some actually tell workers that they would like to give them a note recommending light duty, but that they think they should not do so because it could lead to the worker’s firing.

Most poultry workers eventually give up on reporting injuries and seeking treatment from company nurses. They give up after witnessing workers lose their jobs. And they give up after receiving treatments from company nurses that leave them wondering why they should even bother. These workers often realize they only have one option – working through the pain.

### **Points system costs workers their health, jobs**

Even without these obstacles, a worker seeking outside medical treatment must take time off from work to do so. This can be another hurdle, partly because of a points system that penalizes them for such absences.

Virtually all Alabama poultry plants rely on this system to enforce attendance policies.<sup>16</sup> The system varies slightly among companies, but the general premise is that for each absence – even late arrivals or early departures – the employee receives a point or a half point. The reason for the absence or tardiness usually doesn’t matter.<sup>17</sup>

When an employee reaches a certain number of points, that person is fired. Depending on the company’s policy, it can take as few as six points for an employee to be fired. At some plants, it can take a year for the employee to work off a single point.

Even workers who have a doctor’s appointment or a chronic illness can get a point for taking time off to seek treatment. In an industry notorious for its high rate of long-lasting injuries, this type of policy can force employees to choose between their health and their employment. It also means injured or ill workers will almost certainly be fired – enabling

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<sup>16</sup> Among workers asked about attendance policies, 97 percent reported the existence of some type of points system in their plant.

<sup>17</sup> Eighty-one percent of interview participants asked about attendance policies reported that their plants assess points for any absence, even absences for personal medical or family health reasons.

\* Not her real name.

the company to quickly dispose of workers who have endured harsh working conditions as they've helped the company turn a profit.

This points system cost LaTonya, a young African-American woman, her job at a poultry plant in North Alabama where she cut chicken legs and thighs. She has asthma, which occasionally flared up and forced her to leave work. Sometimes her supervisors or the plant nurse ordered her to leave work to recuperate, an uncommon occurrence in an industry where injured and ill workers are often coerced into working even when ill or injured.

But even on the days LaTonya was told to leave the plant, she received a point under the points system. Her employer even denied her request to work in areas that did not aggravate her condition. Instead, she was forced to work in rooms that both she and her supervisors knew made it difficult for her to remain at work.

LaTonya received her final point when she needed emergency medical care.

On that day, her supervisors attempted to force her to stay at work. When she insisted that she needed medical treatment a plant nurse couldn't provide, her supervisor told her that if she left, she would "point out."

In other words, she would be fired.

LaTonya feared for her health. She made the difficult decision to go to the hospital, even though it meant losing her job.



Fernanda



Wilfrido

### **EEOC case offers hope**

A recent lawsuit brought by the Equal Employment Opportunity Commission (EEOC) highlights a legal problem with points systems. In *EEOC v. Verizon Wireless*,<sup>18</sup> the EEOC alleged that no-fault attendance policies – such as the points system frequently used by poultry plants – violate the Americans with Disabilities Act.<sup>19</sup>

The EEOC argued that Verizon Wireless was required to provide reasonable accommodations to disabled employees that would allow them to continue working. Such reasonable accommodations include not receiving points for absences caused by their disability and its symptoms.

The EEOC's argument in this case, which was settled out of court, recognizes that points systems discriminate against workers with disabilities.<sup>20</sup> These workers could continue working if the company permitted them to take the time to seek medical treatment and recover as needed. Refusing to do so while forcing employees to engage in such demanding and dangerous jobs is unjust and illegal.

Until the poultry industry ends these policies, its workers will continue to discover what workers before them have learned about the industry.

"It's a house of pain in there," Kendrick said.

18 *EEOC v. Verizon Wireless*, CV-018320-SKG (N.D. Md. filed July 5, 2011).

19 Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 et seq. (2011).

20 This case recently settled for \$20 million. See Press Release, EEOC, *Verizon to Pay \$20 Million to Settle Nationwide EEOC Disability Suit* (July 6, 2011).



# Workers' Compensation Out of Reach

## Alabama makes it more difficult for many poultry workers to receive treatment and collect compensation

Workers' compensation is, technically, available to help injured poultry workers. But the fact is, it exists for them mostly on paper.

Survey participants who suffered and reported injuries requiring them to miss work rarely said that they received workers' compensation benefits (29 percent).

**68%**

of workers are not comfortable asking their employer to fix hazards.

Alabama law makes it difficult for workers to receive coverage for musculoskeletal disorders – the type of injury most common among poultry workers.

In 1992, the Alabama Legislature amended the state's Worker Compensation Act to enact a more difficult standard for workers reporting "injuries which have

resulted from gradual deterioration or cumulative physical stress disorders" because such claims were "one of the contributing causes of the current workers' compensation crisis facing [the] state."<sup>1</sup> Carpal tunnel syndrome is usually subject to this higher burden of proof.<sup>2</sup>

By enacting this law, the Legislature chose to take what it perceived as a financial burden on insurance companies and place it squarely on some of the state's hardest working, lowest paid people – poultry workers. These workers face other obstacles as well, including tight deadlines for reporting injuries. This hinders the reporting of many musculoskeletal disorders that may not be diagnosable immediately upon their occurrence

– often because employers obstruct workers' access to independent medical evaluation.<sup>3</sup>

In addition, many workers are blocked from the workers' compensation system by employer threats and retaliation. Human Rights Watch found that "companies in the U.S. meat and poultry industry avoid payouts through their workers' compensation programs by systematically failing to recognize and report claims, delaying claims, denying claims, and threatening and taking reprisals against workers who file claims for compensation for workplace injuries."<sup>4</sup>

Alabama law prohibits retaliation against workers who apply for compensation benefits by stating that no employee "shall be terminated by an employer solely because the employee has instituted or maintained any action against the employer to recover workers' compensation benefits."<sup>5</sup>

On paper, this provides greater protection than Georgia, another major poultry-producing state, which expressly permits employers to retaliate against workers for filing compensation claims.<sup>6</sup>

Nevertheless, the word "solely" sticks out of Alabama's statute like a sore thumb. It invites unscrupulous employers to invent additional reasons to fire injured employees seeking benefits. Workers who participated in this study were under no illusion about what happens to those brave enough to seek workers' compensation – they risk losing their jobs.

<sup>1</sup> Ala. Code § 25-5-81(c); comments to the 1992 Amendments. The precise text reads: "The decision of the court shall be based on a preponderance of the evidence as contained in the record of the hearing, except in cases involving injuries which have resulted from gradual deterioration or cumulative physical stress disorders, which shall be deemed compensable only upon a finding of clear and convincing proof that those injuries arose out of and in the course of the employee's employment. For the purposes of this amendatory act, 'clear and convincing' shall mean evidence that, when weighted against evidence in opposition, will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim and a high probability as to the correctness of the conclusion. Proof by clear and convincing evidence requires a level of proof greater than a preponderance of the evidence or the substantial weight of the evidence, but less than beyond a reasonable doubt." Ala. Code § 25-5-81(c).

<sup>2</sup> *USX Corp. v. Bradley*, 881 So. 2d 421, 425 (Ala. Civ. App. 2003).

<sup>3</sup> See, e.g., Ala. Code § 25-5-78 (denying all benefits to workers who do not file a written report of an accident within, in some circumstances, five days, and in all circumstances, 90 days).

<sup>4</sup> Human Rights Watch, *Blood, Sweat and Fear: Workers Rights in U.S. Meat and Poultry Plants* at 57 (January 25, 2005), available at <http://www.hrw.org/reports/2005/01/24/blood-sweat-and-fear>.

<sup>5</sup> Ala. Code § 25-5-11.1.

<sup>6</sup> See *Evans v. Bibb Co.*, 178 Ga. App. 139, 139-40 (Ga. Ct. App. 1986) (holding that employers may lawfully terminate their employees in direct and open retaliation for employees' assertion of rights under the Georgia Workers' Compensation Act, O.C.G.A. § 34-9-1 *et seq.*).

“The safety scrubs rip easily, which lets chemicals and chicken waste get inside and touch your skin and your clothes.”

## SECTION THREE

# Worker Safety a Low Priority

As a sanitation worker at a poultry processing plant, Franklin\* wore a chemical safety suit to protect himself from the cleaning chemicals he sprayed on the machinery at the plant.

But the suits his employer provided tore easily – often after three or four days of use. His requests for replacement suits were repeatedly denied.

This meant Franklin had to repair the suit on his own. He would tape over the holes and tears to keep the chemicals out as he worked. He hoped his employer would eventually provide a replacement. But Franklin sometimes ended up wearing the same tattered safety suit for five months.

Franklin isn't the only person struggling to work with broken and ragged safety equipment. Many of the workers interviewed for our survey said their companies continually switch to thinner, cheaper aprons that simply don't hold up as they work.

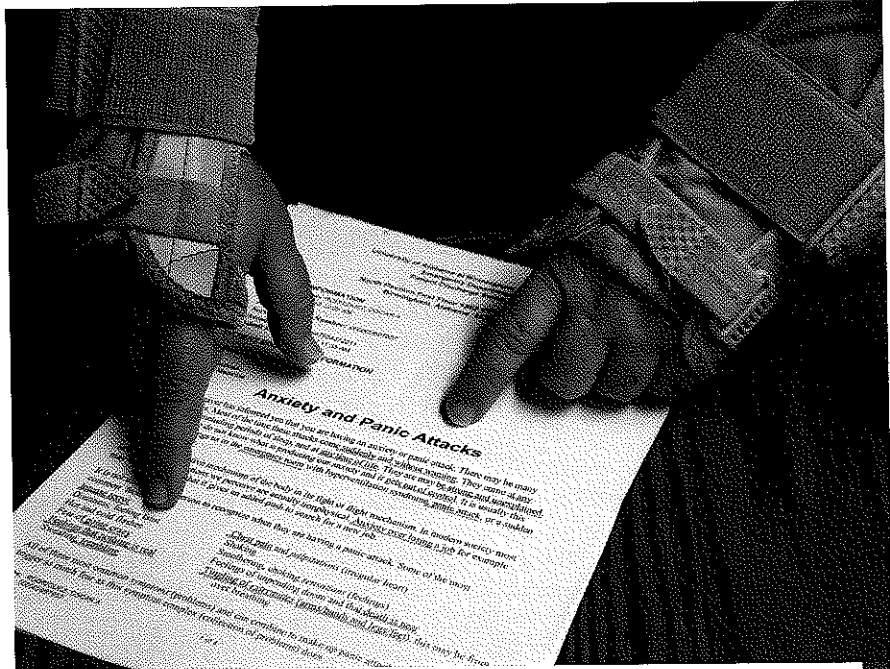
“The safety scrubs rip easily, which lets chemicals and chicken waste inside and touch your skin and your clothes,” one worker said.

But asking for a new apron or safety suit isn't an option for many. A common policy in Alabama poultry plants is to provide workers with one new protective apron to wear each month. A worker who needs a replacement before the end of the month is charged a fee. The same is true for other gear such as hair nets and gloves.

In this survey, 57 percent of respondents said they had to pay for some or all of their protective equipment (33 percent paid for replacement gear only and nearly one-quarter – 24 percent – had to pay for all equipment).

Given these statistics, it should be no surprise that workers often choose to start their workday wearing yesterday's blood-spattered aprons and gloves rather than pay their employer for the privilege of wearing clean gear.

It's an example of how employers discourage poultry workers from voicing concerns about hazardous or unsanitary conditions in the workplace. Sixty-eight percent of workers responding to this survey were not comfortable asking their employer to fix workplace safety



Oscar, whose employer locked him out of company housing while injured, shows some of the long-term health consequences he has suffered.

\* Not his real name.

“You need to cut the chicken,  
not go to the bathroom.”

hazards – a fear that seriously endangers workers in a profession that reported 300,000 injuries between 1998 and 2008.<sup>21</sup>

The majority of workers uncomfortable asking for hazards to be addressed (58 percent) also said they were afraid they might be fired for reporting a safety violation or requesting an improvement in work conditions. This reluctance was particularly high among workers who have witnessed retaliation or some adverse response to such requests (see table below).

Even without the fear of job loss, some workers may believe their request will be ignored. Only a tiny percentage of respondents (8 percent) knew of an instance when they or a co-worker asked a supervisor to improve working conditions in some way and the request was granted. This sets a dangerous precedent for workers laboring in processing plants where chemicals, blood, animal waste and other hazards abound.

The health issues workers witness within the processing plants can be disturbing. Patricia,\* an indigenous woman from southern Mexico who has worked in two poultry processing plants, said she became frightened when her co-workers suddenly developed warts. The workers suspected it was caused by exposure to the “chicken water,” which can contain chemicals and waste from all over the plant.

Wilfrido, a 12-year veteran of Alabama’s poultry processing plants, has watched his co-workers’ fingernails blacken and fall off. Exposure to chemicals and other liquids apparently blackens their fingernails and causes the skin on their fingers to harden and retract from the nails, which ultimately fall off.

Behind these stories and others like them are workers coping with a variety of ailments.

The survey found that 14 percent of all participants reported skin problems, 18 percent described eye pain or vision problems, and 21 percent described respiratory problems. It found that 30 percent of sanitation workers, the workers most exposed to strong cleaning chemicals,

The responses in the table below suggest that when workers see retaliation against themselves or a colleague for attempting to report a problem, it makes them even more fearful of trying to do so in the future.

### Impact of Retaliation on Workers Speaking Out About Workplace Problems

Uncomfortable asking employer about problems	Among all workers	Among workers who had previously witnessed an adverse response to a reported violation or request for improvement
With workplace safety	68%	86%
With safety equipment	57%	82%
With discrimination	71%	93%
With wages	60%	86%

21 Mary Bauer & Mónica Ramírez, Southern Poverty Law Center, *Injustice on Our Plates: Immigrant Women in the U.S. Food Industry*, at 37 (2010) (citing *The Perils of Processing*, *The Charlotte Observer* (June 25, 2010).

\* Not her real name.



“My hand always swells a lot – and even more if I don’t have time to sharpen the knife.”

— SANDRA

described experiencing respiratory problems at work. Yet, fear silences them.

### Workers denied restroom breaks

This silence even extends to the most basic request: Permission for a bathroom break.

Of the 266 workers answering questions about bathroom breaks, nearly eight in 10 (79 percent) said they are not allowed to take breaks when needed.

The long-term health consequences of being unable to use the bathroom when the body needs this relief are well-documented and serious.<sup>22</sup> But such findings do little to deter supervisors determined to keep workers on the processing line at all costs.

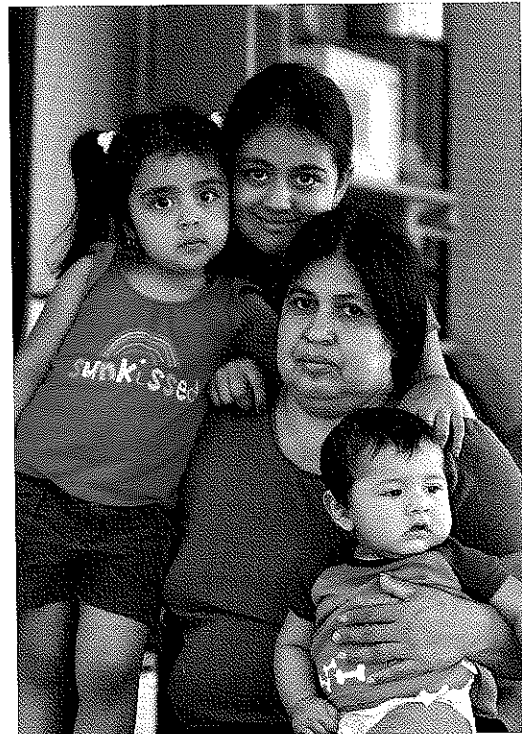
“You need to cut the chicken, not go to the bathroom,” was the response one worker said he got from his supervisor. This worker eventually walked off the processing line because he could wait no longer.

Workers have reported policies limiting bathroom breaks to five minutes – a period during which they must remove protective gear, leave the processing floor, return to the floor and put their protective gear back on. This leaves very little time for actual human necessities. Workers described stripping off their gear while running to the restroom, an embarrassing but necessary action to meet the strict five-minute time limit. This race to the bathroom is also dangerous because processing plant floors can be slippery with fat, blood, water, and other liquids.

Some workers said they dealt with the issue of bathroom breaks by not consuming water before and during shifts – a serious health risk. Others, fearful of losing their jobs, said they had no choice but to relieve themselves as they worked the processing line.

### Dull knives, sharp pain

Even without these issues, workers on the processing line still face a painful problem – dull knives. Access to sharp knives is one of the most basic recommendations from the U.S. Occupational Safety and Health Administration (OSHA)<sup>23</sup> and the Government Accountability Office.<sup>24</sup> Quite simply, dull knives require workers to exert more stress in



When Lilia asked for sharper knives, her supervisors became angry. A year after leaving the industry, her left arm still goes numb and she can’t sleep at night.

22 Marc Linder & Ingrid Nygaard, *Void Where Prohibited: Rest Breaks & the Right to Urinate on Company Time* 47-54 (1998) (describing some studies documenting the connection between long work hours without access to bathroom breaks and several resulting health conditions, including urinary tract infections, incontinence, enlarged prostates, kidney damage, reflux, kidney stones, and others).

23 OSHA, *Guidelines for Poultry Processing: Ergonomics for the Prevention of Musculoskeletal Disorders*, OSHA 3213-09N, 2004, available at <http://www.osha.gov/ergonomics/guidelines/poultryprocessing/poultryprocessing.html>.

24 GAO-05-96, *supra* note 5, at 31-32.

“If there’s no blood,  
I don’t pay anything.”

their arms, wrists and hands to make the necessary cuts.

Many plants tell workers that they can have their knives sharpened when needed. This is supposed to happen in one of two ways: Either the worker is allowed to leave the line to sharpen the knife or a low-level supervisor brings a sharpened knife to the worker.

But many workers say they do not actually get to leave, slow or stop the line to sharpen their knives. Lilia, an older Latina poultry worker, said that whenever she or her co-workers asked for sharper knives, their supervisors would get angry. They would neither allow the worker to leave the line to sharpen the knife nor sharpen a knife for them. Workers had to keep cutting as each cutting motion became more

## Chicken Catchers Face Grueling, Dangerous Conditions

Horacio was only 18 when he began working as a chicken catcher in Alabama.

It was grueling and dirty work, even for an industry largely defined by punishing work that leaves employees injured and ailing years after they quit or get fired. Chicken catchers – the workers who catch birds in chicken houses and load them onto trucks bound for processing plants – encounter many of the same problems as plant workers. These problems include repetitive motion injuries, respiratory ailments and supervisors who have little concern for their safety.

Horacio and his crew worked at night because the chickens are calmer then. It’s also not as hot – though the heat inside the houses is still intense. Horacio and his co-workers typically brought a change of pants because the pants they wore to work would quickly become soaked with sweat, making it difficult to walk.

His crew typically filled 14 or 15 trailers with chickens during each shift. Each trailer held about 4,400 chickens. Horacio would carry about seven chickens at a time – roughly 63 pounds total. It’s a feat he would perform more than 100 times for each trailer.

For Horacio to carry seven chickens at a time, he had to pick the birds up by their feet and place the feet between the fingers of his hand until he held four live,

squawking, scratching, pecking chickens. He then had to grab three more birds and secure their feet between the fingers of his other hand without dropping the first four chickens.

Given these conditions, it’s no surprise that chicken catchers often develop the same types of back, arm, wrist and hand injuries other poultry workers suffer, though the damage is often more severe. Chicken catchers have reported their hands have swollen to twice their normal size. Horacio’s hands, fingers and wrists would swell to the point where he couldn’t completely close his hands. They also would often go numb at night, a common symptom of carpal tunnel syndrome.

Chicken catchers may also develop respiratory ailments, due to the poor air quality in chicken houses. In fact, they are more likely than other blue-collar workers to develop chronic phlegm, wheezing and a variety of respiratory illnesses.<sup>1</sup>

Horacio, like other chicken catchers, said the dust and fecal matter in the air made his eyes burn and skin itch. He frequently had a rash from his work. He had a

<sup>1</sup> P.D. Morris, et al., *Respiratory Symptoms and Pulmonary Function in Chicken Catchers in Poultry*, 19 Am. J. of Indus. Med. 195-204 (1991).

difficult and painful.

"My hand always swells a lot – and even more if I don't have time to sharpen the knife," said Sandra, a Latina mother of four with eight years in the industry.

### **A race to rest**

Workers also reported being denied the opportunity to rest muscles fatigued from repeating the same motion thousands of times. OSHA recommends such breaks,<sup>25</sup> but many workers described being permitted only two breaks in a shift – one lasting 30 minutes and another lasting 15 minutes.

But even the 30-minute break offers little time for rest. Just as workers must race to the

protective mask to wear, but it was so heavy he didn't use it. None of the workers wore the masks because they inhibited their breathing – preventing them from working fast enough to meet their boss' demands.

### **Fighting for minimum wage**

Speed is crucial to this line of work. Chicken catchers say they are paid a group rate for catching the birds. They are paid the same rate regardless of how long it takes them, and there is no additional compensation for working more than 40 hours a week.

One chicken catcher said he typically worked with a crew of seven or eight workers who were required, at each henhouse they visited, to catch 24,000 or more chickens, usually within three hours. This means each worker had to catch and load about 1,000 chickens each hour, or about 17 chickens per minute.

The crew might be paid a lump sum of \$200 or \$250 for the entire load of chickens. If they were able to catch them all within three hours, they would earn more than the federal minimum wage. But if their pace slowed to less than the expected 17 chickens per minute, their wage might fall below the minimum. This situation is why wage-and-hour violations are perhaps more common among chicken catchers than processing plant workers.

But workers were expected to move slower when inspectors were present. Just as processing plant

supervisors often have advance notice of a visit by inspectors, Horacio said his boss had advance notice when inspectors visited a chicken house where his crew was working. Workers were told to slow down and use all of the safety equipment during these visits. Once the inspectors left, the catchers were expected to work fast enough to make up for lost time.

Today, after 19 years as a chicken catcher, 37-year-old Horacio exhibits a tell-tale sign of the profession. Both of his arms are in constant pain. He also walks with a limp – a painful reminder of the time a truck ran over his foot as it backed into a chicken house. His boss insisted that he keep working through the pain.

But such behavior shouldn't be surprising.

Once, his boss threatened to call Immigration and Customs Enforcement if a worker with a broken leg sued over the injury, Horacio said. Another worker was fired after slicing his hand on a chicken house ventilator.

Horacio also has been fired over an injury. While catching chickens in 2005, a bird escaped his grasp. As he attempted to grab it, he slipped and hurt his back so badly that he could not work for six months. It was his third serious back injury from chicken catching. He was immediately fired.

His boss didn't pay for his injuries or take him to the doctor.

"If there's no blood, I don't pay anything," his boss said.

<sup>25</sup> OSHA, *Guidelines for Poultry Processing*, *supra* note 23.

bathroom while stripping off their gear, workers hoping to enjoy these breaks must quickly remove their gear, walk to the employee breakroom, heat their meal, eat it, use the bathroom, put their gear back on and return to the processing line. This race to “rest” is hardly a break for workers who have cut thousands of birds.

“If you come back one or two times late from a break, you get fired,” Sandra said.

Even when Sandra was pregnant, she was given only the two standard breaks to recover from the fast pace of the processing line.

### **OSHA guidelines often ignored**

Though OSHA has recommended a series of guidelines intended to protect poultry worker

## **Sexual Harassment Common, Little Recourse**

One-fifth of workers report unwelcome touching of sexual nature

Marta\* couldn't take it anymore.

She picked up the phone and called her company's human resources hotline. She had endured several years of sexual harassment from her supervisor at the processing plant in southeast Alabama where she was a sanitation worker.

He had repeatedly pressured the 48-year-old Latina to have sex with him, telling her that she could have any job she wanted – if she gave in to his advances.

She was finally reporting him.

But Marta's phone call didn't end her ordeal. In fact, it made matters worse.

She was accused of inventing the story and was transferred to a lower-paying job. Her two sons, who also worked at the plant, received job transfers that cut their pay as well.

A year later, Marta was fired.

She was told she was fired over her immigration status – after seven years at the company. Her harasser, who kept his job, made it clear that immigration wasn't the real issue: He told her that if she had agreed to sleep with him, she'd still have her job.

Sadly, sexual harassment isn't uncommon in this industry.

One-fifth (20 percent) of workers in our survey said

they or someone they knew was subjected to unwelcome touching of a sexual nature. Thirty-four percent said they or someone they knew had been subjected to unwelcome sexual comments. Among the 48 percent of those incidents reported to management, the harasser was disciplined in only 24 percent of those cases.

Patricia, who worked for seven years in two different Alabama poultry plants, said her supervisor offered her an easier job in exchange for sex. She refused.

Patricia knew this supervisor was harassing one of her friends as well. She wanted to report him, but he told her the manager would not listen to her. He said she would be fired if she spoke up. Patricia knew the supervisor was friends with the human resources manager. She simply kept working until she moved away from Alabama.

Patricia and Marta's stories exemplify how women at poultry processing plants often find they are powerless to fight back against sexual harassment. Typically, speaking out only puts their jobs at risk. Too often, the only remedy, as Marta discovered, is to find new work.

She and her family found new jobs separating rubber worms sold as fishing lures. The work pays far below minimum wage, but she no longer endures the sexual harassment she experienced at the processing plant.

\* Not her real name.

health, they are unenforceable as a matter of law and often ignored in practice.<sup>26</sup> They are only guidelines; companies that ignore them do not face any penalty or legal action.<sup>27</sup> Indeed, among the relatively few citations issued in Alabama poultry processing plants for safety violations in the last five years, none addressed the most common hazards reported by workers in our survey, such as fast line speeds, lack of bathroom breaks, and unsafe tools and equipment such as dull knives.<sup>28</sup>

Some of the major guidelines that OSHA suggests to protect poultry worker health include training, providing protective equipment, use of ergonomically sound tools such as pistol-grip knives or electric scissors, and work station designs that permit healthy posture.

OSHA recommends that training should be provided to poultry plant workers “in a manner and language that all employees can understand,” including training on recognizing and addressing musculoskeletal disorders from their “early indications before serious injury has developed.”<sup>29</sup>

Many workers interviewed for this survey described being thrown into their assignments without any training. The survey found that 67 percent of respondents never received training before starting their job. It also found that 68 percent reported they never received *any* training on safety policies.

The minority of workers (33 percent) who received training when starting their jobs were more likely than workers who did not receive training to feel comfortable asking their employers about safety conditions (42 percent of trained workers versus 27 percent of untrained workers). But even 42 percent is too low when companies have a duty to ensure that *all* workers can freely discuss safety and health concerns. Nevertheless, this finding



Even when Sandra was pregnant, she only received two breaks from the poultry processing line each day.

26 *Id.*

27 OSHA provides a strong disclaimer to this effect at the top of these guidelines, making it clear that employers who disregard them will not be cited or fined for doing so: “These guidelines are advisory in nature and informational in content. They are not a new standard or regulation and do not create any new OSHA duties. Under the OSH Act, the extent of an employer’s obligation to address ergonomic hazards is governed by the general duty clause, 29 U.S.C. 654(a)(1). An employer’s failure to implement the guidelines is not a violation, or evidence of a violation of the general duty clause. Furthermore, the fact that OSHA has developed this document is not evidence of an employer’s obligations under the general duty clause; the fact that a measure is recommended in this document but not adopted by an employer is not evidence of a violation of the general duty clause.” *Id.*

28 See data obtainable from OSHA, *Statistics & Data*, *supra* note 14.

29 OSHA, *Guidelines for Poultry Processing*, *supra* note 23.

"If you complain too much, you get laid off or fired," said Francisco, who has worked at the same poultry processing plant for almost 20 years.

suggests that training has a positive effect.

OSHA also recommends job rotation, a practice that attempts to protect workers from strained muscles and tendons by regularly reassigning them to tasks that emphasize different motions.

Several workers told us that such a practice existed in their plant, which is an encouraging sign. Unfortunately, some of these workers said it had little effect because there was little variation between their previous assignment and their new assignment.

For example, when workers on a plant's deboning line were rotated among the work stations, all of the tasks stressed similar muscle and tendon groups.

### **Change is possible, but rare**

This isn't to say it's impossible for poultry workers to bring change to their workplace. Recently, workers at the Pilgrim's Pride plant in Russellville, Ala., voted 706 to 292 to join the Retail, Wholesale and Department Store Union. Among the reasons cited for the unioniza-

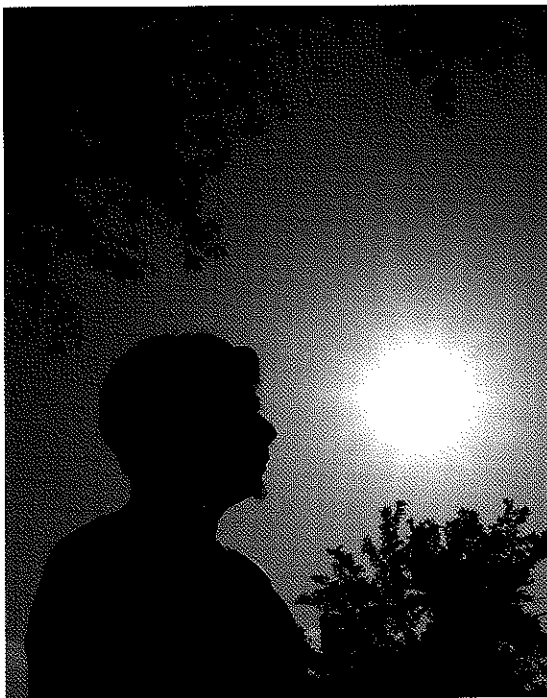
tion was employee desire to change working conditions such as not having time to take bathroom breaks and not having their injuries adequately addressed.<sup>30</sup>

But Alabama's rate of union membership – 10 percent – has been below the national average every year since 1989, the year the Bureau of Labor Statistics started publishing the data.<sup>31</sup> With such a low level of union representation, it's not surprising workers don't see many viable options to make their voices heard.

Also, Alabama poultry workers in union plants are not automatically placed in the union membership, which is a common practice in poultry-producing states.<sup>32</sup> This means that workers may choose to not join the union out of fear of being singled out for negative treatment.

Given the few opportunities for poultry workers to improve their working conditions, it's not surprising that workers like Sandra believe that little will change.

"Unless the company wants change, nothing will improve," she said. "I don't believe others can force the company to change. The company does not want to help any of the people."



30 Sherhonda Allen, *Pilgrim's Pride Hourly Workers to Join Union*, Florence, Ala. *Times Daily*, <http://timesdaily.com/stories/Pilgrims-Pride-hourly-workers-to-join-union,191576> (June 13, 2012).

31 Bureau of Labor Statistics, *Union Membership in Alabama - 2011*, <http://www.bls.gov/ro4/unional.htm>.

32 See Ala. Code § 25-7-34.

## United Nations: Human Rights Include Worker Rights

Safety in the workplace is one of the most fundamental rights to which all workers – including immigrants without legal status – are entitled. The United Nations and regional human rights bodies and treaties have recognized this human right and others that apply to all workers.

Immigrant workers, who make up the majority of the labor force in the poultry industry, are equally protected whether they come to work through a work visa or do not have work authorization.<sup>1</sup>

7%

of workers know of a complaint filed with a worker protection agency.

The Inter-American Court for Human Rights has found that immigration status must not affect the applicability of human rights within a nation's borders. It cited, among various

sources, the International Covenant on Civil and Political Rights, which requires that each country "undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or

social origin, property, birth or other status."<sup>2</sup>

Not only are employers responsible for upholding the basic rights of their workers, but the country in which those workers perform their labor is also responsible for enforcing these rights and can be held accountable for failing to do so. Several instruments<sup>3</sup> set forth the basic rights of workers. Among these rights are:

- A safe and healthful workplace
- Compensation for workplace injuries and illnesses
- Freedom of association and the right to form trade unions and bargain collectively
- Equality of conditions and rights for immigrant workers
- Right to rest and leisure
- Rights against all forms of forced or compulsory labor
- Rights against discrimination in respect of employment and occupation
- An adequate standard of living for the employee and the employee's family

<sup>1</sup> See Human Rights Watch, *Immigrant Workers in the United States Meat and Poultry Industry*, Submission to the Office of the United Nations High Commissioner for Human Rights Committee on Migrant Workers, Dec. 15, 2005.

<sup>2</sup> Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (Ser. A) No. 18, Sept. 17, 2003 (quoting Int'l Covenant on Civ. & Pol. Rts., art. II).

<sup>3</sup> Treaties and other human rights instruments addressing the rights of workers include: The Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the American Convention on Human Rights; the American Declaration of the Rights and Duties of Man; the Declaration on Fundamental Principles and Rights at Work; and the Occupational Safety and Health Convention.

“I’m told to work differently when OSHA comes to inspect. Supervisors are nice, and we pretend like everything is fine and we like our job.”

#### SECTION FOUR

## OSHA Offers Few Protections for Poultry Workers

A remarkable transformation took place at one Alabama poultry plant whenever the U.S. Occupational Safety and Health Administration (OSHA) conducted an inspection.

“When the big shots visit the plant, we’re told to clean, work and follow policies,” a poultry worker said during this survey. “I’m told to work differently when OSHA comes to inspect. Supervisors are nice, and we pretend like everything is fine and we like our job. OSHA has never talked to [me or my co-workers] about our work conditions.”

As this worker’s story shows, though OSHA inspections are “normally” implemented without advance notice to employers,<sup>33</sup> it is not always the case. And too often it means that companies are successful in hiding dangerous conditions.

Despite OSHA’s responsibility to ensure worker safety, it has no mandate to regulate processing line speeds to protect workers.<sup>34</sup> The U.S. Department of Agriculture (USDA) is the only agency that currently regulates line speeds. But the USDA’s regulations are designed to guard against contamination of the product, not to protect workers from hazardous conditions.

OSHA, in fact, has no standards tailored specifically for the poultry industry.<sup>35</sup> This means that only the “General Industry OSHA Standards” are used to regulate the industry.<sup>36</sup> OSHA is the only source of health and safety regulations for Alabama companies.

Many poultry workers develop tendonitis or carpal tunnel syndrome. They often try home remedies or braces to avoid surgery, which is sometimes the only real remedy.

33 OSHA, *OSHA Fact Sheet: OSHA Inspections*, available at [http://www.osha.gov/OshDoc/data\\_General\\_Facts/factsheet-inspections.pdf](http://www.osha.gov/OshDoc/data_General_Facts/factsheet-inspections.pdf).

34 See, e.g., Human Rights Watch, *supra* note 5; OMB Watch, *OSHA Must Improve Safety for Meat and Poultry Workers*, Feb. 7, 2005, <http://www.ombwatch.org/node/2262>.

35 OSHA, “OSHA Poultry Processing Industry eTool: Standards and Compliance,” available at <http://www.osha.gov/SLTC/etools/poultry/standards.html>.

36 *Id.*



OSHA is also severely understaffed. It employs enough inspectors to inspect each U.S. workplace, on average, once every 129 years.<sup>37</sup>

### Official worker complaints rare

In this survey, poultry workers were asked whether they were aware of a complaint to any worker protection agency, such as OSHA or another branch of the U.S. Department of Labor, that was made by themselves or a co-worker. Even though the overwhelming majority of the 302 workers surveyed told us of dangerous conditions at their workplace, only 17 (of 247 workers who answered the question) reported knowledge of a complaint filed with an agency such as OSHA.

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<sup>37</sup> The number of OSHA compliance officers per million workers dropped from 14.8 to 7.3 between 1980 and 2010. AFL-CIO, *Death on the Job*, at 73 (2012); AFL-CIO, *Death on the Job*, at 2 (2011).

## OSHA Blocked in Controversial Attempt to Prevent Musculoskeletal Disorders with Ergonomics Rule

The U.S. Occupational Safety and Health Administration (OSHA) currently has no regulation to protect workers in poultry processing and other industries from musculoskeletal disorders (MSDs). Its most notable effort – hailed by labor leaders as one of the agency’s most important worker safety initiatives ever – was defeated by business interests and a Republican Congress in 2001.

In November 2000, after a decade of study, the Clinton administration issued a sweeping ergonomics standard promulgated by OSHA. Under the rule, if a worker reported an MSD that required time away from work or met other specific conditions, the employer would be required to analyze the hazards of that particular job and, if needed, establish a program to reduce the risk of injury.<sup>1</sup>

At the time, OSHA said MSDs accounted for about

one-third of all job-related injuries and illnesses – nearly 600,000 each year.<sup>2</sup> That made MSDs the single largest job-related injury problem in the country.

The rule would have offered protection to 102 million workers and prevented 4.6 million MSDs over a decade, according to OSHA. The agency estimated the yearly cost to employers to be \$4.5 billion but said it would have an annual economic benefit of approximately \$9 billion.<sup>3</sup> Opponents argued the controversial regulation would cost \$100 billion or more a year to implement.

Business interests, including the U.S. Chamber of Commerce and the National Association of Manufacturers, sued to block the regulation in court. But before the courts could consider the legal challenges, Congress, encouraged by President George W. Bush, voted in early 2001 to repeal the standard.

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<sup>1</sup> Ergonomics Program, 65 Fed. Reg. 68,262, 68,262 (Nov. 14, 2000) (to be codified at 29 C.F.R. pt. 1910), available at [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=FEDERAL\\_REGISTER&p\\_id=16311](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=16311).

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

“[I]t was too fast to keep up with. Every week they had to hire new workers.”

— JORGE

## New USDA Regulations Endanger Workers, Consumers

Fewer inspectors, faster speeds under new rules

The new employees hired at a North Alabama poultry plant didn't last long.

Their first day on the job was often their last day on the job. Some didn't last more than an hour.

The reason was almost always the same – the relentless speed of the processing line.

“[I]t was too fast to keep up with,” said Jorge, a plant worker. “Every week they had to hire new workers.”<sup>1</sup>

Jorge worked at a poultry plant that was part of a U.S. Department of Agriculture (USDA) pilot program to test a new poultry inspection system that permits increases in the speed of the processing line.<sup>2</sup> The agency's proposed new regulations would allow some plants to raise the line speed to a maximum of 175 birds per minute – from the current maximum range of 70 to 140 per minute.<sup>3</sup>

It is unbelievable to Jorge that the USDA – the only agency that has a strict, enforceable limit on line speed – would raise it. Workers across the industry already cite the fast speed of the line as the cause of carpal tunnel syndrome and other musculoskeletal disorders. Jorge, like other poultry workers, suffers from virtually constant hand, wrist and arm pain that makes it difficult for him to sleep at night.

There's also little reason for Jorge or other poultry workers to believe that factory managers will compensate for a faster line speed by hiring additional workers.

Many plants already have workers hanging, cutting and deboning chickens nearly shoulder-to-shoulder on the line. There's simply not enough space for additional workers to reduce the burden of the faster speeds.<sup>4</sup>

### Consumers at risk

The USDA Food Safety and Inspection Service (FSIS) proposed the regulation known as “Modernization of Poultry Slaughter Inspection” on Jan. 27, 2012,<sup>5</sup> to allow plants to slaughter birds more “efficiently.” Though the regulation hasn't taken effect yet, concerns raised by workers have fallen largely on deaf ears.

But this regulation is more than an issue for workers. It poses risks for consumers. Fast processing lines often send chicken carcasses crashing to the floor, as workers can attest:

“We'd have a pile [of chickens] as high as a car by the end of the night,” one worker told survey interviewers. “The chicken gets thrown all over the floor if you fall behind,” another said.

But perhaps the most disturbing aspect of this regulation for consumers is the removal of many USDA inspectors from processing lines. Under the proposed regulation, workers will have the responsibility of spotting and removing diseased and tainted chicken from the line.

Burdening workers with this new duty as they race against the faster line speed hampers the chances of finding feces, blisters and other impurities on the carcasses. This has already started happening at plants operating under this proposed regulation as part of

1 Jorge also gave an interview to the Huffington Post about this rule. Dave Jamieson, *USDA Poultry Plant Proposal Could Allow Plants To Speed Up Processing Lines, Stirring Concern for Workers*, *The Huffington Post* (Apr. 19, 2012) available at [http://www.huffingtonpost.com/2012/04/19/usda-poultry-inspections-workers\\_n\\_1438390.html](http://www.huffingtonpost.com/2012/04/19/usda-poultry-inspections-workers_n_1438390.html).

2 USDA Food Safety and Inspection Service, HACCP-Based Inspection Models Project (HIMP), List of Participating Plants, May 25, 2012, available at [http://www.fsis.usda.gov/Science/Himp\\_Plant\\_List/index.asp](http://www.fsis.usda.gov/Science/Himp_Plant_List/index.asp). Not all of these plants are necessarily operating at the new maximum line speed yet.

3 Modernization of Poultry Slaughter Inspection, 77 Fed. Reg. 4,407, 4,454 (Jan. 27, 2012) (to be codified at 9 C.F.R. pts. 381, 500).

4 See, e.g., U.S. Government Accountability Office, *Workplace Safety and Health: Safety in the Meat and Poultry Industry*, GAO-05-96 at 32 (January 12, 2005), available at <http://www.gao.gov/products/GAO-05-96>.

5 Modernization of Poultry Slaughter Inspection, 77 Fed. Reg. at 4,407–56, *supra* note 3.

“We’d have a pile [of chickens] as high as a car by the end of the night.”

the pilot project. Food and Water Watch’s analysis of records from these plants found that “large numbers of defects – including feathers, bile and feces – were routinely missed when company employees instead of USDA inspectors performed inspection tasks.”<sup>6</sup>

One inspector’s affidavit released by the Government Accountability Project, a nonpartisan advocacy organization, stated that it “is difficult, if not impossible to spot defects at that rate.”<sup>7</sup>

A former federal inspector in North Alabama crunched the numbers to show the daunting reality facing the lone USDA inspector working the processing line under the new regulatory regime.

“The lines are so fast, one-third of a second per bird,” said Phyllis McKelvey, who retired in 2010. “You tell me you can thoroughly inspect that bird for disease and contaminants in one-third of a second.”<sup>8</sup>

Another inspector noted that under the proposal, USDA inspectors will “only see the backside of the bird during carcass inspection. As a result, we are unable to see breast blisters, which form because the birds lay on their front, or to spot other harmful defects. For example, fecal matter can appear anywhere on the bird, including the front of the bird, or under the wings, which are folded up.”<sup>9</sup>

USDA inspectors also have noted “that companies routinely pressure their employees not to stop the line or slow it down, making thorough inspection for

contaminants, tumors and evidence of disease nearly impossible.”<sup>10</sup> In an industry where a worker fears he may lose his job for stopping the line – even choosing to urinate on himself rather than risk angering a supervisor by requesting a bathroom break – it is a legitimate question to ask how these workers will summon the courage to slow the processing line to ensure only healthy, clean birds are shipped to the nation’s supermarkets.

#### USDA urged to withdraw rules

Shortly after the rule was proposed, the Southern Poverty Law Center joined numerous advocates, including Nebraska Appleaseed, in submitting comments to urge the USDA to withdraw the proposed rule because of the danger it poses to the health and safety of thousands of poultry workers throughout the United States.<sup>11</sup>

Poultry processing workers need and deserve more protections, not fewer. The proposed rule ignores what is already a serious problem for this workforce – the danger of the current line speed. Poultry workers should not be subjected to dangerous workplaces and disabling injuries in order to increase the profits of a few large corporations.

FSIS claims that it recognizes the importance of worker safety,<sup>12</sup> even saying that “evaluation of the effects of line speed on food safety should include the effects of line speed on establishment employee safety.”<sup>13</sup> This is encouraging, but it makes the USDA’s support for this rule all the more inexplicable.

6 Wenonah Hauter, *Obama Administration Backwards On Food Safety*, *The Huffington Post* (Sept. 14, 2012) available at [http://www.huffingtonpost.com/wenonah-hauter/obama-backward-food-safety\\_b\\_1882749.html](http://www.huffingtonpost.com/wenonah-hauter/obama-backward-food-safety_b_1882749.html); see also Food & Water Watch, *Privatized Poultry Inspection: USDA’s Pilot Project Results*, <http://www.foodandwaterwatch.org/food/foodsafety/privatized-poultry-inspection-usdas-pilot-project-results/>.

7 Helena Bottemiller, *Debate Heats up over Poultry Inspection Proposal*, *Food Safety News*, <http://www.foodsafetynews.com/2012/04/debate-heats-up-over-new-poultry-inspection-rule/> (Apr. 9, 2012).

8 *Federal inspectors in Alabama wary of proposed changes in poultry slaughter operations*, *The Associated Press*, [http://blog.aj.com/wire/2012/12/feds\\_consider\\_poultry\\_slaughte.html#incart\\_river\\_default](http://blog.aj.com/wire/2012/12/feds_consider_poultry_slaughte.html#incart_river_default) (Dec. 4, 2012).

9 Bottemiller, *supra* note 7.

10 Jim Avila, *USDA to Let Industry Self-Inspect Chicken*, *ABC News*, <http://abc-news.go.com/news/1/blogEntry?id=16165211> (April 19, 2012).

11 There were a total of 2260 comments submitted on the rule, as found at <http://www.regulations.gov/#!searchResults;rpp=25;po=0;s=FSIS-2011-0012>.

12 *Modernization of Poultry Slaughter Inspection*, 77 Fed. Reg. 24,873, 24,877 (Apr. 26, 2012) (to be codified at 9 C.F.R. pts. 381, 500).

13 *Modernization of Poultry Slaughter Inspection*, 77 Fed. Reg. at 4,423, *supra* note 3.

Among these 17 workers, 11 indicated that nothing at all happened in response to the complaint, and only three reported any positive changes.

These data help show that many workers are unable to file a complaint because of the fear of retaliation and the complex complaint process. They also show that even when a worker files a complaint with OSHA or a similar agency, inspections and positive results are rare.

A handful of workers reported that working conditions became *more dangerous* after an OSHA inspection. That's because the company had slowed the processing line while OSHA officers were in the plant. Once inspectors left, the line speed was increased beyond its usual rapid pace to make up for the lost production.

## Not Just Workers in Danger; Neighbors, too

The hazards of the poultry industry extend beyond workers and consumers.

The large henhouses used to raise chickens for slaughter – known as Concentrated Animal Feeding Operations, or CAFOs – produce a massive volume of waste, about 1.8 million tons annually in Alabama alone.<sup>1</sup>

This waste is a significant source of contamination for surrounding surface and ground water. It also emits 168 different gases, including hazardous chemicals such as ammonia, hydrogen sulfide and methane, into the atmosphere.<sup>2</sup>

The disposal of chicken carcasses, too, can lead to environmental problems. Plus, these operations use large amounts of water, electricity and fuel.<sup>3</sup>

There are currently 424 CAFOs for broiler chickens in Alabama and another 82 pending approval.<sup>4</sup>

In northwest Alabama, the hub of the nation's poultry industry, many streams are off limits to swimming because of pollution from livestock waste. This should not be surprising.

While CAFO owners and operators spend millions of dollars annually on technologies to increase production, they resist changes needed to properly treat and dispose of animal waste. Though CAFO operators may use some of this waste as fertilizer, it is not a solution. The heavy volume of waste overwhelms the ability of land, crops and watersheds to absorb it all.<sup>5</sup>

All Alabama CAFOs are required to register with the Alabama Department of Environmental Management. They must maintain "best management practices for animal waste production, storage, treatment, transport and proper disposal or land application" that meet or exceed the technical standards and guidelines of the USDA Natural Resources Conservation Service.<sup>6</sup>

In many cases, the waste is put in anaerobic lagoons, sometimes known as manure lagoons. The waste typically isn't treated to reduce disease-causing pathogens or to remove chemicals, pharmaceuticals and other pollutants. These lagoons have contributed significantly to environmental and health problems.<sup>7</sup>

1 Elton Robinson, *The Latest Scoop on Chicken Litter*, Southeast Farm Press (Nov. 16, 2005), <http://southeastfarmpress.com/latest-scoop-chicken-litter>.

2 Sierra Club, Michigan Chapter, *Facts about CAFOs*, <http://michigan.sierraclub.org/issues/greatlakes/articles/cafofacts.html>.

3 *Id.*

4 Al. Dep't of Env'tl. Mgmt., *Animal Feeding Operations*, <http://adem.alabama.gov/programs/water/cafo.cnt>.

5 See Sierra Club, Michigan Chapter, *supra* note 2.

6 Al. Dep't of Env'tl. Mgmt., *supra* note 4.

7 NRDC, *Pollution from Giant Livestock Farms Threatens Public Health*, <http://www.nrdc.org/water/pollution/nspills.asp>. Retrieved Nov. 2, 2011.

OSHA conducts some planned inspections at worksites it strategically selects based on data or a random sampling, rather than in response to complaints filed by individual workers. However, over the past five years, it has conducted only two planned inspections in Alabama poultry processing plants.<sup>38</sup> OSHA also inspects sites that have received worker complaints. Though OSHA investigates employee complaints, several factors prevent the agency from effectively addressing many of the abusive conditions workers described in this survey.

A key flaw in OSHA enforcement is that it primarily investigates complaints from current employees.<sup>39</sup> Complaints from former employees – the workers with least to fear – are rarely investigated. But the agency offers little protection from retaliation for current workers who bring attention to safety problems, and few in the poultry industry are willing to risk their jobs, particularly when they have little evidence that filing a complaint will improve conditions.

Even workers courageous enough to file a complaint may find they have waited too long to take action. Employees have only 30 days to file a complaint.<sup>40</sup> David Michaels, assistant secretary for OSHA, has argued that it often takes more than 30 days for an employee to understand a hazard in the workplace, much less to formally file a complaint.<sup>41</sup> The strict 30-day rule prevents many valid complaints from being reviewed.<sup>42</sup>

Even complaints that are investigated face uncertain outcomes and weak enforcement. OSHA at times has sought to increase the number of inspections and the number of serious sanctions handed down each year,<sup>43</sup> but very few health and safety cases are ever handed over to the U.S. Department of Justice (DOJ) for formal prosecution. According to William M. Murphy, a former top OSHA official, an objective to prosecute cases is “never communicated” to the OSHA staff.<sup>44</sup>

This was apparent in 2003, when *The New York Times* reported that in 20 years, OSHA made referrals to the DOJ in only 7 percent of cases involving deaths caused by willful employer violations.<sup>45</sup>

In addition, civil and criminal penalties are often so low that they fail to provide any deterrent. According to Michaels, OSHA’s most serious limitation is “the very low level of civil penalties allowed under our law, as well as our weak criminal sanctions.”<sup>46</sup>

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38 OSHA attempted a third planned inspection, but targeted a plant that had already closed. See data obtainable from OSHA, *Statistics & Data*, *supra* note 14.

39 See 29 C.F.R. § 1903.11(a) (“Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace . . .”) (emphasis added).

40 OSHA, “OSHA Whistleblower Protections Fact Sheet,” available at [http://www.osha.gov/OshDoc/data\\_General\\_Facts/whistleblower\\_rights.pdf](http://www.osha.gov/OshDoc/data_General_Facts/whistleblower_rights.pdf).

41 Putting Safety First: Strengthening Enforcement and Creating a Culture of Compliance at Mines and Other Dangerous Workplaces; Hearing Before the Comm. on Health, Educ., Labor and Pensions (Apr. 27, 2010) (statement of David Michaels, Assistant Sec’y for Occupational Safety & Health), available at [http://www.osha.gov/pls/oshaweb/owadis.show\\_document?p\\_table=TESTIMONIES&p\\_id=1122](http://www.osha.gov/pls/oshaweb/owadis.show_document?p_table=TESTIMONIES&p_id=1122).

42 Michaels proposed that legislators pass the Protecting America’s Workers Act (PAWA), an amendment to the Occupational Safety and Health Act of 1970. PAWA would extend the complaint deadline from 30 days to 180 days. *Id.*

43 David Barstow, “U.S. Rarely Seeks Charges for Death in Workplace,” *The N.Y. Times* (Dec. 22, 2003), <http://www.nytimes.com/2003/12/22/us/us-rarely-seeks-charges-for-deaths-in-workplace.html?pagewanted=all&src=pm>.

44 *Id.*

45 Human Rights Watch, *supra* note 5.

46 Putting Safety First, Michaels, *supra* note 41.

The low level of civil penalties is visible in the data on OSHA's enforcement efforts in Alabama's poultry processing plants, which have seen 20 inspections in the past five years, resulting in 78 citations and slightly more than \$184,000 in fines actually paid. Twenty-two of these citations were deleted or excluded from the formal record. These 22 citations include three citations assessed at the most serious level.<sup>47</sup>

Most fines are low, often \$5,000 or less.<sup>48</sup> These fines are often waived or greatly reduced during settlement. Alabama poultry plant employers paid the full fine issued for only 17 of the 78 citations issued for workplace safety violations during the past five years.<sup>49</sup>

Quite simply, it is often cheaper to run an unsafe plant and pay minuscule fines than to protect workers from injury and illness. Without the threat of strong penalties for willful OSHA violations, the agency is unlikely to promote any real change. Without proper enforcement mechanisms, OSHA efforts cannot lead to safer workplaces.

### **Workers can't file lawsuits**

Health and safety problems are mostly exempt from a significant protection enjoyed by workers trying to enforce other types of rights – the ability to file a lawsuit. A private right of action by an employee against an employer is not available under OSHA statutes.<sup>50</sup> In a speech to a U.S. Senate committee, Michaels, the assistant secretary for OSHA, has argued that employees should have the right to file civil suits in federal court against employers for violating orders issued to provide relief to workers.<sup>51</sup>

A private right of action would permit workers to protect their own health and safety instead of relying on an understaffed agency that has been, for several decades, increasingly unable to enforce health and safety standards in most American workplaces.<sup>52</sup> Without a private right of action, these workers remain vulnerable.

This inability to bring a lawsuit extends even to the Occupational Safety and Health Act's Section 11(c) – a section of the statute created specifically to protect whistleblowers filing OSHA complaints against employers.<sup>53</sup> Without a private right of action, workers reporting health and safety violations largely do so at the risk of employer retaliation.

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47 OSHA categorizes citations based on their level of gravity, with the most serious violations rated as 10, and the least serious rated as one. See OSHA Field Operations Manual, Dir. No. CPL 02-00-150, at 6-6, Apr. 22, 2011, available at [http://www.osha.gov/OshDoc/Directive\\_pdf/CPL\\_02-00-150.pdf](http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-150.pdf).

48 Even a "serious" violation, which is defined to mean "a hazard, violation or condition such that there is a substantial probability that death or serious physical harm could result," 29 C.F.R. pt. 1960.2(v), can at most result in a maximum fine of \$7,000. OSHA, *OSHA Administrative Penalty Information Bulletin* (effective Oct. 1, 2010), [http://www.osha.gov/dep/enforcement/admin\\_penalty\\_oct2010.html](http://www.osha.gov/dep/enforcement/admin_penalty_oct2010.html).

49 See data obtainable from OSHA, *Statistics & Data*, *supra* note 14.

50 Michael S. Worrall, *Meatpacking Safety: Is OSHA Enforcement Adequate*, 9 Drake J. Agric. L. 299, 315 (2004).

51 Putting Safety First, Michaels, *supra* note 41.

52 The number of OSHA compliance officers per million workers dropped from 14.8 to 7.3 between 1980 and 2010. AFL-CIO, *Death on the Job*, at 73 (2012), available at <http://www.aflcio.org/Issues/Job-Safety/Death-on-the-Job-Report>. There are only enough federal OSHA inspectors to inspect each workplace, on average, once every 129 years. *Id.* at 2.

53 29 U.S.C. § 660(c)(2) (providing an investigation and possible litigation by OSHA as the only remedy for a worker who has suffered retaliation for exercising health and safety rights, and requiring the employee to file her complaint within 30 days).



## SECTION FIVE

# Alabama's HB 56 Contributes to Climate of Fear

Workers flee state, leaving plants understaffed

When Alabama passed its anti-immigrant law in 2011, it was promoted as a jobs bill.

The law, HB 56, includes a provision requiring employers to verify the immigration status of all new hires through E-Verify, a federal database. HB 56 would not only rid the state of undocumented immigrants through its harsh penalties, supporters said, but the jobs they leave behind would become available for unemployed Alabamians.

But that's not what happened.

Many Latinos – regardless of their immigration status – apparently did choose to flee the state rather than face the racial profiling and harassment promoted by HB 56.

The lines of Alabamians wanting their jobs, however, failed to appear.

Alabama Agriculture Commissioner John McMillan described the results faced by employers: “We have seen the enormous difficulties farmers, especially those in produce and poultry, have encountered as a result of the new immigration law. The economic hardship to farmers and agribusinesses will reverberate throughout Alabama’s economy.”<sup>54</sup>

Some poultry companies operating in Alabama – Tyson, Pilgrim’s Pride and Alatrade Foods – assert that they used E-Verify prior to the state mandate.<sup>55</sup> And though the law applies only to new hires, many employers have dismissed employees without verifying their immigration status at all or after verifying the status of current employees, which E-Verify does not permit.

“We had to replace about 130 employees [out of 900] at our Albertville plant,” said Frank

Alabama’s anti-immigrant law, HB 56, gave employers a tool to intimidate undocumented employees into working under even more hazardous conditions, workers say.

54 Center for American Progress Immigration Team, “Not-So-Sweet Home Alabama: What Alabamians Are Saying about Their State’s New Immigration Law,” Center for American Progress (Nov. 21, 2011), [http://www.americanprogress.org/issues/2011/10/alabama\\_law\\_quotes.html](http://www.americanprogress.org/issues/2011/10/alabama_law_quotes.html).

55 Jonathan Stinson, *Poultry Companies Already Using E-Verify*, *The Sand Mountain Reporter* (April 7, 2010).



Gabriela



Ivan



Rodrigo



Jessica

Singleton, a spokesman for Wayne Farms. He added: “We can’t say for sure that was because of the Alabama law, but the inference certainly was there that we can assume the people left because of their concern about the law. It definitely had a chilling effect on the migrant community.”<sup>56</sup>

### A Climate of Fear

Workers of all races, languages, and immigration statuses who participated in this survey described dangerous conditions in these processing plants. These conditions only worsened after HB 56 raised the threat of retaliation and deportation, they say.

Poultry workers say HB 56 has left processing plants understaffed as some companies choose to leave many positions unfilled. They say companies have used the new law to intimidate the remaining undocumented employees into working under even more dangerous conditions.

Francisco,\* a 50-year-old Latino poultry worker in North Alabama, has seen a dramatic change since the law took effect. He said his employer has hired very few workers to replace those who fled.

Instead, HB 56 has forced each worker to process more chickens than before. The plant has even increased its line speed in the deboning area, despite the number of workers there dropping from about 42 workers per line to about 32. The few new hires are thrown into their jobs without training – a decision that makes their dangerous jobs even riskier, he said.

Francisco believes the company knows that many of its workers are undocumented and is exploiting their fear of HB 56 for profit. The company has threatened mass firings if workers cannot keep up with the faster pace, he said.

The climate of fear also has been fed by a September 2011 incident that occurred shortly after HB 56 took effect. That’s when eight workers were arrested as they left the plant early one morning. The workers were deported even though they hadn’t committed any crimes and were longtime employees with children in Alabama.

The arrests reinforced a powerful fear held by Latino workers – that they can disappear at any time. And as long as a poultry company can profit from that fear, there’s little reason for Francisco to believe his employer will do anything to dispel it.

### False Promises, Real Hardship

Because so few locals were interested in taking the jobs vacated by immigrants after the passage of HB 56, some Alabama poultry plants have resorted to recruiting refugees and other out-of-state workers to fill jobs.<sup>57</sup>

To a group of workers in Puerto Rico, it sounded like a good opportunity.

Workers were promised \$10.50 an hour – or even more – for hanging live chickens on a

56 Daniel Trotta and Tom Bassing, *In Alabama, Strict Immigration Law Sows Discord*, Reuters (May 2012), <http://www.reuters.com/article/2012/05/30/us-usa-immigration-alabama-idUSBRE84T16P20120530>.

57 Margaret Newkirk and Gigi Douban, *In Alabama, Legal Immigrants Wanted for Dirty Jobs*, Bloomberg Businessweek, Oct. 4, 2012, available at <http://www.businessweek.com/articles/2012-10-04/in-alabama-legal-immigrants-wanted-for-dirty-jobs>.

\* Not his real name.



processing line.

The workers were hired, but they had to pay their own way to Alabama. Once they arrived, they discovered they had been lured to the mainland with false promises. Instead of hanging live chickens for \$10.50 an hour, they were tasked with deboning chickens for \$8.90 an hour. Their pay shrank even more as deductions were taken for company housing, temporary use of furniture and other fees.

Gabriela, Ivan, Rodrigo and Jessica\* were among these workers. They, like other Latino workers, said they faced discrimination at the plant. They were required to perform more work than their non-Latino co-workers, harassed and insulted with comments such as “andale, andale” – apparently a mocking reference to Looney Tunes character Speedy Gonzales. Some workers even had feathers and bloody chicken parts thrown at them while working.

Their complaints were met with the same excuse: “If you don’t like it here, you can go back to Puerto Rico.”

The workers felt trapped.

Jessica attempted to make the best out of a bad situation. But things went from bad to

## Doing the Work of Three People

Latinos assigned to the plant’s least desirable jobs

Felipe\* has thought about leaving his job at a North Alabama poultry processing plant. But he keeps working because he’s not sure if there are jobs for him elsewhere.

A Mexican with lawful permanent resident status, he has worked at the processing plant for three years. In the past, two co-workers would assist him with weighing, packing and labeling boxes of processed chicken.

There was good reason for three workers to do these tasks. Eventually someone must carry away the packed boxes or retrieve empty ones. The remaining two workers could continue to weigh and pack the chicken arriving on the conveyor belt.

But after a new plant manager decided to cut workers, Felipe does all of these tasks. He’s been alone at his station since Alabama’s HB 56 took effect.

Working alone means he often ends up working in pain. He can feel the pain and fatigue in his neck. He worries that he may hurt himself worse. But he must work fast or the chicken will pile up on the conveyor belt and fall to the floor. A supervisor’s assistant yells at him

when that happens, but it’s hard to prevent. At some point, he must leave his station to carry away the packed boxes or retrieve empty boxes.

Felipe has told a plant official that he needs more workers at his station.

He says he is told: “Hurry up, and if you don’t like it, the door is right there.”

Other workers have complained about short-staffing and the safety issues it presents. But nothing has changed. Felipe knows that Latinos are assigned to the least desirable jobs. All he has to do is look around the plant for proof.

But there also are fewer Latino workers at the plant since Alabama’s anti-immigrant law was enacted. That means if he quits, it’s unlikely there will be a Latino worker to take his place.

He’s certain that as soon as he leaves, three non-Latino workers will be assigned to his station – just enough to complete all of his tasks.

\* Not their real names.

worse. She was sexually harassed at work. It continued even after she rejected her harasser's advances. Jessica was trapped in an unfamiliar region where she didn't speak the language.

"I couldn't leave because I had nowhere else to go," she said.

Ultimately, Jessica and her three co-workers were fired. They were never told why. And they never had an opportunity to defend their rights. A subcontractor even cut off the electricity and heat to their company housing. They were forced to leave.

The message was clear: The company had gotten what work it could get out of them. Now it was finished with them.

Some Alabama companies sought out political refugees to fill vacant jobs in the wake of HB 56.

"The demand is still there," Albert Mbanfu, refugee employment director for Lutheran Services of Georgia, told Bloomberg Businessweek in October 2012. "Even now, if I called [Wayne Farms], they would say, 'Send all of them.'"<sup>58</sup>

But refugees and others unfamiliar with rural Alabama are often vulnerable to exploitation. The promises companies make to these potential workers are too often false. The work conditions are almost always grueling and harsh. And once these companies are finished with these workers, they throw them away – even if it means shutting off the power and heat to someone's company housing.

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<sup>58</sup> *Id.*

## Recommendations

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Americans eat more than 50 pounds of chicken each year, on average, making it the country's most popular meat.

But while Americans enjoy the luxury of this relatively inexpensive and always available food, tens of thousands of low-paid workers who produce this bounty are paying a steep price.

They spend long hours keeping pace with relentless poultry processing lines and endure grueling conditions that leave many with painful and, often, permanent injuries from the stress of countless, repetitive motions required to turn chicken carcasses into consumer products. They are treated by their employers as a resource that can be tossed aside once they are used up or broken beyond repair.

Yet, they're the reason Americans can count on finding boneless, skinless chicken breasts at their local supermarket. They're the reason a fast-food joint can churn out an endless stream of chicken nuggets or a platter of Buffalo wings.

While the poultry industry has been built on the backs of these workers, they enjoy few legal protections, and federal regulations do little to protect their health and safety. In fact, a new rule proposed by the U.S. Department of Agriculture (USDA) will make their jobs even more dangerous by increasing the speed of poultry processing lines up to 175 birds per minute.

But reforms can help protect poultry workers and improve their working conditions.

The U.S. Occupational Health and Safety Administration (OSHA) should stop the epidemic of repetitive motion injuries in poultry processing plants by limiting line speeds and the number of repetitions required of workers; by enforcing rights to bathroom and other rest breaks; and by requiring other ergonomically sound practices. The USDA should withdraw its proposed rule that would allow companies to increase line speeds.

State lawmakers can also take action. In 2003, Nebraska enacted a Meatpacking Workers Bill of Rights. Among other rights, this state law included the right of workers to have proper tools, the right to be free from discrimination, and the right to a safe workplace.<sup>59</sup> Currently, all Nebraska employers within the meatpacking industry must follow the bill of rights.<sup>60</sup> Alabama, Georgia and Arkansas, the three leading poultry-producing states, are not among the 27 states that have job safety and health standards approved by OSHA as being at least as effective as federal standards.<sup>61</sup>

It is the responsibility of policymakers to protect the hard-working people who produce our nation's food. The current system may provide greater profits to the nation's large poultry companies, but it relies on systematic exploitation of workers. It must be reformed. Detailed recommendations are proposed on the following pages.

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59 Neb. Rev. Stat. §§ 48-2207 to 48-2214, (2003).

60 Nebraska Appleseed, *Dignity On The Line: An Evaluation of The Nebraska Meatpacking Workers Bill of Rights*, 1 (2006), available at [http://www.neappleseed.org/docs/dignity\\_on\\_the\\_line.pdf](http://www.neappleseed.org/docs/dignity_on_the_line.pdf).

61 See 29 U.S.C. § 667; Worral, *supra* note 50; OSHA, "Frequently Asked Questions about State Occupational Safety and Health Plans," available at <http://www.osha.gov/dcsp/osp/faq.html#oshaprogram>.

## **There are five major ways lawmakers can stop this health and safety crisis in the poultry industry:**

- The U.S. Department of Agriculture should stop its proposed increase of maximum line speeds.
- OSHA should affirmatively regulate line speeds and the number of birds per minute each worker may be required to process.
- OSHA should issue comprehensive ergonomics regulations to reduce musculoskeletal disorders arising from repetitive motion in the poultry industry.
- Alabama should enact a Poultry Workers Bill of Rights to protect this large sector of its workforce. This should include reform of the workers' compensation system to ensure universal access for injured workers and recognition of workers' rights to be free from hazardous conditions.
- Federal and state lawmakers should enact stronger anti-retaliation protections and prohibit practices that obstruct workers' access to medical treatment. Workers should be empowered to sue their employers to change hazardous health and safety conditions.

## The following are detailed policy recommendations for Alabama and the federal government:

### Federal Recommendations

Mandate a decrease in poultry processing line speeds.

- ☉ The USDA should withdraw a proposed rule that would increase the maximum permitted line speed to 175 birds per minute.
- ☉ OSHA and the USDA should create a standard, enforceable, maximum line speed that adequately protects worker safety.

Reinstate a federal ergonomic standard.

- ☉ OSHA should adopt a clear ergonomic standard requiring poultry processing plants and other meatpackers to provide enhanced training, job rotation, ergonomically sound tools, a slower work pace and other measures needed to prevent musculoskeletal disorders. Currently, OSHA only *recommends* that employers meet an ergonomic standard.<sup>62</sup>
- ☉ A federal ergonomic standard should be comprehensive enough to eliminate the possibility that a state could use weaker worker safety standards as a competitive advantage against other states seeking to attract poultry processing plants.

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<sup>62</sup> The need for specific, enforceable line speed and other ergonomic standards is apparent from, among other sources, the lack of OSHA citations for violations of the general duty to provide a safe workplace. OSHA is more likely to enforce specific standards addressing particular industry problems than its general duty clause, which could hypothetically require safe line speeds and other ergonomically sound practices but is rarely enforced in that way. For example, in the last five years, OSHA has issued only two general duty citations to Alabama poultry plants, neither of them for line speed or ergonomic hazards. See data obtainable from OSHA, *Statistics & Data*, *supra* note 14.

- ⊕ Strengthen federal standards and enforcement to protect workers from injuries and from retaliation when they report safety hazards.
- ⊕ OSHA should increase the number of random, unannounced workplace inspections and the number of inspectors.
- ⊕ OSHA should implement mandatory - not recommended - follow-up inspections for noncomplying companies. It should require a more intensive examination of a noncomplying company's history to find systemic problems that could trigger additional mandatory inspections. OSHA should conduct inspections throughout a corporation once it has identified a life-threatening hazard at one of its establishments.
- ⊕ Congress should amend OSHA's statutory authority to conduct inspections and investigations, 29 U.S.C. § 657, to require investigations in cases of deaths or serious injuries.
- ⊕ Congress should amend OSHA's recordkeeping requirements, at 29 U.S.C. § 657(c)(2), to require reporting of all injuries and illnesses, especially of certain categories of common injuries currently exempt as a practical matter from recordkeeping, such as musculoskeletal injuries and severe lacerations. Musculoskeletal injuries and lacerations are common injuries among poultry processing workers, but under current law, a company does not have to keep records of injuries unless they involve deaths, loss of consciousness, transfer to another job, or restrictions of work or motion.

In poultry plants, whether to transfer an injured worker to another job or set restrictions on her motion or work is often a decision made by the employer, which means that many injuries, including even some very serious ones, fall through the reporting cracks and go unrecorded. Requiring employers to record all injuries and illnesses would permit easier identification of hazards and analysis of trends, would empower workers to insist on treatment where necessary, and would reduce incentives for employers to resist work restrictions and job transfers where they may be needed.

- Strengthen enforcement of anti-retaliation laws, and prohibit threats of deportation. These measures are needed to protect a worker's employment and prevent a worker from feeling threatened or intimidated when reporting an accident or injury. Employers should provide greater training to managers and supervisors to ensure understanding of anti-retaliation laws.
- Vigorously enforce and enhance the rights of workers to organize a union and bargain collectively for health and safety guarantees, including line speed and the number of workers on the line. The government should ensure that information about how to organize a union is made readily available to workers.
- Comply with international labor and employment standards.
- Protect the rights of all workers to access workers' compensation, judicial remedies for violations of their rights, and healthy and safe workplaces.

## Alabama Recommendations

**Follow Nebraska's lead and enact a Meatpacking Workers Bill of Rights.**

- ⊕ The bill of rights should ensure clear communications between employer and employees regarding employee rights to workers' compensation, employer retaliation limits, access to information in employees' own language, and ergonomic safety initiatives.
- ⊕ Alabama should require that this information be distributed in multiple languages and in a manner that reaches all employees.
- ⊕ Alabama should appoint a coordinator to oversee the implementation of the bill of rights.

**Strengthen state health and safety laws to improve working conditions.**

- ⊕ Launch initiatives that include broader access - including electronic access - to information such as plain language standards and explanations of how to enforce them, and to government and employer information for measuring and ensuring workplace safety.<sup>63</sup>
- ⊕ Create a private right of action for employees so they may sue to stop dangerous health and safety conditions, especially retaliation against workers who complain of health and safety problems.

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<sup>63</sup> OSHA, "State Occupational Safety and Health Plans: Examples of State OSH Plan Initiatives," available at <http://www.osha.gov/dcsp/osp/innovations.html#innovations>.



## Reform the workers' compensation system.

- Repeal the 1992 statutory amendment that made it nearly impossible for workers suffering from musculoskeletal and repetitive motion injuries to obtain workers' compensation coverage of their medical care and the time they must be away from work.
- Ensure that employees are aware of the workers' compensation system, how it works and their rights within it. Employers should be required to hold information sessions for employees in a language they understand - both as a part of their initial orientation and at least annually. This information should include the right of workers to select their own physician.
- Workers should be protected from retaliation for filing a claim.
- Provide workers with enhanced workers' compensation benefits when their employers have willfully violated OSHA safety standards.
- Increase the time workers have to report injuries for workers' compensation coverage, especially repetitive motion and musculoskeletal disorders. Currently, workers have only five days to report injuries in many cases.

- Increase penalties for employers who fail to comply with workers' compensation policies, especially those with repeated violations.
- Increase workers' compensation benefit caps so workers are able to maintain a suitable standard of living, especially when benefits provide the sole source of income until the worker recovers.
- Increase workers' compensation outreach and education efforts by community organizations, unions, and state agencies and departments. This information should be provided through materials workers can understand.

## Survey Methodology

The Southern Poverty Law Center and Alabama Appleseed interviewed 302 workers currently or previously employed in the state's poultry industry. We interviewed workers who resided in more than 20 cities and towns across North and South Alabama.

Survey participation was voluntary. No material incentive was offered to participants. No participants were pre-screened for their point of view.

The workers were employed in 20 poultry plants owned by eight different companies. Chicken catchers employed by subcontractors affiliated with several of these companies were also interviewed. Most of the workers identified by name in this report appear under pseudonyms to protect them from possible retaliation.

We interviewed a diverse sample of workers: 54 percent were Latino, 37 percent were African American and 9 percent were white. Our sample was 56 percent male and 44 percent female.

At least 10 percent of the workers surveyed speak an indigenous Latin American language. We found that 53 percent of survey participants speak at least some Spanish. Forty-two percent speak English as their primary language. Among the immigrant workers participating in the survey, 64 percent had lived in the United States for 10 years or less.

We conducted interviews lasting 45 minutes, on average, with workers whose experience covers all aspects of the poultry industry.<sup>64</sup> Fifteen current or former supervisors participated in our interviews. We restricted our sample to include only workers with more than one month at a job and those who had held a job in the industry within the last five years.

Participants were asked approximately 70 questions about safety practices and equipment in the workplace as well as their experience with line speed, workplace safety and rights enforcement. We also asked workers about their experience with injuries and employer response to injuries. We asked about employment discrimination and other working conditions, including wages and work hours, bathroom and rest breaks, and access to medical care.

The survey found that 37 percent of participants had worked in two or more poultry plants – a reflection of the heavy turnover in the industry and the lack of other job opportunities in many poultry towns. Since we often declined interviews with workers who had worked in poultry jobs for short periods of time, this survey likely reflects a higher level of worker experience and longevity than is typical for the industry. The data in the table on page 50 is intended only to provide a picture of the experience level of the workers providing information for this report.

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<sup>64</sup> Some plants primarily prepare broiler chickens for sale whole, while others debone the chicken carcasses to sell wing, thigh and breast meat cut off of the carcass, and still others do other types of processing to produce chicken tenders, nuggets or patties, sometimes breading the meat in the plant. Interviews included workers from a variety of job stations in different types of plants. Also included were chicken catchers, who do not work inside a plant but travel from henhouse to henhouse to load chickens onto trucks for transportation to slaughter and processing plants. There are a number of other types of workers employed in other roles in the industry, such as those working full time at henhouses, but our interviews were conducted almost exclusively with people employed in slaughter and processing plants or as chicken catchers.

### Study Participants' Experience in Poultry Jobs

Years of Experience	Among all 302 Interview Participants	Among the 253 Interview Participants Currently Employed in Poultry
1 year or less	24%	37.9%
1 to 3 years	21.4%	28.1%
3 to 5 years	16%	12.7%
5 to 10 years	26.4%	17.7%
Over 10 years	12.2%	3.6%

Interviews were conducted primarily in individuals' homes, though some were conducted in church halls. A handful of interviews were completed by telephone. Participants were not interviewed at their worksites – a step taken to ensure workers felt they could speak openly about their experiences.

While the goal was to obtain a response to all of the survey's questions, workers could decline to answer any question. In some surveys, time and the demands of the worker's life – such as the need to attend to a family member or to leave for work – left a survey unfinished.

In such cases, interviewers attempted to complete the survey questions by telephone or at a later date. However, this was not always possible. This "item non-response" is typical in large field surveys. Where data from the survey is reported, percentages based on the total number of responses to the particular question are used, and the number of responses is clarified when necessary.

## About this Report

Alabama's poultry workers face deplorable and dangerous work conditions. Yet no one has previously investigated Alabama's poultry processing plants. This investigation is modeled on the Nebraska Appleseed Center report examining worker safety in meatpacking plants, *The Speed Kills You*.

Through research and interviews, this report, *Unsafe at These Speeds: Alabama's Poultry Industry and its Disposable Workers*, exposes the dangerous working conditions in Alabama's poultry processing plants. The paramount concern for the Southern Poverty Law Center and Alabama Appleseed Center for Law & Justice is worker safety. In the poultry industry, many minority and immigrant workers lack knowledge of workplace safety standards and rarely pursue available remedies.

Improving the conditions in Alabama's poultry plants will not only protect the health and safety of these vulnerable workers but provide a model for other states and encourage federal reform of the industry.

## About the Author

Tom Fritzsche is a staff attorney with the Southern Poverty Law Center, where he began his legal career as a Skadden Fellow. He has represented workers who faced retaliation after asserting their rights to a minimum wage and a work environment free from sexual harassment and discrimination.

Fritzsche previously worked as a labor organizer with the Service Employees International Union and as a health outreach worker and interpreter with the Maine Migrant Health Program. He also has performed farm work on migrant crews. He is a graduate of Amherst College and New York University School of Law, where he was a Bickel and Brewer Latino Institute for Human Rights Scholar and a student advocate at the Immigrant Rights Clinic.

## Photo credits

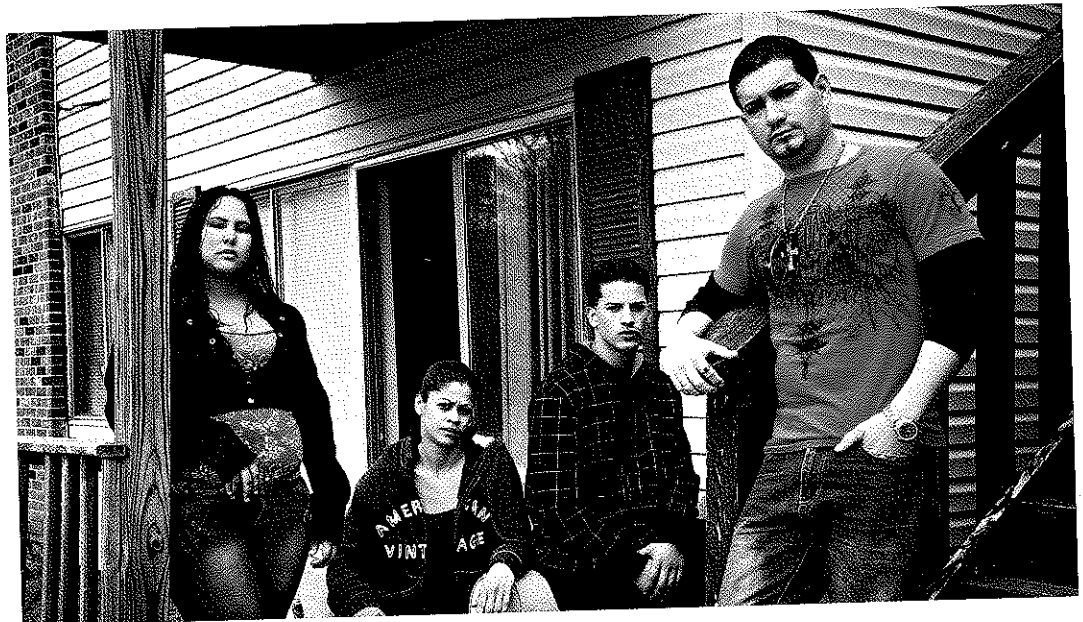
David Bundy                      Cover, pages 2, 6, 9, 10, 14, 21, 23, 27, 28, 30, 37  
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Church leaders, union members, small business owners and other community leaders provided invaluable assistance by identifying areas for outreach and providing secure spaces to hold community discussions and interviews. We hope that our work builds on the longstanding efforts of the many workers, medical researchers and members of the labor movement who have dedicated their lives and careers to protecting the health and safety of workers everywhere. We owe a great debt for their insight, analysis and inspiration.

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# UNSAFE AT THESE SPEEDS

*Alabama's Poultry Industry and its Disposable Workers*

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