



"NOW TO GET RID OF THOSE PESKY HEALTH DEPARTMENTS!"
**HOW THE TRUMP ADMINISTRATION
HELPED THE MEATPACKING INDUSTRY
BLOCK PANDEMIC WORKER PROTECTIONS**

STAFF REPORT
MAY 2022

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Executive Summary

This staff report presents findings from an investigation conducted by the Select Subcommittee on the Coronavirus Crisis into the meatpacking industry's response to the coronavirus pandemic. The Select Subcommittee launched this investigation following reports that meatpacking companies refused to take adequate coronavirus precautions to protect their workers during the first year of the pandemic, resulting in mass illness and death.¹

Last year, the Select Subcommittee found that during the first year of the pandemic, infections and deaths among workers for five of the largest meatpacking companies—Tyson Foods, Inc. (Tyson), JBS USA Holdings, Inc. (JBS), Smithfield Foods (Smithfield), Cargill, Inc. (Cargill), and National Beef Packing Company LLC (National Beef)—were significantly higher than previously estimated, with over 59,000 workers for these companies being infected with the coronavirus and at least 269 dying.² Internal meatpacking industry documents reviewed by the Select Subcommittee now illustrate that despite awareness of the high risks of coronavirus spread in their plants, meatpacking companies engaged in a concerted effort with Trump Administration political officials to insulate themselves from coronavirus-related oversight, to force workers to continue working in dangerous conditions, and to shield themselves from legal liability for any resulting worker illness or death. Specifically, the Select Subcommittee's investigation has found that:

The Meatpacking Industry Had Notice of the Acute Risks the Coronavirus Posed to Workers in Meatpacking Plants.

- **Meatpacking executives were aware of the high risks of coronavirus transmission inside of plants.** For example, a JBS executive received an April 2020 email from a doctor in a hospital near JBS' Cactus, Texas facility saying "100% of all COVID-19 patients we have in the hospital are either direct employees or family member[s] of your employees," and warning that "your employees will get sick and may die if this factory continues to be open."³

Meatpacking Companies' Claims of an Impending Protein Shortage Were Flimsy if Not Outright False.

- **In an attempt to justify operating meatpacking plants under dangerous conditions, Smithfield and Tyson warned that reduced operations and worker absenteeism would cause an imminent meat shortage,⁴ but these fears were baseless.** For example, just three days after Smithfield Chief Executive Officer (CEO) Ken Sullivan publicly warned that the closure of a Smithfield plant was "pushing our country perilously close to the edge in terms of our nation's meat supply,"⁵ he asked industry representatives to issue a statement that "there was plenty of meat, enough . . . to export,"⁶ while Smithfield told meat importers the same.⁷ When discussing Smithfield's statements about the meat supply, industry representatives described Sullivan as "intentionally scaring people," "whipp[ing] everyone into a frenzy," and creating a "mess" that others would have to "clean up."⁸ Numerous public reports corroborate that there was no meat shortage during this time.⁹

Meatpacking Companies Successfully Enlisted Trump USDA Political Appointees to Advocate Against Health Protections for Workers, While Sidelining Career Staff.

- **Trump political appointees at USDA advocated for meatpacking companies—not consumers, workers, or the public.** In mid-March 2020, a meatpacking industry representative spoke with Department of Agriculture (USDA) Under Secretary for Food Safety Mindy Brashears about the White House Coronavirus Task Force, saying “we would certainly like” for Brashears “to be involved in any discussion regarding meat.”¹⁰ By the following day, USDA was reportedly “in the leadership role” on the Task Force, which “delighted” the representative.¹¹ Just a few weeks later, industry representatives discussed how they were “fortunate” to have USDA as their “primary regulator” because it was “representing [the] industry’s interests in every important interagency conversation.”¹²
- **Under Secretary Brashears was viewed as the industry’s go-to fixer in blocking attempts by other regulators to improve health and safety conditions in meatpacking plants.** For example, in March 2020 a Tyson executive discussed Tyson plants under scrutiny by state and local health authorities, saying “So far, we’ve been able to handle these situations, but at some point we may need to get Mindy involved if we are forced to shut down a plant.”¹³ A few months later, a meatpacking lobbyist told a Foster Farms executive that Brashears “hasn’t lost a battle for us” in connection with efforts to block a local health department order to regulate coronavirus measures in a Foster Farms facility.¹⁴
- **Trump political appointees at USDA reportedly excluded career USDA officials from key decision making, did not consult career USDA officials when engaging with state and local health authorities, and used personal devices in communicating with industry groups.** Career USDA officials told the Select Subcommittee that Brashears’ and her deputies’ pattern of interference with state and local health departments in issues of coronavirus plant safety was “exclusively handled at the political level,” with career staff being “walled off,” and leaving “no paper trail” of such meetings.¹⁵ Internal meatpacking industry emails similarly show Brashears personally calling and texting with industry representatives, giving them her personal cell phone number, and using her personal email account to communicate with them.¹⁶

Meatpacking Companies Worked with Trump’s USDA to Force Meatpacking Workers to Stay on the Job Despite Unsafe Conditions.

- **When workers were afraid to report to work because of the lack of coronavirus precautions and high infection rates in plants, meatpacking companies and USDA jointly lobbied the White House to dissuade workers from staying home or quitting.** In April 2020, the CEOs of JBS, Smithfield, Tyson, and other meatpacking companies had a call with Secretary of Agriculture Sonny Perdue, during which they asked him to “elevate the need for messaging about the importance of our workforce staying at work to the POTUS or VP level” and separately stressed the need to make clear that “being afraid of COVID-19 is not a reason to quit your job and you are not eligible for unemployment compensation if you do.”¹⁷ These efforts led to Vice President Pence issuing a direct message to meatpacking workers in a press conference that “we need you to continue . . . to show up and do your job,” admonishing recent “incidents of worker absenteeism.”¹⁸

- **Meatpacking companies successfully lobbied USDA officials to advocate for Department of Labor policies that deprived their employees of benefits if they chose to stay home or quit, while also seeking insulation from legal liability if their workers fell ill or died on the job.** For example, in late-March 2020, a meatpacking lobbyist emailed a USDA political official laying out the industry’s preferred worker benefits policies, “so [USDA] can educate the Department of Labor on how to develop rules that apply to the Coronavirus Aid, Relief, and Economic Security Act [] and the Families First Coronavirus Response Act [] in a way that does not incentivize our workers to stay home instead of coming to work”.¹⁹

The Department of Labor (DOL) should be encouraged, as part of its guidance to employees and employers regarding the CARES Act, to **clarify that healthy employees will not qualify for unemployment benefits unless their employer furloughs them or lays them off or they satisfy one of the other statutorily identified reasons . . .**²⁰

- During an April 3, 2020 call with Secretary Perdue, meatpacking CEOs reiterated that workers “**should not be entitled to unemployment benefits if they are otherwise able to work through the pandemic**” and cautioned against “**creat[ing] an incentive, much less a path, for food industry workers to choose unemployment over producing food.**”²¹
- While they lobbied to force employees to continue working amidst coronavirus outbreaks, these companies **implicitly acknowledged how dangerous plants were, asking for liability protection against lawsuits if workers were infected on the job.**²²

Meatpacking Companies Worked with USDA and the White House in an Attempt to Prevent State and Local Health Departments from Regulating Coronavirus Precautions in Plants.

- **The meatpacking industry complained about “pesky” state and local health departments that sought to impose science-backed coronavirus precautions in meatpacking plants and tried to obscure worker death counts from these authorities.** For example, as late as May 22, 2020—well after the efficacy and necessity of coronavirus precautions such as testing, social distancing, and personal protective equipment were widely recognized—an executive at Koch Foods told a meatpacking industry lobbyist that temperature screening was “all we should be doing.” The lobbyist agreed, saying “Now to get rid of those pesky health departments!”²³ As late as August 2020, Foster Farms enlisted Brashears to try to block attempts by a local health department to address a coronavirus outbreak after Foster Farms had, for months, refused to impose recommended coronavirus precautions and disguised death counts as “resolved cases” in county reporting. According to officials from this health department, during a call with Foster Farms and Brashears’ office, someone working for either Foster Farms or USDA callously referred to these death counts as “toe tag resolutions,” likely alluding to the toe tag that is often put on a corpse at the morgue.²⁴
- **Companies lobbied the White House to make clear that—despite concerns by state and local health departments—meatpacking companies should not have to address coronavirus risks if it would impact productivity.** For example, on April 9, 2020, a

meatpacking industry representative emailed an aide to Vice President Pence complaining that companies were “getting lots of pressure from state and local governments to shut down when there are positive COVID cases discovered” and seeking “intervention with governors, local officials and some indication the [White House] is saying that we need and expect plants to keep operating even with COVID positive tests.”²⁵ The aide later responded that “we are working closely with USDA on the JBS issue in CO”—referencing calls for a Greeley, Colorado JBS plant to be shut down following multiple worker deaths—“and the broader issue writ large by getting the word out to states/locals.”²⁶

Meatpacking Companies Successfully Lobbied USDA and the White House to Issue an Executive Order Purporting to Insulate Them from State and Local Coronavirus Regulations and Liability for Worker Infections and Deaths.

- **By mid-April 2020, meatpacking companies were expressing anxiety that their powerful allies at USDA and the White House were unable to block a handful of state and local public health measures.** For example, an industry representative lamented that “Plants are being closed. Health depts. are making decisions (Greeley [Colorado]), governors are making surprise decisions (Sioux Falls [South Dakota]), health departments are showing up unannounced at plants (Waterloo IA), and the media reporting is going to create more attention from health departments and governors in other communities IMO. It seems to be cascading and our friends at USDA and the VP’s office are not able to stop it.”²⁷
- **To combat this, Smithfield and Tyson proposed an executive order signed by the President that would insulate meatpacking companies from oversight by state and local health departments and provide legal protection against lawsuits for worker illnesses and deaths.** Tyson’s legal department drafted the proposed order and the companies, through their industry representative, shared it with allied USDA officials who had previously helped them lobby or interfere with decision-making by other arms of federal and state government.²⁸ In the days leading up to President Trump’s issuance of the Executive Order, meatpacking industry representatives and companies—Smithfield and Tyson in particular—engaged in constant communications with Trump appointees at USDA, the National Economic Council, and the White House, including calls between Smithfield CEO Ken Sullivan and White House Chief of Staff Mark Meadows; a joint call with Sullivan, Meadows, and Tyson CEO Noel White; a call between White and Vice President Pence’s Chief of Staff Marc Short; and a call from Meadows to White asking if White would be willing to meet with President Trump.²⁹ The eventual order adopted the themes and statutory directive laid out in Tyson’s draft, invoking the Defense Production Act to ensure meatpacking plants “continue operations.”³⁰
- **After the Executive Order was issued, meatpacking companies and government officials, including at the White House, continued to coordinate closely on messaging concerning the order and its effects, apparently hoping to generate positive press coverage for President Trump.** For example, the day after the order was issued, the Trump White House—apparently expecting gratitude and a show of appreciation from the meatpacking industry—reportedly “requested” that meatpacking companies “issue positive statements and social media about the President’s action on behalf of the industry, about the Order itself and about how it will help ensure the food supply chain remains strong.”³¹

I. Background

a. Meatpacking Workers Risk Their Own Health and Safety to Keep America Fed and to Keep Meatpacking Companies Profitable.

Long before the coronavirus crisis put the health of meatpacking workers at heightened risk, meatpacking workers already dealt with challenging working conditions. Meatpacking workers—who are disproportionately immigrants, refugees, and people of color—repeat the same physical motions thousands of times to process hundreds of animals per hour, at high speeds and in freezing conditions, for up to 12 hours at a time with few breaks.³² The rapid, repetitive physical movements required on meatpacking lines for sustained periods of time often lead to chronic, severely painful musculoskeletal disorders, while conditions inside meatpacking facilities expose workers to other serious health and safety hazards, including high noise levels, hazardous chemicals that can cause severe illness, dangerous equipment, and slippery floors.³³ In 2017, the Government Accountability Office wrote that “meat and poultry slaughter and processing is one of the most hazardous industries in the United States,” noting that it had recently seen the eighth highest number of severe injury reports across all industries.³⁴

The industry responsible for employing these workers has long been dominated by just a handful of major players, who correspondingly wield extensive financial and commercial influence. As of 2018, the four largest meatpacking companies in the United States controlled between 52 and 85 percent of the markets for different meat products. For example, in the beef market, Tyson, JBS, Cargill, and National Beef were together responsible for 85 percent of purchasing and processing in the United States.³⁵ In the pork market, Smithfield, JBS, Tyson, and Hormel Foods (Hormel) were together responsible for 70 percent.³⁶ The concentration of market power in the hands of such a small group of companies has led to significant hardship for many who are forced to do business with these companies. At a recent hearing before the House of Representatives Committee on Agriculture, cattle farmers testified about how large meatpacking companies exploit their stronghold over the industry to secure cheap prices from farmers and ranchers.³⁷

Meatpacking companies also reap enormous profits. For example, Tyson reported a net income of approximately \$3 billion in 2021, and \$2 billion in 2020.³⁸ JBS reported a net income of approximately \$4.2 billion in 2021, and \$937 million in 2020.³⁹ Meatpacking companies’ profit margins in recent years have been so high that even industry lobbyists have recognized the possibility of poor optics. In one email obtained by the Select Subcommittee discussing a pandemic-related proposal by USDA to require and subsidize hazard pay for meatpacking workers through corporate tax breaks, a meatpacking lobbyist asked a Tyson lobbyist “Given where margins are, do we want to publicly support a tax break for [meat] packers?”⁴⁰

In addition to featuring a heavily concentrated market, the meatpacking industry has a high degree of coordination among competitors, often through participation in powerful trade associations such as the North American Meat Institute (NAMI) and the National Chicken Council (NCC). These organizations facilitate coordination amongst their members—some of whom have recently been investigated for price fixing—for matters ranging from public affairs strategies to crisis response, including their response to the coronavirus crisis.⁴¹

b. Regulation of the Meatpacking Industry

The meatpacking industry is regulated by a combination of federal agencies and state and local authorities. At the federal level, USDA is generally responsible for promoting agricultural production, providing economic opportunity (particularly in rural areas), and preserving natural resources.⁴² The Food Safety and Inspection Service (FSIS), housed within USDA's Office for Food Safety, regulates meat production and is responsible for ensuring that meat and poultry are free from chemical and microbial contaminants and correctly packaged.⁴³

The Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) is tasked with regulating workplace safety standards. Employers are responsible for complying with these standards and ensuring that workers are not subject to occupational hazards, including exposure to disease at work.⁴⁴ OSHA enforces its standards by conducting targeted inspections of workplaces in high-risk industries to ensure compliance with applicable safety regulations, and by responding to workplace fatalities, catastrophes, and worker complaints, among other things.⁴⁵

Supplementing this, the Centers for Disease Control and Prevention (CDC) and state and local health departments work together to address containment and prevention of infectious diseases, such as the coronavirus. CDC provides leadership and technical expertise, including guidance, to other public health agencies and healthcare providers in order to contain viral disease spread, while also monitoring health outcomes.⁴⁶ State and local health departments, meanwhile, have primary authority over regulating infectious disease control within their jurisdictions, and take more direct action in infectious disease surveillance, responses to outbreaks, vaccine delivery, as well as screening, care, and treatment.⁴⁷

c. Initial Impact of the Coronavirus on Meatpacking Plants

During the early months of the pandemic, meatpacking facilities saw some of the worst coronavirus outbreaks in the country, sickening and killing hundreds of meatpacking workers and driving community spread.⁴⁸ As of early May 2020, coronavirus cases in meatpacking-dependent rural counties rose to be nearly ten times the number of cases in non meatpacking-dependent counties with analogous socioeconomic demographics.⁴⁹ A USDA analysis estimated that, by the end of May 2020, counties with high proportions of meatpacking workers accounted for about half of the top 25 and eight of the top ten rural counties with the highest infection rates.⁵⁰ These outbreaks were likely driven by meatpacking facility conditions that were uniquely susceptible to viral spread, coupled with a failure by meatpacking facilities to blunt the effects of these conditions with coronavirus precautions. The USDA analysis found that the physical proximity of workers was significantly higher in the meatpacking industry compared to other manufacturers, and that proximity was likely the main factor that influenced coronavirus spread within the meatpacking industry.⁵¹ These conditions did not only affect those within the plants: a study by the Proceedings of the National Academy of Sciences found that by July 21, 2020, meatpacking plants had driven so much community spread that they were associated with 236,000 to 310,000 coronavirus cases—amounting to six to eight percent of all U.S. coronavirus cases—and 4,300 to 5,200 coronavirus deaths.⁵²

Given the risk, as one National Beef executive noted, “Employees are afraid to come to work.”⁵³ Yet meatpacking companies realized early in the pandemic that mitigation measures required to curb the spread of the coronavirus could reduce their production and profitability.⁵⁴

d. The Select Subcommittee’s Investigation

Following multiple reports of high rates of coronavirus infections and deaths among meatpacking workers during the first year of the pandemic, the Select Subcommittee launched an investigation into the meatpacking industry’s response to the coronavirus crisis.⁵⁵ The Select Subcommittee conducted an intensive review of five of the largest meatpacking companies—JBS, Tyson, Smithfield, Cargill, and National Beef—all of which saw large-scale coronavirus outbreaks during the first year of the pandemic in their plants.⁵⁶

As part of this investigation, the Select Subcommittee sent letters to each company seeking data and communications concerning coronavirus infections and deaths, as well as coronavirus-related precautions. The Select Subcommittee also sought documents and communications concerning coronavirus issues from NAMI and NCC, two trade associations that lobbied and engaged in public affairs campaigns on behalf of meatpacking companies, as well as documents from OSHA concerning enforcement activities in meatpacking plants.⁵⁷ The Select Subcommittee received and reviewed more than 151,000 pages of documents; conducted over a dozen survey calls with meatpacking workers, union representatives, former USDA and OSHA officials, and state and local health authorities; and held one staff briefing with OSHA and one staff briefing with USDA. In addition, the Select Subcommittee obtained information pertaining to this investigation in transcribed interviews with a current CDC official and the Trump-appointed former CDC Director, who were involved with matters pertaining to coronavirus precautions in the meatpacking industry.

Last year, the Select Subcommittee released an interim report finding that coronavirus infections among meatpacking workers for JBS, Tyson, Smithfield, Cargill, and National Beef were nearly three times higher than previously publicly estimated, with over 59,000 of these workers falling ill during the first year of the pandemic. These companies’ workforces also saw at least 269 workers die of coronavirus, over three times the figure previously estimated.⁵⁸

The Select Subcommittee’s investigation has now revealed that, despite their awareness of the risk to their employees and their awareness of the security of the nation’s meat supply, meatpacking companies went on to engage in an aggressive campaign to ensure their facilities remained at maximum capacity, notwithstanding the unsafe conditions. As detailed below, the meatpacking industry’s efforts—aided extensively by Trump’s USDA and White House officials—led to policies, guidance, and an executive order that, individually and altogether, forced meatpacking workers to continue working despite health risks and allowed companies to avoid taking precautions to protect workers from the coronavirus, ultimately contributing to thousands of worker infections and hundreds of worker deaths.

II. The Meatpacking Industry Was Aware That Normal Plant Operations During the Pandemic Posed an Undue Risk to Their Workers.

a. Meatpacking Companies and Their Representatives Had Notice of the Acute Health Risk the Coronavirus Posed to Workers in Plants Operating Normally.

Internal communications exchanged among meatpacking companies and industry representatives demonstrate that industry insiders and representatives were well aware of the high risk of contracting the coronavirus in meatpacking plants under normal operating conditions. For example, on April 7, 2020, a meatpacking industry representative emailed a colleague regarding a request from Smithfield for a satellite media tour showing that Smithfield was keeping its workers safe, saying he was “not sure how you do an smt showing how we’re keeping workers safe when we can’t get video or photos of it because that wouldn’t be safe.” He later acknowledged that “The worker safety issue is a challenge . . . it’s hard to go out bragging about how we’re keeping workers safe when you then have reports of plants closing down because of several positive cases.”⁵⁹ Two days later, another industry representative emailed her colleague saying that when “put on the spot and asked directly if plants are safe,” she should discuss “why we are doing what we are doing, not how we are doing it.”⁶⁰

To: Sarah Little [redacted]@meatinstitute.org]
From: Julie Anna Potts
Sent: Thur 4/9/2020 9:27:12 PM
Subject: Re: updated talking points
Received: Thur 4/9/2020 9:27:12 PM
Thanks!

I was considering better responses for you when you are put on the spot and asked directly if plants are safe. Dan Solomon suggests we tell them why we are doing what we are doing, not how we are doing it.

The most effective answer is:
We must remain in operation to provide food for the nation. We have public health officials in our plants every day. We are working overtime with our members and the entire food supply chain to ensure the safety of employees.

Caught some typos and updated the attached.

External communications sent to meatpacking executives also confirm the executives’ awareness of the dangers of continuing regular plant operations. For example, on April 18, 2020, a doctor from a Moore County hospital—located near JBS’ processing plant in Cactus, Texas—emailed a JBS executive and state government officials saying that “100% of all COVID-19 patients we have in the hospital are either direct employees or family member[s] of your employees” and telling him that one JBS employee had such deteriorated lung function he had to be put on a ventilator and was afraid for his life. The doctor warned the JBS executive that “there is a major outbreak of COVID-19 infection in your Cactus facility . . . Your employees will get sick and may die if this factory continues to be open.”⁶¹

To: Cameron Bruett [REDACTED]@jbssa.com]; Dunham Winoto [REDACTED]@pilgrims.com]
Cc: ADPolicy@cdc.gov|ADPolicy@cdc.gov]; PCDmedia@cdc.gov|PCDmedia@cdc.gov];
coronavirus@dshs.texas.gov|coronavirus@dshs.texas.gov]
From: [REDACTED]
Sent: Sat 4/18/2020 1:45:25 PM
Subject: COVID-19 outbreak among JBS Cactus employees
Received: Sat 4/18/2020 1:45:37 PM

Hello, JBS

This is Dr. [REDACTED], a physician who works at Moore County Hospital. We have noticed increasing number of your JBS Cactus employees at the hospital with active COVID-19 infection. 100% of all COVID-19 patients we have in the hospital are either direct employees or family member of your employees. We believe there is a major outbreak of COVID-19 infection in your Cactus facility. This morning, we intubated one of your employees. His mother died few months ago on a ventilator and he expressed he is worried he may die the same way. His lung function continued to decline and he had to be put on the ventilator. We are not sure he will survive.

I understand JBS has been notified about this outbreak by several authorities but I am not sure this situation is being treated with the urgency it deserves. Your employees will get sick and may die if this factory continues to be open.

I have CC'd the CDC and Texas health department on this email so they can follow up on this issue.

This email was so concerning that the Chief of Staff to Texas Governor Greg Abbott reached out to JBS.⁶² It is unclear whether JBS ever responded to either of these emails. Five days later, a JBS human resources director received a letter from the Mexican Consulate of Omaha, Nebraska expressing concern on behalf of workers that Iowa meatpacking facilities, such as JBS' facility in Marshalltown, featured "sanitary measures" that were "far from ideal, including that [workers] continue to work shoulder to shoulder on a production line that does not slow down and the use of masks is still optional."⁶³ The letter noted two Mexican nationals who had died, including one that worked at an Iowa plant. When asked about a response by JBS, the JBS human resources director told the state government representative that "My corporate team will not press this request" and noted "I personally do not want to be in contact" with the consulate on this issue.⁶⁴

Some meatpacking industry executives even acknowledged that being transparent about the lax mitigation measures and high infections rates in plants would cause alarm. On April 7, 2020, National Beef managers discussed avoiding explicitly notifying workers when an infected plant worker returned to work with physician clearance, saying they should instead "announce line meeting style," likely referring to announcements made during informal in-person huddles of production line workers, "hoping it doesn't incite additional panic."⁶⁵ On April 18, 2020, an industry representative cautioned that "when testing is done to a group of plant workers, there are a lot of positives that show up, even of asymptomatic workers, like in the 40-50% range."⁶⁶

When it came to their personal lives, meatpacking executives and representatives expressed reluctance to impose the same conditions found in meatpacking facilities upon themselves or their loved ones. For example, one email between two meatpacking industry representatives stated that the "[A]dministration is living in an alternate and dangerous reality" by considering reopening schools as soon as July 24, 2020.⁶⁷ Two weeks earlier, these same representatives pondered how schools could be reopened without a coronavirus vaccine available to students, noting that distance learning was preferable to avoid "put[ting students] at risk or risk having them bring the virus home for [sic] the school incubator."⁶⁸ These documents

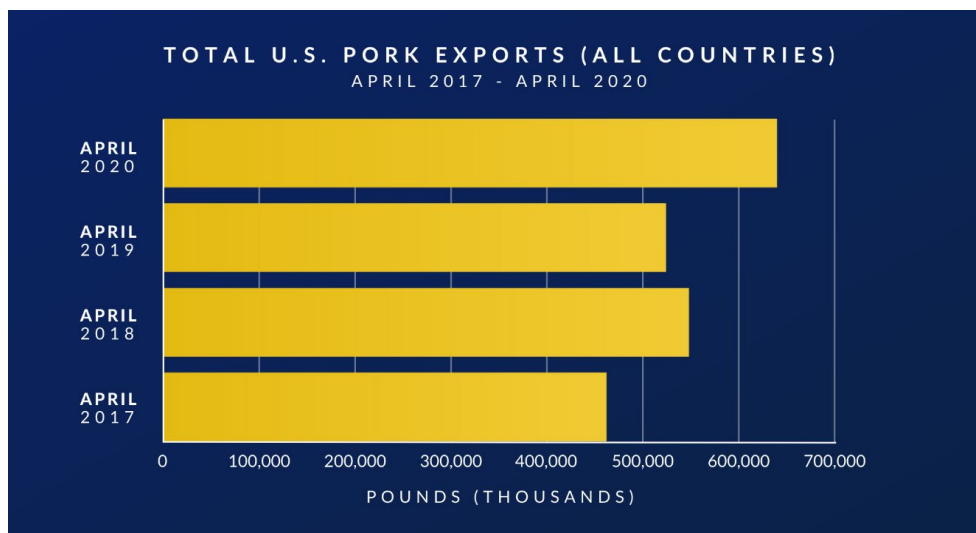
demonstrate that industry leaders knew the dangers posed by the coronavirus. But they were unwilling to protect meatpacking workers from them.

b. Meatpacking Company Representatives and Executives Were Aware That the Nation Was in No Danger of a Meat Shortage, Undermining a Proffered Justification for Subjecting Meatpacking Workers to Heightened Risk of Coronavirus Infection.

While meatpacking companies—Smithfield and Tyson in particular—asserted that reduced plant operations and worker absenteeism were making the food supply chain “vulnerable,”⁶⁹ documents obtained by the Select Subcommittee suggest that this narrative lacked any basis in fact and show that others in the industry believed it was false. For example, on April 12, 2020, Smithfield CEO Ken Sullivan issued a public statement admonishing that the closure of one of its plants was “pushing our country perilously close to the edge in terms of our [nation’s] meat supply” and would have “severe, perhaps disastrous, repercussions for many in the supply chain.”⁷⁰ But just three days later, Smithfield asked their industry representatives to issue a statement that “there was plenty of meat, enough that it was [sic] for them to export,” while Smithfield simultaneously was “tell[ing] importers they have enough meat.”⁷¹ When discussing Sullivan’s statements about the meat supply, meatpacking industry representatives described it as “intentionally scaring people,” “whipp[ing] everyone into a frenzy,” and creating a “mess” that others would have to “clean up.”⁷² When meatpacking industry representatives inquired into where any actual shortages were occurring, they were unable to find any.⁷³

Indeed, numerous public reports indicate that meatpacking companies had abundant inventory during this time—inventory that they could have used to supply domestic grocery shelves. According to the National Agricultural Statistics Service, meatpackers held 622 million pounds of frozen pork as of March 31, 2020—an amount well above levels predating the pandemic.⁷⁴ During the first three quarters of 2020, Smithfield exported 90 percent more pork to China than it did during the same period of 2017, while JBS appears to have exported a whopping 370 percent more.⁷⁵ The amount of total U.S. pork exports in April 2020 was higher than amounts exported during the same month in each of the preceding three years.⁷⁶

Figure A: Total U.S. Pork Exports in April 2017, April 2018, April 2019, and April 2020



While there was a brief slowdown in pork and beef production during the spring of 2020, there remained so much pork in cold storage as of March 2020 that an expert at the Institute for Agriculture and Trade Policy projected it would have been sufficient to supply grocery shelves for almost the next 14 months.⁷⁷

III. Meatpacking Companies Coordinated with USDA Political Appointees to Keep Meatpacking Workers at Plants and Unprotected from the Coronavirus.

a. During the Early Months of the Coronavirus Crisis, Meatpacking Companies Cultivated Their Close Relationships with USDA Political Appointees to Advance Their Interests.

During the first few months of the coronavirus crisis, the meatpacking industry worked actively to cultivate its very close relationship with USDA, the entity charged with regulating the industry, openly seeking to ensure that this agency would play a central role in minimizing the meatpacking industry’s obligations regarding the coronavirus crisis. For example, during a call with USDA Under Secretary for Food Safety Mindy Brashears on March 13, 2020, a meatpacking industry representative told Brashears about an FDA official “being promoted as the guy to be detailed to the WH TF,” referring to the White House Coronavirus Task Force. The representative told Brashears “we,” as in the meatpacking industry, “would certainly like [Brashears] to be involved in any discussion regarding meat.” Brashears agreed and said she was “going to figure out how to plug in.”⁷⁸ The following day, in an email with Brashears, the representative referenced how “delighted” she was “that USDA is in the leadership role” on the White House Task Force.⁷⁹ Within a week and a half, this maneuver was already benefiting the meatpacking industry: in a March 25, 2020 email update on coronavirus issues, an industry representative said, “We are fortunate to have USDA/FSIS as our primary regulator. Officials at USDA are moving more quickly than other agencies and representing our industry’s interests in every important interagency conversation.”⁸⁰

Internal meatpacking industry documents obtained by the Select Subcommittee also show that Under Secretary Brashears was personally in regular phone, text, and email communication with industry representatives and lobbyists, using both her personal and government phone numbers and email addresses.⁸¹ For example, when Foster Farms asked Brashears to help push back on a local health department order seeking to impose coronavirus precautions in a Foster Farms plant, Brashears directed the meatpacking lobbyist representing the company to send the health order to her work email, while the lobbyist sent a “presentation” on the issue—which ostensibly informed the Under Secretary’s position and talking points—to her personal email.⁸² In doing this, the lobbyist noted to a meatpacking executive that the health order could go to Brashears’ government email—which would be subject to disclosure under the Freedom of Information Act—in part because it was “going to be public at some point anyhow,” suggesting other documents such as the Foster Farms “presentation” were sent to Brashears’ personal email with the intent of avoiding their public disclosure.⁸³

Message

From: Ashley Peterson [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A8F1CD85B9034BC292B0AD10BF6CEE71-APETERSON]
Sent: 8/27/2020 5:21:40 PM
To: O'Connor, Robert Dr. <[REDACTED]@fosterfarms.com>
Subject: RE: Health Order

The presentation from last night went to her personal email. The official order went to her work email – she asked me to send it there so she could take official action.

I will text this letter to her first. If she needs it officially, I can route it accordingly.

From: O'Connor, Robert Dr. <[REDACTED]@fosterfarms.com>
Sent: Thursday, August 27, 2020 1:20 PM
To: Ashley Peterson <[REDACTED]@chickenusa.org>
Subject: RE: Health Order

I thought all of this was going to her non-work email? But, whichever you decide is best (email address); please send.

Thanks

From: Ashley Peterson <[REDACTED]@chickenusa.org>
Sent: Thursday, August 27, 2020 10:18 AM
To: O'Connor, Robert Dr. <[REDACTED]@fosterfarms.com>
Subject: RE: Health Order

You would like me to send this to Mindy, correct? Her work email I assume. Just wanted to make sure. This is all going to be public at some point anyhow.

Brashears' use of her personal phone number and email address in connection with her advocacy of meatpacking company interests may have violated the Federal Records Act (FRA). The FRA defines a federal "record" as including "all recorded information . . . made or received by a Federal agency . . . in connection with the transaction of public business"⁸⁴ and specifies that government officials "may not create or send a record using a non-official electronic messaging account" unless they either (1) copy their official email account on the email, or (2) forward the email to their official account no later than 20 days of the original email.⁸⁵ It is unclear whether Brashears took steps to ensure that federal records in her personal possession were copied or forwarded to her official account as required by the FRA, but the Select Subcommittee has not obtained evidence that she did so.

Meatpacking industry representatives also received non-public information from Trump officials at USDA, including a "confidential" plan regarding FSIS operations and an "advanced copy of the USDA's departmental 'playbook' for the COVID-19 issue."⁸⁶ When meatpacking industry representatives had sensitive questions, they asked USDA personnel in "offline conversation[s]" outside of the industry-wide stakeholder calls.⁸⁷ Current USDA officials and staff also indicated that, to their knowledge, Brashears and other Trump Administration officials

who interacted with state and local health authorities left no written records and “no paper trail” of such meetings.⁸⁸ Documents obtained by the Select Subcommittee corroborate this account, showing many meetings that do not appear to be on FSIS’ public calendar from 2020.⁸⁹

Brashears would come to be viewed as the industry’s go-to fixer in dealing with attempts by other regulatory authorities to improve safety conditions in meatpacking plants. For example, on March 26, 2020, a Tyson lobbyist discussed various plants under regulatory scrutiny by state and local health authorities with an executive from a meatpacking interest group, saying, “So far, we’ve been able to handle these situations, but at some point we may need to get Mindy [Brashears] involved if we are forced to shut down a plant.”⁹⁰ Just a few months later, in August 2020, another meatpacking lobbyist told a Foster Farms executive that Brashears “hasn’t lost a battle for us” in connection with Foster Farms’ efforts to shut down regulatory attempts by a county health department in California.⁹¹ In December 2020—after a year that saw tens of thousands of meatpacking worker infections and deaths⁹²—meatpacking industry representatives and lobbyists discussed Brashears’ potential successor under the incoming Biden Administration, with one asking if the Biden “Administration will make the US for FS [Under Secretary for Food Safety] the COVID lead again?” Another meatpacking industry representative responded that they “wont [sic] need a U for Food Safety that played as large of a role as Mindy did because I imagine they would not use that role that way”⁹³—alluding to Brashears’ role in protecting the industry from meaningful coronavirus regulations and ensuring no other authorities could impose the same.

In liaising with meatpacking industry representatives and other third-parties regarding plant safety during the coronavirus crisis, Brashears and her deputies also excluded USDA career staff. Career USDA employees informed the Select Subcommittee during a staff briefing that they were left out of key decision making and not consulted in USDA’s efforts to influence state and local health authorities on behalf of the meatpacking companies. Career personnel from FSIS indicated that Brashears and her deputies’ involvement with state and local regulators in issues of worker safety was “exclusively handled at the political level,” with career staff being “walled off” from these interactions.⁹⁴ As set forth below, this led to worker health being disregarded in favor of meatpacking production and profits.

The ease with which the meatpacking industry ingratiated itself with USDA political appointees was likely facilitated by the industry’s employment of former USDA officials. For example, a key industry adviser was Carmen Rottenberg, a former FSIS Administrator who had left her official government post in March 2020.⁹⁵ A party celebrating Rottenberg’s departure from USDA was the site of one of NAMI’s earliest meetings with USDA political officials discussing coronavirus issues.⁹⁶ Former Under Secretary Brashears has received income from working on projects “sponsor[ed]” by NAMI and the National Cattleman’s Beef Association—which had lobbied for her nomination and confirmation to USDA—and has consulted for a company that sells sanitation technology to meatpacking companies.⁹⁷ A former USDA official expressed concern during a survey call with Select Subcommittee staff over what he viewed as the meatpacking industry’s regulatory capture of Trump’s USDA and the appearance that many USDA officials were simply doing the meatpacking industry’s “bidding” in connection with their response to the coronavirus crisis.⁹⁸

b. Meatpacking Companies Successfully Coordinated with Their USDA Allies to Keep Workers on the Job Without Adequate Coronavirus Mitigation Measures.

Documents obtained by the Select Subcommittee demonstrate how meatpacking industry representatives worked closely with top Trump USDA officials to ensure meatpacking workers were exempted from state stay-at-home and social distancing orders and discouraged from and penalized for staying home.

i. *Industry-USDA Collaboration Ensured the Federal Government Recommended Meatpacking Workers Not Be Subject to Stay-at-Home Orders or Social Distancing Requirements.*

Meatpacking companies had begun meeting regularly with top Trump Administration USDA officials by mid-March 2020 in an attempt to get meatpacking workers exempted from stay-at-home orders and social distancing requirements imposed by states. Without first ensuring coronavirus prevention or mitigation measures were in place in meatpacking plants or attempting to address the rampant outbreaks that plants across the country were seeing,⁹⁹ USDA officials responded by escalating the request to some of the highest levels of government—including Vice President Pence’s office. These efforts ultimately led to the Department of Homeland Security’s decision to recommend meatpacking workers be designated by states as “critical infrastructure” employees, who may be exempt from stay-at-home and social distancing requirements and were urged to continue to report to work amidst severe coronavirus risks that meatpacking companies had not even begun to address.

Documents show that meatpacking industry representatives were in constant contact with USDA political officials to persuade relevant federal decisionmakers to have meatpacking “designated as ‘critical infrastructure’” and to make an “affirmative assertion that food production and its supply chain are, and will remain, essential activities.”¹⁰⁰ On March 18, 2020, a meatpacking industry representative asked Brashears and her Chief of Staff, Shawna Newsome, “for clear federal government guidance that we are exempt from quarantines, curfews, and the like.” Brashears replied that either the Secretary of Agriculture, Sonny Perdue, or his Deputy Secretary of Agriculture, Stephen Censky, had already “spoken to the VPOTUS about this last night.”¹⁰¹ The next day, Brashears shared both her work and personal cell phone numbers with the industry representative, who thanked Brashears for the “open line of communication” and “all you and your team are doing for the industry.”¹⁰² Following this private push, the meatpacking industry also signed onto a public March 18, 2020 letter requesting to be designated as “critical infrastructure.”¹⁰³

The meatpacking industry’s efforts had immediate effects: within a week of meatpacking industry representatives privately asking USDA political officials for exemptions from quarantine and social distancing requirements, and a day after publicly requesting as much, the Department of Homeland Security recommended that meatpacking workers be exempt from such requirements as employees of “critical infrastructure,” for which there is a “special responsibility to maintain your normal work schedule.”¹⁰⁴ In an email circulating this guidance, a meatpacking industry representative explicitly noted that the designation was due to her activities on behalf of the meatpacking companies, saying that the guidance “is helpful, and reflects our work with government officials.” Further highlighting the constant and ongoing coordination between the

meatpacking industry and USDA, the representative told the group that USDA Under Secretary for Marketing and Regulatory Programs Greg Ibach had called her “to ask if we could be more vocal about what we are doing to keep plants open and meat flowing into retail.”¹⁰⁵

Meatpacking companies and USDA officials sought the “critical infrastructure” designation without first attempting to address the glaringly deficient coronavirus precautions in plants. This conduct is particularly egregious considering that, as discussed above, the nation’s meat supply was not actually at risk. As set forth in the Select Subcommittee’s October 2021 report, during the first few months of the pandemic, meatpacking companies responded to rising plant infection rates slowly, unevenly, and with significant reluctance towards imposing science-driven prevention and mitigation techniques.¹⁰⁶ Email correspondence related to the meatpacking industry’s push to be designated as “critical infrastructure” makes virtually no mention of the health risks to the meatpacking employees being forced to work.¹⁰⁷

Professor Jerold Mande, who formerly served as Deputy Under Secretary for Food Safety at USDA and Deputy Assistant Secretary for Occupational Health at DOL, told the Select Subcommittee that “the clear thing to do to maintain meat supply” would have been to “work cooperatively with partners like CDC and OSHA to figure out what we need to do to keep plants open through preventive controls.” Professor Mande said that, by way of example, USDA could have removed FSIS inspectors from plants in the event certain conditional criteria (such as health guidance for worker safety) was not met to motivate meatpacking companies to keep their workers safe. However, he said, Trump USDA officials such as Brashears “made the opposite choice . . . If workers died, if USDA inspectors died – the law absolutely allows [USDA] to pull out to protect inspectors’ life – but she made a decision to sacrifice inspectors’ and workers’ lives . . . and keep plants open that way.”¹⁰⁸

ii. *Industry-USDA Collaboration Ensured Meatpacking Workers Were Discouraged from Staying Home Due to Coronavirus Concerns.*

Despite federal guidance recommending that states and localities designate meatpacking workers as employees of “critical infrastructure,” many workers were still afraid to report for work out of fear of unsafe working conditions. Meatpacking companies quickly recognized that workers staying home out of fear for their health and safety would be bad for business. For example, on March 26, 2020, an executive of a processed foods company emailed industry representatives complaining that FSIS personnel were “agitating/inciting/disrupting/scaring the folks that are the backbone of this industry,” after an FSIS inspector spoke with the company’s workers “about our lack of appropriate social distancing in the break room and urg[ed] our folks to call the Governor’s hotline.” The meatpacking executive followed up her email saying “just so you know, I backchanneled the same info to Mindy [Brashears] – she was not happy.”¹⁰⁹

To combat what they viewed as unjustified employee “absenteeism,” meatpacking companies aggressively lobbied USDA officials and, using USDA as an intermediary, the White House to discourage workers from staying home. For example, on April 3, 2020—the same week industry representatives were seeking to avoid being asked if plants were safe¹¹⁰—the CEOs of Smithfield, Tyson, Hormel, Seaboard Foods (Seaboard), and JBS had a call with Secretary Perdue to convey, in the words of their industry representative, “how dire a situation we are in if we can’t stem workforce absenteeism during the next few weeks” and to “ask[] the

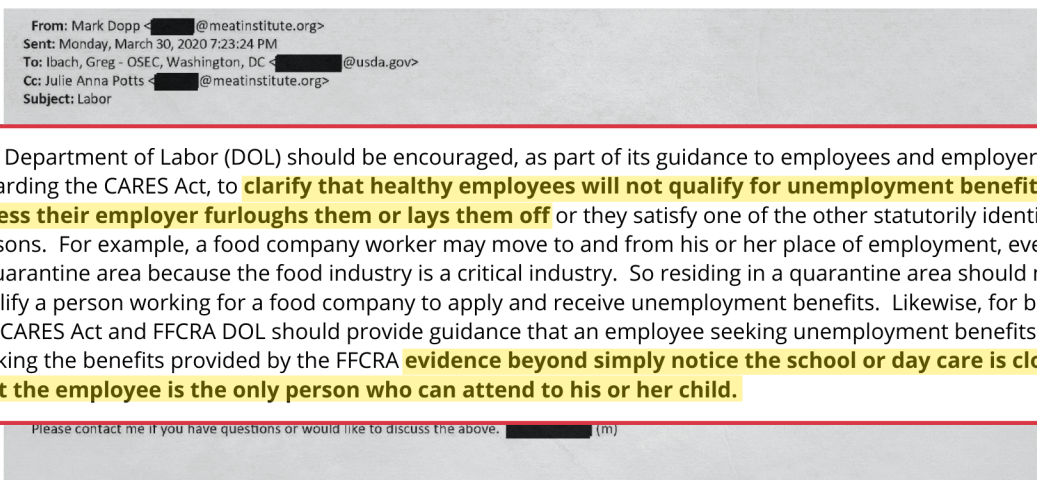
Secretary to elevate the need for messaging about the importance of our workforce staying at work to the POTUS or VP level.”¹¹¹ Following the call, an industry representative emailed Secretary Perdue on behalf of the companies, thanking him for the call and saying:

Whether due to fear or a misguided idea that unemployment benefits are available simply because of fear of going to work, hearing a strong and consistent message from the President or Vice President like that delivered by the Governor of Nebraska yesterday is vital: being afraid of COVID-19 is not a reason to quit your job and you are not eligible for unemployment compensation if you do.¹¹²

The threat of ineligibility for unemployment benefits by workers if they quit was wielded extensively. On March 30, 2020, a meatpacking industry lobbyist emailed the General Counsel of National Beef seeking “data to help some people at USDA when they have a conversation with the Department of Labor over the next day or so” regarding DOL’s implementation of the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, noting that “interesting times lead to interesting requests.” A subsequent message confirmed that:

USDA need[ed] this summary information so it can educate the Department of Labor on how to develop rules that apply the Coronavirus Aid, Relief, and Economic Security Act [] and the Families First Coronavirus Response Act [] in a way that does not incentivize our workers to stay home instead of coming to work.¹¹³

Later that day, the meatpacking industry lobbyist sent Under Secretary Ibach a separate email entitled “Labor,” referencing an earlier conversation and describing the meatpacking industry’s preferred structure of worker benefits regulations:



Ibach responded saying “Thank you. We will share.”¹¹⁴

Similarly, during the April 3, 2020 call between Smithfield, Tyson, JBS, Hormel, Seaboard, and Secretary Perdue, meatpacking companies conveyed their “need” for “the Administration’s help in assuring [] workers they are valued, protected by appropriate PPE and

sanitation and should not be entitled to unemployment benefits if they are otherwise able to work through the pandemic.”¹¹⁵ In preparation for this call, meatpacking companies used talking points that included, among other things, that “Unemployment Benefits Should Not be Provided to People who Quit Their Jobs,” and that accordingly “DOL should, through CARES Act guidance, affirm that employees will not qualify for unemployment benefits unless they are less [sic] furloughed or laid off.”¹¹⁶

While Smithfield, Tyson, Hormel, Seaboard, and JBS went to great lengths to get the federal government to dissuade meatpacking workers from staying home, Smithfield CEO Ken Sullivan rejected a proposal to use this call to ask for safety provisions, such as adequate PPE and testing, as a method of encouraging meatpacking workers to come to work. In discussing the proposed talking points for the call, Sullivan reminded the group of meatpacking CEOs that they should use this opportunity to lobby Secretary Perdue not to secure more PPE for workers, but rather to leverage Trump officials to spread the message that workers must continue reporting to work:

From my perspective, point #2 about PPE isn’t entirely on point. As an industry we’re doing everything we can to provide as sanitized an environment as possible. But, we’re not asking for N-95 masks or anything like that. The ask is for the President, as well as all levels of government, to make more explicitly clear that food and agriculture workers are front line workers fighting the pandemic. The industry needs help, straight from the bully pulpit, to reinforce our patriotic duty to produce food for the country. All our plants are seeing cases. In the absence of positive messaging about their special role, workers are getting scared.¹¹⁷

USDA officials immediately accepted the meatpacking industry’s proffered position and conveyed it to other arms of government. In discussing the talking points for this call, a meatpacking industry representative said, “I have just talked with Under Secretary Ibach about the Secretary’s objectives and they are consistent with this format.” She said that the Secretary “wants to hear about the threat to the entire animal agriculture complex and your stories about what’s happening in your plants.”¹¹⁸ Within a week of this call, Secretary Perdue was already acting on the meatpacking industry’s requests, setting up a call between the CEOs of Smithfield, Tyson, JBS, Cargill, Hormel, Seaboard, Clemens Food Group (Clemens), and National Beef, and Vice President Pence, which occurred on April 7, 2020.¹¹⁹ That same day, at the companies’ request, Vice President Pence made a direct request to meatpacking workers during a press conference, asking them to continue to “show up and do your job” and admonishing recent “incidents of worker absenteeism.”¹²⁰

iii. *Industry-USDA Collaboration Weakened CDC and OSHA Guidance and Recommendations for Coronavirus Mitigation in Meatpacking Plants.*

Emails obtained by the Select Subcommittee and statements given during transcribed interviews show that meatpacking companies communicated regularly with USDA regarding USDA’s discussions with CDC and OSHA about coronavirus mitigation guidance and recommendations to ensure they would allow plants to continue operating without critical science-based prevention and mitigation measures.¹²¹ For example, on March 21, 2020, Under Secretary Brashears had a “catch up call” with a powerful meatpacking industry representative during which Brashears reportedly told the representative about calls with FDA and CDC concerning forthcoming food manufacturing guidance that would describe “the low risk nature to

workers due to sanitation practices.” The representative asked for “guidance to allay worker anxiety (so that they will continue to come to work).”¹²² Far from having a “low risk nature,” meatpacking plants posed particularly acute risks of coronavirus spread as compared to other settings, and plants across the country were beginning to see coronavirus outbreaks during this time.¹²³

One such outbreak occurred in April 2020 in Smithfield’s Sioux Falls, South Dakota plant, which left at least 900 workers infected and two workers dead.¹²⁴ When CDC issued recommendations to address the coronavirus outbreak in the facility, the recommendations included precatory language and qualifiers that effectively made the guidance optional for Smithfield. It later came to light that the CDC recommendations had been watered down from an earlier draft that lacked these types of qualifiers.¹²⁵ For example, the final recommendations included the disclaimer that they “are discretionary and not required or mandated by CDC,” which was absent from the initial draft. The final recommendations also added “if feasible” to a recommendation that employees should wear proper face coverings in all areas of the plant and to an admonition that face shields should not act as substitutes for masks, and added “if possible” or “where possible” to at least ten recommendations on topics spanning from source control and hygiene, to screening and attendance policies, to communicating with employees.¹²⁶ Internal meatpacking company documents obtained by the Select Subcommittee now illustrate how these edits came about—namely, that Smithfield intercepted the draft CDC recommendations, provided extensive comments to CDC, USDA, and the South Dakota Governor’s office, and ultimately succeeded in having CDC water them down before being issued.

On April 21, 2020, a Senior Advisor to South Dakota Governor Kristi Noem emailed a Smithfield executive “the initial draft” of the CDC recommendations, noting they were “for [Smithfield’s] internal purposes only,” and asked the Smithfield executive to “chat in the morning.”¹²⁷ Subsequent emails show that Smithfield was frustrated that CDC had not contacted them directly, having apparently expected CDC to send them the recommendations to “review” before they were circulated elsewhere. Shortly after his colleague received the draft CDC recommendations, another Smithfield executive emailed a CDC employee working on the Sioux Falls review, expressing anger that CDC had not given Smithfield a chance to weigh in on its forthcoming document:

I must admit that I was surprised we didn’t have a chance to review these documents and suggestions prior to this document finding its way to the Governor’s office. . . . By sending this directly to the Governor’s office without engaging us in the draft [the] document feels a little blind sided.

The CDC employee responded saying, “It is unclear to me how this got to the Governor’s office and I am more than a little blindsided myself. Is there a good time for us to briefly discuss in the morning?”¹²⁸

Later that morning, Smithfield CEO Ken Sullivan emailed Under Secretary Ibach a marked-up draft of the recommendations, to which Ibach responded, “We are on it.”¹²⁹ As detailed in the Select Subcommittee’s October 2021 report, this mark-up identified at least 14 recommendations for the facility as “problematic,” including “actions to physically separate employees . . . and reduce employee density in non-work areas of the facility,” and asked what flexible attendance policies “have to do with” addressing the coronavirus outbreak.¹³⁰ Notably, a CDC report later found that the highest infections rates among Smithfield’s Sioux Falls facility

workers occurred “among employees who worked <6 feet (2 meters) from one another on the production line.”¹³¹ Smithfield’s mark-up also touted the unverified claim that “99 percent” of infections “occur in community.”¹³² Within a few hours of sending these revisions to USDA officials, a Smithfield executive was told by his colleague to “Expect a call from Blake Rollins,” who was described as “one of Perdue’s deputies, important guy” and “an ally.”¹³³

From: Sullivan, Ken <[REDACTED]@smithfield.com>
Sent: Tuesday, April 21, 2020 11:28:56 AM
To: Ibach, Greg - OSEC, Washington, DC <[REDACTED]@usda.gov>
Subject: FW: Message from KM_C458

I have attached the draft report. Forgive my scratch marks. The report is 14 pages. In the interest of time, I suggest you focus just on pages 5-10. **The starred recommendations are problematic for a 110 year old, 8 story plant.** As discussed, social distancing is the single most challenging thing to achieve in a (dis) assembly production environment. Workers are often shoulder to shoulder and the plant in general is a beehive of activity. As you know, Sioux Falls is not different in that regard to any other plant.

You said it best, the best we can do in these environments is aggressively mitigate risk, not eliminate it.

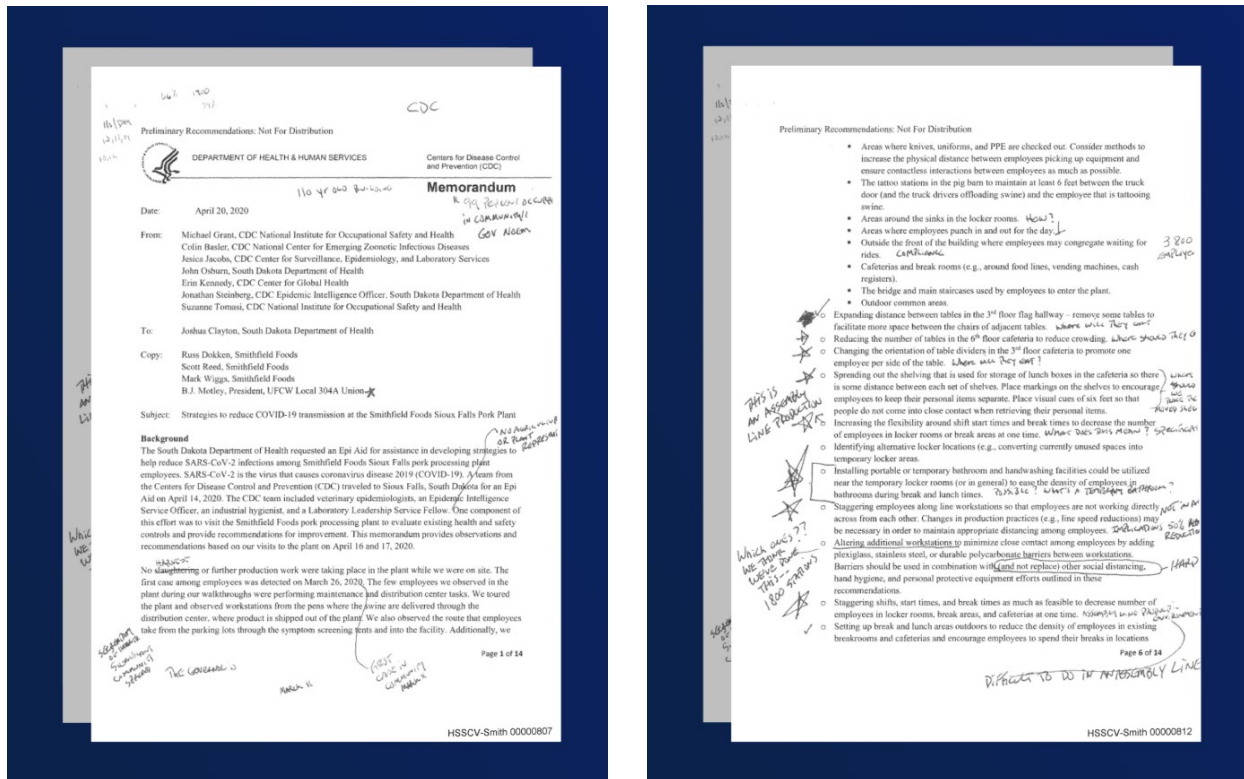
THANK YOU FOR YOUR HELP!!! Ken [REDACTED]

The changes that were ultimately made to the CDC recommendations came at the behest of Smithfield, as relayed by Secretary Perdue, and were made by the Trump-appointed CDC Director over the objection of career officials. During a transcribed interview with the Select Subcommittee, the Director of CDC’s Division of Preparedness and Emerging Infections Dr. Henry Walke told the Select Subcommittee that he disagreed with adding qualifiers such as “if feasible,” but that CDC implemented these changes at the direction of former CDC Director Robert Redfield. Dr. Walke explained that the revisions adopted language that “undermines the clarity of the guidance itself,” and that he was “resistant to try to incorporate this type of language into our guidance, because it really muddies the guidance, when we start putting these waffle words into it.” He “felt that was watering down our guidance” and that such language “dilutes our recommendations.”¹³⁴ Dr. Walke stated that he believed that this could harm CDC’s recommendations “by undermining the whole recommendation,” because people could “opt out of our guidance”—effectively allowing meatpacking facilities to reopen despite known unsafe conditions—and making the guidance “so wishy washy that -- is it guidance at some point? And is it a CDC recommendation or not?”¹³⁵

Dr. Walke voiced these objections to Director Redfield, who nonetheless made the changes. Dr. Walke explained: “Dr. Redfield and I had many conversations around these . . . in the end, he’s the director, and he wanted to include this language. And so that’s what we did. . . he had the ultimate decision.”¹³⁶ Dr. Walke said that he specifically recalled Director Redfield “wanting this language, if feasible, in the memo.” Even when Dr. Walke “express[ed] [his] concern about diluting the message,” Director Redfield was “firm about wanting that language in there.”¹³⁷

When asked about these changes during a transcribed interview, Director Redfield acknowledged that he decided to insert qualifiers like “if feasible” because he was persuaded by industry concerns that previously drafted recommendations would require Smithfield to “shut the plant down,” although he denied inserting additional precatory language, such as new language emphasizing that CDC’s recommendations were not mandatory.¹³⁸ Director Redfield said that he understood that certain recommendations in the memo, such as the recommendation to implement social distancing on staircases, would have required Smithfield to “redo” parts of its facility and thus would have required Smithfield to “close[] the plant for a long period of time.”¹³⁹ Dr. Redfield was not able to explain why he added the same qualifiers to a number of recommendations that would not have required Smithfield to undertake construction, such as a recommendation for all employees to wear face coverings in all parts of the plants.¹⁴⁰ Dr. Walke corroborated that these changes came from Director Redfield based on concerns around whether “industry was going to be able to implement our recommendations,” and told the Select Subcommittee he had multiple conversations with Director Redfield around providing “some leeway” and “flexibility” in the recommendations.¹⁴¹ Director Redfield and Dr. Walke also both confirmed that the industry concerns prompting these changes were conveyed to CDC by Secretary Perdue, who, according to Dr. Redfield, made “very, very passionate presentations” to the White House Coronavirus Task Force.¹⁴² Dr. Walke recalled telephonic meetings “with USDA during this period of time with Dr. Redfield and Sonny Perdue . . . and his staff, where this topic was discussed.”¹⁴³

Figure B: Smithfield CEO Ken Sullivan’s Hand Mark-up of Draft CDC Recommendations



Director Redfield said that his decision to make the recommendations more discretionary for meatpacking companies was also informed by his belief that the nation was “close” to a

“substantial protein shortage.”¹⁴⁴ This argument—which largely resembles the flimsy narrative touted by Smithfield CEO Ken Sullivan¹⁴⁵—was conveyed to Dr. Redfield by Secretary Perdue during a meeting of the Task Force. Director Redfield said his concern about a “protein shortage” was from a “public health perspective” for which he “rel[ie]d on the presentations of Secretary Perdue,”¹⁴⁶ and that:

[M]y recommendation [] was impacted by significant presentations that I had from the Secretary of Agriculture, not privately but in the Task Force, that really made me aware of the significance that was going on because of the COVID pandemic in beef, pork, and chicken plants across the country. . . . I became convinced that the Secretary of Agriculture’s concerns were right, that if this thing goes on too long that we’re going to have a protein shortage.¹⁴⁷

The concerns that Secretary Perdue conveyed to the Task Force came directly from meatpacking companies such as Smithfield, and not from USDA or other regulators. When asked whether the concerns expressed by Secretary Perdue during his meetings with Director Redfield were from USDA itself, or whether USDA was instead “translating industry concerns,” Dr. Walke said, “the general conversation was USDA talking about industry concerns.”¹⁴⁸

Smithfield’s changes to CDC’s recommendations had potentially dire consequences for Smithfield’s workers. During the first year of the pandemic, Smithfield saw 9,666 worker infections and 25 worker deaths.¹⁴⁹

Smithfield’s lethal role in weakening federal meatpacking worker protections was not limited to its own employees. The company’s lobbying efforts with respect to the Sioux Falls recommendations carried over into shaping CDC/OSHA guidance for all federally-inspected meatpacking plants. For example, an April 21, 2020 email from a Smithfield executive to a CDC employee confirms that Smithfield tried to weigh in on “a play book for our industry going forward”—likely referring to the forthcoming CDC/OSHA guidance—and expressed consternation when CDC moved forward with certain positions before conferring with Smithfield.¹⁵⁰ Similarly, during a transcribed interview with the Select Subcommittee, Dr. Walke confirmed that Smithfield’s attempts to influence CDC policy using Secretary Perdue as an intermediary pertained both to the Sioux Falls recommendations and the CDC/OSHA guidance, and that the guidance was altered based on Smithfield’s interests, much like the Smithfield memo. Dr. Walke said that the guidance was “more of the same” and “sort of the continuation of the same conversation” to provide “this kind of flexibility” in the guidance.¹⁵¹ He stated that “Dr. Redfield really wanted this type of language in the guidance,” referring to the precatory language that was added into both the Smithfield recommendations and the CDC/OSHA guidance, “and so that’s what we did.”¹⁵²

Ultimately, CDC’s guidance for the meatpacking industry and workers issued on April 26, 2020 used language that softened recommendations to meatpacking companies.¹⁵³ In the words of the CEO of Clemens, the guidance “basically regurgitated and put down on paper everything we told them we are currently doing.”¹⁵⁴ Meatpacking industry representatives commented that it was “very helpful for asymptomatic and exposed employees” because “Those exposed can keep working, and those that are asymptomatic and COVID + can return after 7 days.”¹⁵⁵ Dr. Walke told the Select Subcommittee that the conditional language used in the guidance “muddie[d]” and “undermine[d] the clarity of the guidance itself.”¹⁵⁶

Although it was drafted with industry preferences in mind, many meatpacking CEOs and lobbyists were not satisfied with the guidance issued by CDC on April 26, 2020. They complained in emails with other meatpacking executives that they were “disappointed,” considering the guidance to be “worse than nothing” and a “Middle finger from [the] govt” because it did not mandate that plants remain open regardless of coronavirus outbreaks, and because it did not expressly disavow “the theory [that] the plant is the problem.”¹⁵⁷ One meatpacking industry representative complained to a colleague that “The WH and USDA think they gave us a great thing!” noting their powerful allies had “no idea” that the meatpacking industry was angry the guidance did not go far enough in expressly sanctioning their dangerous operations.¹⁵⁸

To: Julie Anna Pott [redacted]@meatinstitute.org]; Mark Dopp [redacted]@meatinstitute.org]
Cc: Pete Thomson [redacted]@meatinstitute.org]; Nathan Frost [redacted]@meatinstitute.org]
From: Sarah Little
Sent: Sun 4/26/2020 9:21:17 PM
Subject: RE: the land mine
Received: Sun 4/26/2020 9:21:00 PM

Just got a call from Ken Sullivan. He says this is worse than nothing. Middle finger from govt. I would like to know how company counsel are all reading this before we react.

Here is the landmine. Will be read as CDC buying into the theory the plant is the problem. My cynicism is showing.

Unclear how much of what is pasted below from the CDC doc is unique to meat and poultry. Why would what is underlined not apply to a Ford factory, or dozens of other industry factories?

Distinctive factors that affect workers' risk for exposure to SARS-CoV-2 in meat and poultry processing workplaces include:

- **Distance between workers** – meat and poultry processing workers often work close to one another on processing lines. Workers may also be near one another at other times, such as when clocking in or out, during breaks, or in locker/changing rooms.
- **Duration of contact** – meat and poultry processing workers often have prolonged closeness to coworkers (e.g., for 10-12 hours per shift). Continued contact with potentially infectious individuals increases the risk of SARS-CoV-2 transmission.
- **Type of contact** – meat and poultry processing workers may be exposed to the infectious virus through respiratory droplets in the air – for example, when workers in the plant who have the virus cough or sneeze. It is also possible that exposure could occur from contact with contaminated surfaces or objects, such as tools, workstations, or break room tables. Shared spaces such as break rooms, locker rooms, and entrances/exits to the facility may contribute to their risk.
- **Other distinctive factors that may increase risk among these workers include:**

- A common practice at some workplaces of sharing transportation such as ride share vans or shuttle vehicles, car-pools, and public transportation
- Frequent contact with fellow workers in community settings in areas where there is ongoing community transmission.

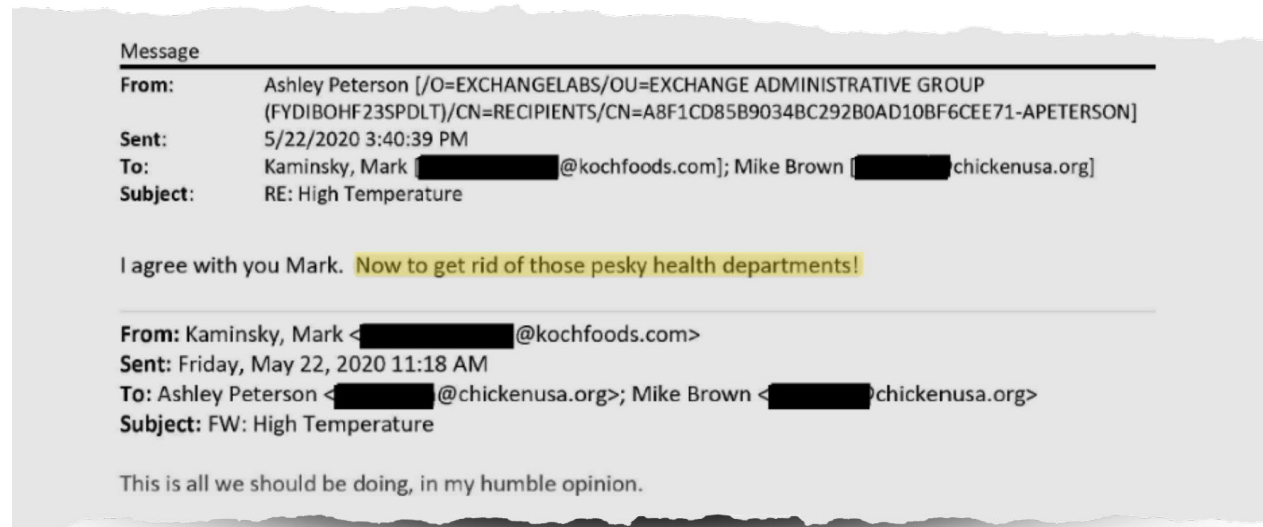
This disappointment was not unanimous: on May 11, 2020, one trade association executive, taking credit for the weak final product, told another trade association executive that “getting the guidance out of CDC/OSHA happened largely because governors wrote to the president and VP,” and “outreach by companies/associations to the president and VP.”¹⁵⁹

iv. *Industry Collaborated with USDA in Attempts to Ensure Meatpacking Workers Were Not Protected by State and Local Health Authorities.*

Internal documents obtained by the Select Subcommittee show that meatpacking companies also enlisted USDA to engage directly with state and local health departments to stifle their attempts to regulate coronavirus issues in meatpacking facilities.

During the first few months of the pandemic, meatpacking companies identified state and local health authorities as potential barriers to their interests in maximizing production and profits at the expense of worker safety. For example, in spring of 2020, an executive at Koch Foods told a meatpacking industry lobbyist that temperature screenings was “all we should be

doing.” The lobbyist agreed, saying “Now to get rid of those pesky health departments!”¹⁶⁰ The industry acted swiftly to enlist the Trump Administration’s assistance in dismantling this roadblock. Acting at the request of companies such as JBS, Smithfield, and Foster Farms, USDA officials aggressively pursued state and local health departments that attempted to regulate meatpacking plants, and even involved other arms of government, such as CDC and the Vice President’s office, in doing so.



On April 9, 2020, a meatpacking industry representative emailed Jonathan Hickey, Special Advisor to Vice President Pence, saying meatpacking companies were “getting lots of pressure from state and local governments to shut down when there are positive COVID cases discovered” and asking the Vice President’s office for “intervention with governors, local officials and some indication the [White House] is saying that we need and expect plants to keep operating even with COVID positive tests.”¹⁶¹ Vice President Pence’s aide Hickey responded that “VP [Pence] understands the issue and we will take it to the states.” He later followed up saying, “we are working closely with USDA on the JBS issue in CO,”¹⁶² referencing calls for a Greeley, Colorado JBS plant to be shut down following multiple worker deaths,¹⁶³ “and the broader issue writ large by getting the word out to states/locals.”¹⁶⁴ The representative later thanked Hickey for his “massive efforts on behalf of our industry.”¹⁶⁵ According to Weld County Health Department emails published by news outlets, around this time, “JBS was in touch with the VP [Pence] who had Director Redfield call [the Colorado state health director]” in an attempt to ensure the plant continued to operate.¹⁶⁶

Three days later, an industry representative expressed meatpacking companies’ continued concern over state and local health orders that were impacting operations at Smithfield, Tyson, and JBS plants to Under Secretary Ibach, who informed her that he “believe[d] the Sec is not fully apprised of the situation.”¹⁶⁷ Smithfield likely played a role in getting Secretary Perdue’s attention. Earlier that day, Smithfield CEO Ken Sullivan spearheaded an effort to “collect information about our plants for the purpose of communicating the breadth and magnitude of COVID positive plants,” and a USDA official separately followed up on this initiative the next

morning.¹⁶⁸ As part of this effort, meatpacking companies—including Smithfield, Tyson, JBS, Cargill, and National Beef—compiled plant operation information in an attempt to demonstrate to USDA that positive coronavirus test results and oversight by local health departments were hurting meatpacking production and, as a result, the nation’s protein supply.¹⁶⁹ Within three days, the meatpacking industry and USDA officials had coordinated to create a “Confidential” tracker of “plant closures and reduced operations” that the meatpacking industry representative described as a “triage list for the Sec [Perdue] to send to the head of the CDC,” listing the plants for which meatpacking companies were most concerned about closures or reduced operations.¹⁷⁰ The next day, the meatpacking industry representative reported to her colleagues that Secretary “Perdue had head of CDC begin to engage with local and state health authorities to reopen closed plants and continue to allow others to operate”¹⁷¹—presumably acting on the meatpacking companies’ requests for him to help stymie state and local health oversight.

By May 2020, meatpacking companies and political appointees at USDA were regularly attempting to stifle regulatory attempts by state and local health authorities in order to force plants to stay open despite coronavirus risks. For example, on May 15, 2020, an industry representative emailed Under Secretary Brashears, Under Secretary Ibach, and their respective deputies a document containing “new CA guidance,” noting that it said to “Practice six-foot physical distancing to the greatest extent possible” and highlighting in yellow a clause saying: “even if this means production slows down.” Without first asking whether or why the representative took issue with this document, Brashears responded saying, “We will discuss ASAP and get back to you.”¹⁷² Later that day, the representative emailed other trade associations, saying that she was “on the phone with USDA” before noting that the California guidance was “Not consistent with USDA expectations and the OSHA/CDC guidance or the EO,” referencing OSHA/CDC guidance for meatpacking plants and an executive order that, as explained in Sections III(b)(iii) and (v), were shaped heavily by meatpacking companies.¹⁷³ Similarly, on August 5, 2020, a meatpacking lobbyist sent Brashears and others at USDA an email about a recent Michigan executive order concerning coronavirus precautions, saying, “FYI. We may need to talk again regarding Michigan.” A USDA political official responded that they were “happy to chat if needed.” The lobbyist later said, “This seems to me [to] be a circumstance in which the playbook you used before regarding contacting state or local jurisdictions is in order.”¹⁷⁴ Documents show that the following day, USDA “reached out and requested a call with the [local] ag department to touch base on the order.”¹⁷⁵

A particularly stark example of meatpacking companies’ use of USDA political officials to strong-arm state and local health departments occurred in connection with attempts by California’s Merced County Department of Public Health (MCPH) to address a coronavirus outbreak at Foster Farms’ Livingston, California plant that left at least 392 workers sick and eight workers dead.¹⁷⁶ Previous reporting disclosed that MCPH officers received outreach from federal officials telling them they could not shut down the plant after a health order was issued that would have required a suspension of operations.¹⁷⁷ Internal documents received by the Select Subcommittee, as well as survey calls with MCPH officials, now confirm that Foster Farms used USDA to intimidate MCPH and to try to stop MCPH from shutting down the plant.

In late June 2020, reports of coronavirus infections at the Foster Farms plant prompted scrutiny from MCPH officials, who conducted a site visit on June 29, 2020 and recommended universal testing for all workers on production lines that had experienced outbreaks, among other

things.¹⁷⁸ MCPH officials were particularly concerned because Foster Farms was one of the largest employers in the area, and outbreaks in its facilities appeared to have been driving community spread. By July 13, 2020, Foster Farms had still not conducted the recommended testing, and MCPH officials repeated their request. Instead of adopting this recommendation, Foster Farms opted instead to test a random sample of workers around July 22, 2020. However, even that more limited testing yielded a 29 percent infection rate among workers who were Merced County residents—significantly higher than MCPH officials anticipated, and well above the average infection rate of approximately 16 percent for Merced County residents at the time. These results suggested the Foster Farms facility was a viral hot spot. When MCPH informed Foster Farms that the company should be doing universal testing, Foster Farms refused.¹⁷⁹

According to MCPH officials, Foster Farms repeatedly tried to obscure the true infection and even death count in the summer of 2020. For example, MCPH learned through community channels (such as reporting by families or hospitals) that two Foster Farms workers had died around July 22, 2020. While Foster Farms confirmed these two deaths when asked, the deaths were not apparent to MCPH from Foster Farms’ weekly case reporting. On August 13, 2020, MCPH asked Foster Farms to differentiate fatalities from other coronavirus cases in its weekly reports, at which point the tally of deaths jumped from two to seven. Foster Farms had previously been reporting the five additional deaths as “resolved cases” or “resolutions.”¹⁸⁰

A second site visit from MCPH and the California Division of Occupational Health and Safety on August 3, 2020 revealed that Foster Farms had not fully implemented many prior recommendations for its plant concerning physical distancing and other coronavirus precautions. By mid-August, there were over 360 infections—nearly a third of the plant’s employees—and eight worker deaths, a nearly two percent death rate. MCPH officials said this was the “worst rate we’ve had in a workplace here by an order of magnitude.”¹⁸¹ Coronavirus deaths among Foster Farms workers represented 18 percent of all coronavirus-related deaths in Merced County among people under the age of 65 at the time.¹⁸² To attempt to address this lethal outbreak, MCPH decided to require the plant to temporarily suspend operations.¹⁸³

Within days of MCPH’s order that Foster Farms temporarily suspend operations, Foster Farms’ representatives called in Under Secretary Brashears and her deputies to pressure MCHP into allowing the plant to continue to operate. On August 26, 2020, Robert O’Connor, an executive at Foster Farms, emailed a meatpacking lobbyist a copy of the order mandating Foster Farms to temporarily cease operations. Within a few hours, the lobbyist notified Foster Farms that “Under Secretary [Brashears] has received a copy of the order. She is engaging the Secretary [Perdue] and will be working this under the Defense Production Act. . . . she knows the clock is ticking.” The lobbyist closed by saying to “Hold tight” and that Brashears “hasn’t lost a battle for us.”¹⁸⁴ Later that day, the lobbyist, on behalf of Foster Farms, also sent an update from the California Department of Health to Brashears’ official USDA email address and sent a “presentation” concerning the issue to Brashears’ personal email address.¹⁸⁵

From: Ashley Peterson <[REDACTED]@chickenusa.org>
Sent: Thursday, August 27, 2020 3:29 AM
To: O'Connor, Robert Dr. <[REDACTED]@fosterfarms.com>
Subject: Update

EXTERNAL

The Under Secretary has received a copy of the order. She is engaging the Secretary and will be working this under the Defense Production Act. I highlighted both the scope of the order and the urgency - she knows the clock is ticking. Political officials from the state have also been engaged - from the Federal level. As soon as I have a readout on their engagement I will follow up.

Hold tight. We will get through this together. She hasn't lost a battle for us and your compromise is more than fair.

According to MCPH officials, MCPH received an unsolicited call from Brashears within a week of issuing the order, who insisted that USDA, rather than MCPH, had jurisdiction to regulate Foster Farms' Livingston plant. Brashears' office insisted on a second call, during which her office conveyed that "because of the [defense] production act you can't shut [Foster Farms] down,"¹⁸⁶ referencing an April 2020 Executive Order that, as described below, the meatpacking industry proposed, drafted, and lobbied the White House to issue, but which did not in fact pre-empt state and local jurisdiction over coronavirus regulation in meatpacking plants.¹⁸⁷ MCPH officials told the Select Subcommittee that the tone of the call was that MCPH "can't shut [the plant] down," and so MCPH had to "come up with alternatives" that USDA signed off on, not involving a reduction in plant operations.¹⁸⁸

During the second of these calls, MCPH also raised Foster Farms attempts to obfuscate the death count by labeling fatalities as "resolutions." MCPH officials told the Select Subcommittee that an unidentified person on the call from either Foster Farms or USDA said these cases could be considered "toe tag resolutions," referring to the toe tag that is often put on a corpse at the morgue. MCPH said that Brashears asked this individual to "stop" and said they would "talk about this separately."¹⁸⁹

MCPH officials said they were concerned by the relationship between Foster Farms and Brashears evinced by the call. MCPH officials indicated that Foster Farms personnel repeatedly alluded to prior discussions—suggesting they had spoken with Brashears previously—and referred to her on a first-name basis. One official told the Select Subcommittee: "It seemed as though Foster Farms had personal connection to USDA, so they called in that connection and fully anticipated that they would not have any health order implemented on them, that it would not be implemented."¹⁹⁰

Ultimately, USDA dropped its demand for MCPH not to enforce its suspension order, and asked MCPH to give Foster Farms a 48-hour extension before the order was enforced to

allow for the diversion of certain operations to other plants. MCPH agreed, and Foster Farms' Livingston Plant temporarily suspended operations on August 31, 2020.¹⁹¹

- v. *Meatpacking Companies Successfully Lobbied the White House and USDA to Issue an Executive Order Purporting to Insulate Meatpacking Companies from State and Local Coronavirus Regulations and Liability for Worker Infections and Deaths.*

When meatpacking companies' attempts to stifle state and local health department regulation did not yield sufficiently comprehensive results, Smithfield and Tyson conceived of a "federal directive" that would ensure state and local health authorities were powerless to impose coronavirus health and safety precautions in the plants. The meatpacking companies drafted and pitched an executive order to the Trump White House, which promptly issued it after less than a week of review and revision. The final order that was eventually issued adopted the themes and statutory directive laid out in the meatpacking industry's draft, invoking the Defense Production Act (DPA) to ensure meatpacking plants "continue operations."¹⁹²

By mid-April 2020, meatpacking companies had grown anxious that their allies at USDA were unable to stop state and local health regulators from imposing slowdowns or shutdowns on some meatpacking plants. For example, on April 11, 2020, an industry representative complained that:

Plants are being closed. Health depts. are making decisions . . . governors are making surprise decisions . . . health departments are showing up unannounced at plants . . . and the media reporting is going to create more attention from health departments and governors in other communities IMO.¹⁹³

The regulatory scrutiny referenced in the email referred to three meatpacking plants that eventually saw a combined total of at least 3,189 worker infections and 16 worker deaths during the first year of the pandemic.¹⁹⁴ The representative further noted that the state and local regulatory scrutiny "seems to be cascading and our friends at USDA and the VP's office are not able to stop it."¹⁹⁵

That same day, the CEOs of Smithfield and Tyson—two of the largest meatpacking companies that together saw over 39,000 worker infections and at least 176 worker deaths during the first year of the pandemic¹⁹⁶—conceived of an executive order that would invoke the DPA to keep plants open despite coronavirus outbreaks. On April 11, 2020—two days after Smithfield closed its Sioux Falls facility due to a coronavirus outbreak—Smithfield CEO Ken Sullivan emailed Tyson CEO Noel White saying he would "like to speak about COVID and a possible executive order from the President (as well as any effort related to the Defense Production Act)."¹⁹⁷ The next day, Sullivan emailed other meatpacking CEOs, including those at JBS, Cargill, and National Beef, and industry representatives saying "Positive cases, fear-driven absenteeism, and disincentives to work are threatening the country's protein supply," and referenced the need for "a Presidential Executive Order, invoking the Defense Production Act as a mechanism to manage public perception and state/local interdiction," among other potential solutions.¹⁹⁸

From: Julie Anna Potts
Sent: Saturday, April 11, 2020 5:47 PM
To: Eric Zito <[REDACTED]@meatinstitute.org>; Anne Halal <[REDACTED]@meatinstitute.org>; Mark Dopp <[REDACTED]@meatinstitute.org>; Pete Thomson <[REDACTED]@meatinstitute.org>; Nathan Fretz <[REDACTED]@meatinstitute.org>
Cc: Sarah Little <[REDACTED]@meatinstitute.org>; Eric Mittenthal <[REDACTED]@meatinstitute.org>
Subject: RE: Is there a way...

You are the best! Thank you so much. I have been on the phone and email since early this morning with several of our companies and folks in the WH and USDA. And FEMA. I realized I was flying a little blind with some of the conversations so this is incredibly helpful. I'm sorry that I interrupted your Sat doing it.

Plants are being closed. Health depts. are making decisions (Greeley), governors are making surprise decisions (Sioux Falls), health departments are showing up unannounced at plants (Waterloo IA), and the media reporting is going to create more attention from health departments and governors in other communities IMO. It seems to be cascading and our friends at USDA and the VP's office are not able to stop it. It's too much to put in email right now but our friends at Smithfield, JBS and Tyson have probably been working today too. I have been in close contact with Chandler.

By April 13, 2020, Tyson had created and circulated a draft “Order under DPA.”¹⁹⁹ The order stated, among other things:

I also recognize that other industries play a crucial role in supporting the Nation throughout this emergency, including those critical infrastructure industries, as defined by the Department of Homeland Security, such as food production and supply. Businesses operating in the food supply and production industry have a special responsibility to maintain, to the fullest extent possible, their operations and normal work schedules. Since [March 13, 2020], we have seen some of these operations reduce their capacity and output due to issues related to COVID-19. These businesses are crucial to our emergency preparedness as we respond to COVID-19 and after we defeat it during the recovery. Accordingly, I find that conditions exist which may pose a direct threat to the national defense or emergency preparedness programs and that the continued operation of food processing, production, and supply companies meet the criteria for emergency preparedness and protections under 50 U.S.C. 4501 et seq. . . . I hereby order that critical infrastructure food companies continue their operations to the fullest extent possible both during and after the COVID-19 crisis subsides so that they can continue to process, produce, and deliver food to the Nation.²⁰⁰

Within a matter of days, Tyson, Smithfield, JBS, Cargill, National Beef, Hormel, Seaboard, and Clemens had collectively agreed they would send a letter to the White House requesting some variation of this executive order from President Trump.²⁰¹

In addition to seeking to ensure state and local health agencies were powerless to regulate coronavirus precautions in meatpacking plants, meatpacking companies also sought to use the executive order to insulate themselves from liability for worker illness or death caused by the lack of coronavirus precautions they were lobbying for. In connection with the first draft of the order, Tyson also circulated a memo on the DPA, noting that it shielded companies from liability for actions taken thereafter. The memo stated, in relevant part:

1. President issues an ‘order’ under the Defense Production Act approving a ‘voluntary agreement’ that Tyson and other food processors remain open to the fullest extent possible.

2. From that moment on, anyone operating under that order is subject to the following protection, *even if the order is ruled invalid*

a. ‘No person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with a rule, regulation, or order issued pursuant to this Act [sections 4501 to 4568 of 50 U.S.C.], notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid.’²⁰²

When discussing the order, meatpacking companies and their representatives repeatedly referred to the order as seeking not only direction for plants to remain operational, but a shield for liability from issues arising from meatpacking plants’ continued operation during coronavirus outbreaks. For example, on April 16, 2020, a meatpacking industry representative described Tyson and Smithfield’s proposal in an email to Bob Evans Foods as intended “to ask POTUS for an Executive Order that would ‘direct’ state and local health officials to help packing plants remain operational and to seek a limit on liability for continuing to operate during the pandemic.”²⁰³ That same day, the representative emailed Tim Klein, CEO of National Beef, describing the purpose of the order as “two-fold: to give federal protection for the ability to operate and to seek some liability protection against future lawsuits for doing so pursuant to federal direction.”²⁰⁴ Later that day, a Tyson Government Relations executive reiterated Tyson’s hope for President Trump to insulate meatpacking companies from legal liability, saying “I realize this Exe[cutive] Order is a long shot but my legal team really wants some type of protection from the plaintiffs’ bar.”²⁰⁵

In a slew of other emails with other trade associations that same day, a meatpacking industry representative coordinating the executive order request repeatedly referred to the order as “(1) directing state and local authorities to keep plants open and (2) protection from liability for worker illnesses.”²⁰⁶ After the order was issued on April 28, 2020, another meatpacking industry representative received an email from an executive at the American Farm Bureau Federation (AFBF), an agriculture-related insurance company and lobbying group, asking if the order “waives liability for the [meat]packers?” The representative responded saying “It is subtle, but it does.” Perhaps recognizing the optics of lobbying against measures intended to protect workers from a lethal virus while simultaneously seeking insulation from liability for ensuing worker illnesses and death, the representative continued: “We are avoiding mentioning that at all costs. It is a terrible fact, but it is what it is. We have been noodling around with it and there is probably not a way to address it directly.”²⁰⁷

Others who were asked to participate in the request to the White House for an executive order similarly recognized that the initiative could result in a public relations backlash, with some opposing any public request. For example, on April 17, 2020, a Johnsonville executive emailed the meatpacking industry representative who was coordinating Smithfield’s and Tyson’s request for an executive order, saying:

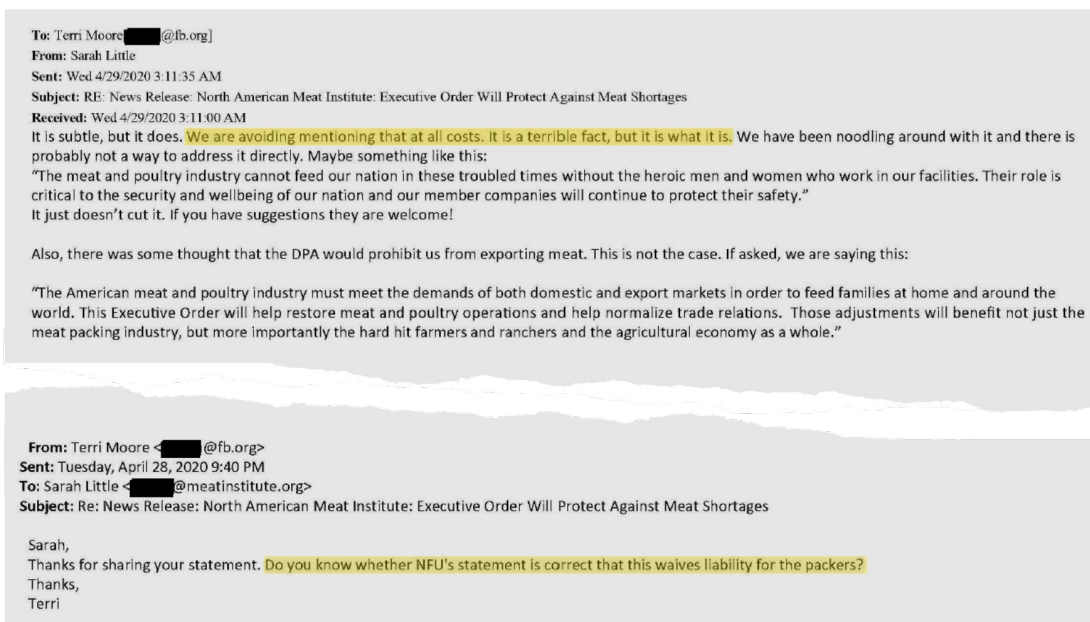
Perhaps the intent should be to get federal assistance to gain priority on PPE and testing supplies. I am concerned that it could become a social/public relations nightmare if we are too aggressive in asking for an EO to make us off limits. If not handled right, it could come across as all the industry is interested in is ‘production at any cost.’²⁰⁸

An AFBF executive expressed a similar concern, saying, “the perception that there is a balance to be struck between worker safety/health and productivity is potentially explosive.” He

continued that his organization—which provides agriculture-related insurance and lobbying activities—wanted to “pull the Executive Order approach away from this,” noting that “certain ‘I’m in charge’ actions have not put things in a good light so far.” When the meatpacking representative replied that the companies she represented would not be “satisfied” with “anything short of” a request for an executive order, AFBF doubled down, saying “We can’t put the ask in writing.”²⁰⁹ Likely because of these hesitations, the meatpacking industry representative informed the CEOs of Tyson, Smithfield, JBS, National Beef, Hormel, Seaboard, and Clemens, and Cargill’s Protein North America Group Business Operations and Supply Chain Lead, that they would initially “back-channel” the request for an executive order “with the Secretary [Perdue] who has made his desires known on this topic to AFBF.”²¹⁰ Smithfield and Tyson were initially reluctant to drop the public request, but ultimately did in the interest of time.²¹¹

On April 18, 2020, the meatpacking trade association that had led the push for an executive order joined in a formal letter to President Trump requesting that he “emphasize the importance of allowing critical infrastructure food companies” to operate “without undue disruption.”²¹² Hours after the letter was sent, a representative for this trade association assured the CEOs of Smithfield, Tyson, JBS, National Beef, Hormel, Seaboard, and Clemens and Cargill’s Protein North America Group Business Operations and Supply Chain Lead that she would start back-channeling the request for an executive order and “start the conversation about what we want to see with an EO.”²¹³

The meatpacking companies’ efforts to secure an executive order grew more aggressive in the ensuing days. On Sunday, April 19, 2020—when meatpacking companies had not seen results from the letter they had sent just one day prior—Tyson CEO Noel White emailed the meatpacking industry representative coordinating the executive order push wondering if they should refocus their lobbying efforts on a different agency: “Ask for HHS to be the lead at the federal level? If so, would it alienate the USDA?” The representative responded that “As of my conversations with USDA this afternoon, they still think they are on it...and in better shape with POTUS than other agencies. I have said we have to see some results!”²¹⁴



On April 21, 2020, the meatpacking industry representative coordinating the request spoke with USDA officials Censky, Brashears, and Ibach about the executive order. These officials were skeptical that “a federal directive that would be preemptive of local or state authority” would “fly” with state governors, but after some convincing, they ultimately “asked to see a suggestion” for such an order.²¹⁵ As has been previously reported, the representative emailed Censky, Brashears, and Ibach, among others at USDA, the draft executive order prepared by Tyson.²¹⁶ On this same day, the representative reached out to the White House’s National Economic Council (NEC) asking them to “Please help!”²¹⁷ and received a phone call from NEC staff in return. The representative updated Tyson, Smithfield, JBS, Cargill, National Beef, Hormel, Seaboard, and Clemens that “we now have the door propped open with some smart WH staff that want to help and that’s encouraging” and that NEC asked them “to provide some concepts of what would work for processors.” The representative noted she was sharing this information with their allied USDA political officials, to keep them “fully in the loop.”²¹⁸

Internal documents obtained by the Select Subcommittee reveal that between April 22 and April 27, 2020, meatpacking industry representatives and companies were in constant communication with the White House and USDA concerning the proposed executive order,²¹⁹ including in a series of calls between individual meatpacking company CEOs and White House staff²²⁰ such as Tate Bennet, Special Assistant to the President, NEC, and Christopher Chaffee from the Office of Public Liaison.²²¹ Smithfield and Tyson in particular had numerous side conversations with White House staff, including calls between Smithfield CEO Ken Sullivan and President Trump’s Chief of Staff Mark Meadows;²²² a joint call with Sullivan, Meadows, and Tyson CEO Noel White;²²³ a call between White and Vice President Pence’s Chief of Staff Marc Short;²²⁴ and a call from Meadows to White asking if White would be willing to meet with President Trump.²²⁵ When the order was ultimately issued on the morning of April 28, 2020, the Deputy White House Staff Secretary emailed Sullivan a copy of the order, saying “Further to your conversation with Chief of Staff Mark Meadows, below are links to the text of the executive order.”²²⁶ President Trump held a call with officers of the meatpacking companies who had lobbied for it on the morning the order was issued.²²⁷

While USDA and meatpacking companies attempted to interpret the order as prohibiting state and local health authorities from requiring plants to reduce or suspend operations to address coronavirus outbreaks, and pre-empting state and local health authorities from imposing coronavirus measures beyond those set forth in the CDC/OSHA guidance,²²⁸ the Executive Order did not explicitly do either of these things without USDA first exercising its delegated authority through agency action, such as a rulemaking.²²⁹ One USDA career staffer told the Select Subcommittee in a briefing that without further action by Secretary Perdue, the order was “dead letter law,” while a former USDA political official told the Select Subcommittee during a survey call that, while the order “was presented as if somehow it empowered the Secretary to . . . override local health authorities,” he didn’t “see anything in the executive order that actually [did] that.”²³⁰ Even Tyson acknowledged when circulating a memorandum on the DPA in connection with the draft order that certain steps needed to take place before authority delegated under the DPA could be exercised.²³¹ Nonetheless, meatpacking companies and USDA fostered the image that the order’s immediate effect was to shut down attempts by state and local health regulators to make meatpacking plants safer for workers.

For example, the day after the order was issued, in response to a question from National Beef about the impact of the order, another meatpacking industry representative said the order meant workers in quarantine for coronavirus exposure “can go back to work” and that “CDC guidance overrules state and local for all return to work guidance.” She added that “Mindy [Brashears] was very clear with me.”²³² This same narrative was being touted as late as August 2020, when Foster Farms used USDA to strong arm MCPH out of regulating Foster Farms’ Livingston, California plant, saying “because of the production act you can’t shut [Foster Farms] down.”²³³

Meatpacking companies and their federal allies also worked closely to coordinate public messaging about the effect of the order. For example, the day after the order was issued, a meatpacking industry representative told her colleagues that the Trump White House, apparently expecting gratitude and a show of appreciation by the meatpacking industry, had “requested” that meatpacking companies “issue positive statements and social media about the President’s action on behalf of the industry, about the Order itself and about how it will help ensure the food supply chain remains strong,” and provided a White House email where these statements may be sent.²³⁴ About a week later, when a federal court issued a ruling favoring the meatpacking industry in connection with coronavirus safety issues, USDA immediately consulted with meatpacking industry representatives and brought them into the messaging fold, with Under Secretary Ibach telling a representative he “want[ed] to visit with [her] about rolling [the] ruling out widely” to “tell state and local health departments that the Sunday [CDC/OSHA] Guidance is the standard.”²³⁵

Meanwhile, others in the industry recognized that the order did not provide any automatic relief to meatpacking companies from state and local health department oversight. For example, on May 6, 2020, Cargill employees emailed one another recapping a call they had with USDA, CDC, the City of Milwaukee, and the State of Wisconsin. They noted that “USDA was completely ineffective in their attempt to use the Defense Protection Act to keep the Cargill facility open . . . City and state officials aggressively challenged their legal standing and USDA could not defend their position.” This email also indicated that Cargill had asked USDA to issue “an order under the Defense Protection Act,” suggesting Cargill understood further USDA action was required before the DPA could have the desired effect of impacting state and local health authorities’ jurisdiction.²³⁶

Even though the Executive Order did not automatically pre-empt the jurisdiction of state and local health authorities, many meatpacking companies nonetheless attempted to use it as such, insisting that USDA and the CDC/OSHA guidance’s lax parameters governed their conduct exclusively.²³⁷ Armed with the Executive Order, a loyal USDA ready to do their bidding, and favorable CDC/OSHA guidance, many meatpacking companies proceeded to operate plants without adopting critical coronavirus prevention and mitigation measures over the course of the following months, to the detriment of tens of thousands of vulnerable workers.

IV. Conclusion

Meatpacking companies knew the risk posed by the coronavirus to their workers and knew it wasn’t a risk that the country needed them to take. They nonetheless lobbied aggressively—successfully enlisting USDA as a close collaborator in their efforts—to keep

workers on the job in unsafe conditions, to ensure state and local health authorities were powerless to mandate otherwise, and to be protected against legal liability for the harms that would result. The results of this lobbying campaign were tragic: during the first year of the pandemic, workforces for Smithfield, Tyson, JBS, Cargill, and National Beef alone saw at least 59,000 worker infections, at least 269 worker deaths, and countless more cases and deaths among meatpacking-adjacent communities driven by plant outbreaks. To prevent a recurrence of these harms, it is important that agencies work with each other and state governments to develop crisis plans that will guard against industry-captured agencies, such as Trump's USDA, exploiting their authority to advance private corporate interests at the expense of public health.

¹ Select Subcommittee on the Coronavirus Crisis, Press Release: Select Subcommittee Launches Investigation into Widespread Coronavirus Infections and Deaths in Meatpacking Plants (Feb. 1, 2021) (online at <https://coronavirus.house.gov/news/press-releases/select-subcommittee-launches-investigation-widespread-coronavirus-infections-and>).

² Memorandum from Majority Staff to Members of the Select Subcommittee on the Coronavirus Crisis, Coronavirus Infections and Deaths Among Meatpacking Workers at Top Five Companies Were Nearly Three Times Higher than Previous Estimates (Oct. 27, 2021) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2021.10.27%20Meatpacking%20Report.Final_.pdf).

³ Email from Moore County Hospital Physician, to Cameron Bruett, Head of Corporate Affairs, JBS USA Holdings, Inc. (Apr. 18, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/JBS-SSCC_000003512_Redacted.pdf) (JBS-SSCC_000003512).

⁴ Smithfield Foods, *Press Release: Smithfield Foods, to Close Sioux Falls, SD Plant Indefinitely Amid COVID-19* (Apr. 12, 2020) (online at www.smithfieldfoods.com/press-room/2020-04-12-Smithfield-Foods-To-Close-Sioux-Falls-SD-Plant-Indefinitely-Amid-COVID-19); John Tyson, *Feeding the Nation and Keeping Our Team Members Healthy*, The Feed (Apr. 26, 2020) (online at <https://thefeed.blog/2020/04/26/feeding-the-nation-and-keeping-our-employees-healthy/>); Tyson Foods Chairman Warns 'The Food Supply Chain is Breaking', NBC (Apr. 27, 2020) (online at <https://www.nbcnews.com/news/us-news/tyson-foods-chairman-warns-food-supply-chain-breaking-n1193256>).

⁵ Email from Sarah Little, Vice President of Communications, North American Meat Institute, to Bill Westman, Senior Vice President of International Affairs and Administration, North American Meat Institute (Apr. 15, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00071141-42_Redacted.pdf) (NAMI00071141-2); Smithfield Foods, *Press Release: Smithfield Foods, to Close Sioux Falls, SD Plant Indefinitely Amid COVID-19* (Apr. 12, 2020) (online at www.smithfieldfoods.com/press-room/company-news/smithfieldfoods-to-close-sioux-falls-sd-plant-indefinitely-amid-covid-19).

⁶ Email from Sarah Little, Vice President of Communications, North American Meat Institute, to Robin Troye, Director of Conference Services and Marketing, North American Meat Institute (Apr. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00071259-60_Redacted.pdf) (NAMI00071259-60).

⁷ Email from Sarah Little, Vice President of Communications, North American Meat Institute, to Eric Mittenenthal, Vice President of Sustainability, North American Meat Institute (Apr. 15, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00071135-36_Redacted.pdf) (NAMI00071135-36).

⁸ Email from Sarah Little, Vice President of Communications, North American Meat Institute, to Bill Westman, Senior Vice President of International Affairs and Administration, North American Meat Institute (Apr. 15, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00071141-42_Redacted.pdf) (NAMI00071141-42); Email from Sarah Little, Vice President of Communications, North American Meat Institute, to Robin Troye, Director of Conference Services and Marketing, North American Meat

Institute (Apr. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00071259-60_Redacted.pdf) (NAMI00071259-60).

⁹ According to the National Agricultural Statistics Service, meatpackers held 622 million pounds of frozen pork as of March 31, 2020—an amount well above the norm—while exports of pork by companies such as Smithfield and JBS surged during the first three quarters of 2020 to well above pre-pandemic levels. See Steve Suppan, *Cold Hard (Storage) Facts About Meatpacker Threats of Scarcity*, Institute for Agriculture Trade and Policy (May 1, 2020) (online at <https://www.iatp.org/blog/202005/cold-hard-storage-facts-about-meatpacker-threats-scarcity>); *Surge in U.S. Pork Exports to China Led by Brazil's JBS, China's WH Group*, Reuters (Sept. 22, 2020) (online at www.reuters.com/article/uk-usa-trade-china-pork/surge-in-u-s-pork-exports-to-china-led-by-brazils-jbs-chinas-wh-group-idUKKCN26D300).

¹⁰ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Pete Thomson, Senior Vice President for Public and Legislative Affairs, North American Meat Institute, *et al.* (Mar. 18, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021688-91_Redacted.pdf) (NAMI00021688-91).

¹¹ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mindy Brashears, Under Secretary for Food Safety, Department of Agriculture (Mar. 19, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021763_Redacted.pdf) (NAMI00021763).

¹² Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to DC Office, North American Meat Institute, *et al.* (Mar. 25, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00022561-62_Redacted.pdf) (NAMI00022561-62).

¹³ Email from Charles Penry, Vice President of Federal Government Relations, Tyson, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute (Mar. 26, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00064030-32_Redacted.pdf) (NAMI00064030-32).

¹⁴ Email from Ashley Peterson, Senior Vice President of Scientific and Regulatory Affairs, National Chicken Council, to Robert O'Connor, Senior Vice President, Foster Farms (Aug. 27, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NCC-00003938-41_Redacted.pdf) (NCC-00003938-41).

¹⁵ Briefing by Food Safety and Inspection Service, Department of Agriculture, to Staff, Select Subcommittee on the Coronavirus Crisis (Jan. 13, 2022).

¹⁶ See, e.g., Email from KatieRose McCullough, Director of Scientific and Regulatory Affairs, North American Meat Institute, to Wade Fluckey, Vice President of Technical and Regulatory Affairs, Clemens Food Group (Apr. 14, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00035075-76_Redacted.pdf) (NAMI00035075-76) (meatpacking industry representative saying “Mindy just texted me” about the idea of meatpacking plants temporarily hiring college students in plants); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Mar. 21, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00022122-23_Redacted.pdf) (NAMI00022122-23) (meatpacking industry representative saying “I have texted Mindy to ask” about a testing protocol document another trade association submitted to FDA); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mark Dopp, General Counsel, North American Meat Institute (Mar. 23, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00022353_Redacted.pdf) (NAMI00022353) (meatpacking industry representative saying “After that call with the WH, I texted a bit with Mindy and gave her a rundown of the call, asked if CDC guidance was still forthcoming and sent her the industry-generated FDA protocol doc.”); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mindy Brashears, Under Secretary for Food Safety, Department of Agriculture (Mar. 19, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021763_Redacted.pdf)

(NAMI00021763); Email from Ashley Peterson, Senior Vice President of Scientific and Regulatory Affairs, National Chicken Council, to Robert O'Connor, Senior Vice President, Foster Farms (Aug. 27, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NCC-00003947-52_Redacted.pdf) (NCC-00003947-52).

¹⁷ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Noel White, Chief Executive Officer, Tyson Foods, Inc., *et al.* (Apr. 2, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00023117-18_Redacted.pdf) (NAMI00023117-18); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Secretary Sonny Perdue, Department of Agriculture (Apr. 3, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00023173_Redacted.pdf) (NAMI00023173).

¹⁸ *Vice President Pence with Coronavirus Task Force Briefing*, C-SPAN (Apr. 7, 2020) (online at www.c-span.org/video/?471020-101/vice-president-pence-coronavirus-task-force-briefing); Email from Sarah Little, Vice President of Communications, North American Meat Institute, to Casey Kammerle, North American Meat Institute, *et al.* (Apr. 8, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00012047-48_Redacted.pdf) (NAMI00012047-48) (“in today’s Coronavirus briefing, the VP praises the food industry (at Our CEOs’ request after their call today)”); Email from Sarah Little, Vice President of Communications, North American Meat Institute, to Eric Mittenenthal, Vice President of Sustainability, North American Meat Institute (Apr. 8, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00012056_Redacted.pdf) (NAMI00012056) (“Yesterday NAMI President and CEO Julie Anna Potts arranged a call with NAMI members and Vice President Pence which earned immediate results. At the daily Coronavirus briefing, the Vice President took considerable time to praise food industry workers and specifically mentioned the NAMI call.”).

¹⁹ Email from Bret Wilson, Vice President and General Counsel, National Beef Packing Company LLC, to Mike Eckman, Executive Vice President of Human Resources and Administration, National Beef Packing Company LLC (Mar. 31, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00046481_Redacted.pdf) (NAMI00046481).

²⁰ Email from Mark Dopp, General Counsel, North American Meat Institute, to Greg Ibach, Under Secretary for Marketing and Regulatory Programs, Department of Agriculture (Mar. 30, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00046475_Redacted.pdf) (NAMI00046475) (emphasis added).

²¹ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Greg Ibach, Under Secretary for Marketing and Regulatory Programs, Department of Agriculture (Apr. 3, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00023098-99_Redacted.pdf) (NAMI00023098-99); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mindy Brashears, Under Secretary for Food Safety, Department of Agriculture (Apr. 3, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00023112-13_Redacted.pdf) (NAMI00023112); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Noel White, Chief Executive Officer, Tyson Foods, Inc., *et al.* (Apr. 2, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00023117-18_Redacted.pdf) (NAMI00023117-18).

²² Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Greg Ibach, Under Secretary for Marketing and Regulatory Programs, Department of Agriculture (Apr. 3, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00023098-99_Redacted.pdf) (NAMI00023098-99); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mindy Brashears, Under Secretary for Food Safety, Department of Agriculture (Apr. 3, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00023112-13_Redacted.pdf) (NAMI00023112).

²³ Email from Ashley Peterson, Senior Vice President of Scientific and Regulatory Affairs, National Chicken Council, to Mark Kaminsky, Chief Operating Officer, Koch Foods (May 22, 2020) (online at

https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NCC-00003971_Redacted.pdf) (NCC-00003971).

²⁴ Survey Call by Majority Staff, Select Subcommittee on the Coronavirus Crisis, with Merced County Department of Public Health (Aug. 30, 2021); Survey Call by Majority Staff, Select Subcommittee on the Coronavirus Crisis, with Merced County Department of Public Health (Mar. 8, 2022).

²⁵ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Jonathan Hickey, Special Advisor for Domestic Policy, Office of the Vice President, White House (Apr. 9, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024108_Redacted.pdf) (NAMI00024108).

²⁶ *Coronavirus Outbreak at Greeley Plant Forces Two-week Closure, Burdens Local Health Facilities*, The Denver Post (Apr. 13, 2020) (online at www.denverpost.com/2020/04/13/coronavirus-jbs-greeley-plant-closure/); Email from Jonathan Hickey, Special Advisor for Domestic Policy, Office of the Vice President, White House, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute (Apr. 10, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024159-66_Redacted.pdf) (NAMI00024159-66).

²⁷ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Eric Zito, Vice President of Membership and Exposition Services, North American Meat Institute, *et al.* (Apr. 11, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00018786-87_Redacted.pdf) (NAMI00018786-87).

²⁸ Email from Ken Sullivan, Chief Executive Officer, Smithfield Foods, to Noel White, Chief Executive Officer, Tyson Foods, Inc. (Apr. 11, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000736_Redacted.pdf) (HSSCV-Smith 00000736); Email from Ken Sullivan, Chief Executive Officer, Smithfield Foods, to Noel White, Chief Executive Officer, Tyson Foods, Inc., *et al.* (Apr. 12, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000737-38_Redacted.pdf) (HSSCV-Smith 00000737-38); Email from Jane Duke, Vice President and Associate General Counsel, Tyson Foods, Inc., to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Apr. 13, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00046974-76_Redacted.pdf) (NAMI00046974-76); Email from Mark Dopp, General Counsel, North American Meat Institute, to Michael Fleming, Smithfield Foods, *et al.* (Apr. 14, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00049421-36_Redacted.pdf) (NAMI00049421-36); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Warren Panico, President and Chief Executive Officer, Bar-S Foods Co., *et al.* (Apr. 21, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000763_Redacted.pdf) (HSSCV-Smith 00000763).

²⁹ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Neil Dirks, Chief Executive Officer, National Pork Producers Council, *et al.* (Apr. 22, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025202-03_Redacted.pdf) (NAMI00025202-03); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Stephen Censky, Deputy Secretary of Agriculture, Department of Agriculture, *et al.* (Apr. 21, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00052977-79_Redacted.pdf) (NAMI00052977-79); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Andre Nogueira, Chief Executive Officer, JBS USA Holdings, Inc., *et al.* (Apr. 23, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025346-47_Redacted.pdf) (NAMI00025346-47); Email from Mark Dopp, General Counsel, North American Meat Institute, to Neil Dirks, Chief Executive Officer, National Pork Producers Council, *et al.* (Apr. 22, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00047171-75_Redacted.pdf) (NAMI00047171-75); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Tim Klein, Chief Executive Officer, National Beef Packing Company LLC, *et al.* (Apr. 23, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000771_Redacted.pdf) (HSSCV-Smith 00000771); Email from Christopher Chaffee, Associate Director, Office of Public Liaison, White House, to Cameron Bruett, Head of Corporate Affairs, JBS USA Holdings, Inc. (Apr. 23, 2020) (online at [36](https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/JBS-</p></div><div data-bbox=)

SSCC_000003562-63_Redacted.pdf) (JBS-SSCC_000003562-63); Email from Michael Skahill, Vice President of Government Affairs, Smithfield Foods, to Ken Sullivan, Chief Executive Officer, Smithfield Foods, *et al.* (Apr. 23, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000772-73_Redacted.pdf) (HSSCV-Smith 00000772-73); Email from Ken Sullivan, Chief Executive Officer, Smithfield Foods, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute, *et al.* (Apr. 25, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025671-72_Redacted.pdf) (NAMI00025671-72); Email from Eliza Thurston, Office of the Chief of Staff, White House, to Cynthia Edwards, Executive Assistant, Smithfield Foods (Apr. 27, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000777_Redacted.pdf) (HSSCV-Smith 00000777); Email from Marc Short, Chief of Staff, Office of the Vice President, White House, to Russel Vought, Acting Director, Office of Management and Budget (Apr. 28, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/OMB-SSCC-0010771-72_Redacted.pdf) (OMB-SSCC-0010771-72); Email from Noel White, Chief Executive Officer, Tyson Foods, Inc., to Julie Anna Potts, Chief Executive Officer, North American Meat Institute (Apr. 27, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025828_Redacted.pdf) (NAMI00025828).

³⁰ *Compare* Email from Jane Duke, Vice President and Associate General Counsel, Tyson Foods, Inc., to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Apr. 13, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00046974-76_Redacted.pdf) (NAMI00046974-76) *with* Exec. Order 13917, 85 Fed. Reg. 26313 (May 1, 2020). The meatpacking industry’s draft “order[ed] that critical infrastructure food companies continue their operations to the fullest extent possible,” while the Executive Order ultimately issued delegated the President’s authority under the DPA to the Secretary of Agriculture, to “ensure the continued supply of meat and poultry, consistent with the guidance for the operations of meat and poultry processing facilities jointly issued by the CDC and OSHA.” The Executive Order that was ultimately issued also adopted the themes of meatpacking operations being essential to supporting the country and being impacted negatively by coronavirus mitigation measures, which were also set forth in the industry draft provided to USDA.

³¹ Email from Sarah Little, Vice President of Communications, North American Meat Institute, to Sarah Little, Vice President of Communications, North American Meat Institute, *et al.* (Apr. 29, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00012490-92_Redacted.pdf) (NAMI00012490-92).

³² Economic Policy Institute, *Who Are America’s Meat and Poultry Workers?* (online at www.epi.org/blog/meat-and-poultry-worker-demographics/) (accessed Mar. 16, 2022); Center for Economic and Policy Research, *Meatpacking Workers are a Diverse Group Who Need Better Protections* (online at <https://cepr.net/meatpacking-workers-are-a-diverse-group-who-need-better-protections/>) (accessed Mar. 16, 2022); *Working ‘The Chain,’ Slaughterhouse Workers Face Lifelong Injuries*, National Public Radio (Aug. 11, 2016) (online at www.npr.org/sections/thesalt/2016/08/11/489468205/working-the-chain-slaughterhouse-workers-face-lifelong-injuries).

³³ *Working ‘The Chain,’ Slaughterhouse Workers Face Lifelong Injuries*, National Public Radio (Aug. 11, 2016) (online at www.npr.org/sections/thesalt/2016/08/11/489468205/working-the-chain-slaughterhouse-workers-face-lifelong-injuries); Department of Labor, Occupational Safety and Health Administration, *Meatpacking – Hazards and Solutions* (online at www.osha.gov/meatpacking/hazards-solutions) (accessed Mar. 16, 2022).

³⁴ Government Accountability Office, *Workplace Safety and Health: Better Outreach, Collaboration, and Information Needed to Help Protect Workers at Meat and Poultry Plants* (Nov. 9, 2017) (GAO-18-12) (online at www.gao.gov/products/gao-18-12).

³⁵ Department of Agriculture, Agricultural Marketing Service, *Packers and Stockyards Division Annual Report 2019* (online at www.ams.usda.gov/sites/default/files/media/PSDAnnualReport2019.pdf) (accessed Mar. 18, 2022); *How Four Companies Control the Beef Industry*, Vox (Sept. 29, 2021) (online at www.vox.com/videos/2021/9/29/22700589/beef-industry-meat-production-future-perfect).

³⁶ Department of Agriculture, Agricultural Marketing Service, *Packers and Stockyards Division Annual Report 2019* (online at www.ams.usda.gov/sites/default/files/media/PSDAnnualReport2019.pdf) (accessed Mar. 18, 2022); *Just a Few Companies Control the Meat Industry. Can a New Approach to Monopolies Level the Playing*

Field?, Civil Eats (July 14, 2021) (online at <https://civileats.com/2021/07/14/just-a-few-companies-control-the-meat-industry-can-a-new-approach-to-monopolies-level-the-playing-field/>); Mary K. Hendrickson *et al.*, *The Food System: Concentration and Its Impacts* (Nov. 19, 2020) (online at <https://farmactionalliance.org/wp-content/uploads/2020/11/Hendrickson-et-al.-2020.-Concentration-and-Its-Impacts-FINAL.pdf>).

³⁷ See Committee on Agriculture, Testimony of Coy Young, *An Examination of Price Discrepancies, Transparency, and Alleged Unfair Practices in Cattle Markets*, 117th Cong. (Apr. 27, 2022) (online at <https://docs.house.gov/meetings/AG/AG00/20220427/114664/HHRG-117-AG00-Wstate-YoungC-20220427-U1.pdf>); Committee on Agriculture, Testimony of Gilles Stockton, *An Examination of Price Discrepancies, Transparency, and Alleged Unfair Practices in Cattle Markets*, 117th Cong. (Apr. 27, 2022) (online at <https://docs.house.gov/meetings/AG/AG00/20220427/114664/HHRG-117-AG00-Wstate-StocktonG-20220427-U1.pdf>).

³⁸ Tyson Foods, *Form 10-K for the Fiscal Year Ended October 2, 2021* (online at <https://sec.report/Document/0000100493-21-000122/>) (accessed Mar. 21, 2022); Tyson Foods, *Form 10-K/A for the Fiscal Year Ended October 3, 2020* (online at <https://sec.report/Document/0000100493-21-000009/>) (accessed Mar. 21, 2022).

³⁹ JBS USA Holdings, Inc., *Earnings Releases 4Q21* (online at <https://ri.jbs.com.br/en/financial-information/results-center/>) (accessed Mar. 22, 2022).

⁴⁰ Email from Nathan Fretz, Vice President of Legislative Affairs, North American Meat Institute, to Matthew Mika, Director of Government Relations, Tyson Foods, Inc., *et al.* (Apr. 24, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/TYSON-SSCC-00033833-35_Redacted.pdf) (TYSON-SSCC-00033833-35).

⁴¹ See *Report: Four Major Meatpackers Subpoenaed in DOJ Antitrust Investigation*, Food Dive (June 5, 2020) (online at www.fooddive.com/news/report-4-major-meatpackers-subpoenaed-in-doj-antitrust-investigation/579266/). See also, *e.g.*, Email from Ken Sullivan, Chief Executive Officer, Smithfield Foods, to Noel White, Chief Executive Officer, Tyson Foods, Inc., *et al.* (Apr. 12, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000737-38_Redacted.pdf) (HSSCV-Smith 00000737-38); Email from Eric Mittenenthal, Vice President of Sustainability, North American Meat Institute, to Warren Panico, President and Chief Executive Officer, Bar-S Foods Co., *et al.* (Jan. 8, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00010565-624_Redacted.pdf) (NAMI00010565-624). See also, *e.g.*, Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Noel White, Chief Executive Officer, Tyson Foods, Inc., *et al.* (Apr. 2, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00023117-18_Redacted.pdf) (NAMI00023117-18); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Secretary Sonny Perdue, Department of Agriculture (Apr. 3, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00023173_Redacted.pdf) (NAMI00023173); Email from Ken Sullivan, Chief Executive Officer, Smithfield Foods, to Noel White, Chief Executive Officer, Tyson Foods, Inc., *et al.* (Apr. 12, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000737-38_Redacted.pdf) (HSSCV-Smith 00000737-38); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Apr. 14, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00046925-26_Redacted.pdf) (NAMI00046925-26).

⁴² Department of Agriculture, *About the U.S. Department of Agriculture* (online at <https://usda.gov/our-agency/about-usda>) (accessed Mar. 17, 2022).

⁴³ The National Agricultural Law Center, *Meat Processing Laws in the United State: A State Compilation* (online at <https://nationalaglawcenter.org/state-compilations/meatprocessing/>) (accessed Mar. 16, 2022); Department of Agriculture, *Food Safety and Inspection Service Strategic Plan 2017-2021* (online at www.fsis.usda.gov/sites/default/files/media_file/2020-07/strategic-plan-2017-2021.pdf) (accessed Mar. 16, 2022); Department of Agriculture, *Office for Food Safety* (online at www.fsis.usda.gov/contactus/fsis-offices/office-food-safety-ofs) (accessed Mar. 17, 2022). As part of this requirement, USDA mandates that “[f]ederal inspection personnel must be present at all times during livestock slaughter operations and for at least part of each shift during which there is further processing of meat products.” Department of Agriculture, Food Safety and Inspection

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⁴⁴ Government Accountability Office, *Workplace Safety and Health: Better Outreach, Collaboration, and Information Needed to Help Protect Workers at Meat and Poultry Plants* (Nov. 2017) (GAO-18-12) (online at www.gao.gov/products/gao-18-12); Department of Labor, Occupational Safety and Health Administration, *Employer Responsibilities* (online at www.osha.gov/workers/employer-responsibilities) (accessed Mar. 17, 2022).

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⁴⁹ Department of Agriculture, Economic Research Service, *COVID-19 Working Paper: Meatpacking Working Conditions and the Spread of COVID-19* (Sept. 27, 2021) (online at www.ers.usda.gov/webdocs/publications/102206/ap-092.pdf). “Analogous counties” refers to rural counties dependent on other single manufacturing industries. *Id.*

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⁵⁴ See, e.g., Email from Mark Dopp, General Counsel, North American Meat Institute, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute, *et al.* (Mar. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021386-88_Redacted.pdf) (NAMI00021386-88) (“The list of essential businesses is quite long but I’m not certain I can shoe horn food processing into one of them.”); Email from Randy Strait, Tyson Foods, Inc., to Matthew Mika, Director of Government Relations, Tyson Foods, Inc., *et al.* (Mar. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021386-88_Redacted.pdf) (NAMI00021386-88) (Tyson executives asking “Can we find an exclusion to keep meat moving as an ‘essential service?’”); Email from Pete Thomson, Senior Vice President for Public and Legislative Affairs, North American Meat Institute, to Nathan Fretz, Vice President of Legislative Affairs, North American Meat Institute, *et al.* (Mar. 14, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00011472-75_Redacted.pdf) (NAMI00011472-75) (“Need affirmative assertion that food production and its supply chain are, and will remain, essential activities”); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Pete Thomson, Senior Vice President for Public and Legislative Affairs, North American Meat Institute, *et al.* (Mar. 13, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021100_Redacted.pdf) (NAMI00021100) (meatpacking industry representative saying that different, allied trade associations “have some outside firms looking at all the authorities like the Bioterrorism Act to understand how food/grocery might be designated as ‘critical infrastructure’”); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Warren Panico, President and Chief Executive Officer, Bar-S Foods Co., *et al.* (Mar. 14, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021125-26_Redacted.pdf) (NAMI00021125-26) (meatpacking industry representative saying they are “seeking . . . to be designated as ‘critical infrastructure’”); Email from Tim Klein, Chief Executive Officer, National Beef Packing Company LLC, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute (Mar. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024711-12_Redacted.pdf) (NAMI00024711-12) (“our plant is running at 50% capacity because of absenteeism. Employees are afraid to come to work”).

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⁵⁹ Email from Eric Mittenhal, Vice President of Sustainability, North American Meat Institute, to Sarah Little, Vice President of Communications, North American Meat Institute (Apr. 7, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00012040-41_Redacted.pdf) (NAMI00012040-41).

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⁶¹ Email from Moore County Hospital Physician, to Cameron Bruett, Head of Corporate Affairs, JBS USA Holdings, Inc. (Apr. 18, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/JBS-SSCC_000003512_Redacted.pdf) (JBS-SSCC_000003512).

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⁷⁹ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mindy Brashears, Under Secretary for Food Safety, Department of Agriculture (Mar. 19, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021763_Redacted.pdf) (NAMI00021763).

⁸⁰ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to DC Office, North American Meat Institute, *et al.* (Mar. 25, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00022561-62_Redacted.pdf) (NAMI00022561-62).

⁸¹ *See, e.g.*, Email from KatieRose McCullough, Director of Scientific and Regulatory Affairs, North American Meat Institute, to Wade Fluckey, Vice President of Technical and Regulatory Affairs, Clemens Food Group (Apr. 14, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00035075-76_Redacted.pdf) (NAMI00035075) (meatpacking industry representative saying “Mindy just texted me” about the idea of meatpacking plants temporarily hiring college students in plants); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Mar. 21, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00022122-23_Redacted.pdf)

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⁸² Email from Ashley Peterson, Senior Vice President of Scientific and Regulatory Affairs, National Chicken Council, to Robert O’Connor, Senior Vice President, Foster Farms (Aug. 27, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NCC-00003947-52_Redacted.pdf) (NCC-00003947-52).

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⁸⁴ 44 U.S.C. § 3301(a)(1)(A).

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⁸⁷ Email from Ashley Peterson, Senior Vice President of Scientific and Regulatory Affairs, National Chicken Council, to Robert O’Connor, Senior Vice President, Foster Farms, *et al.* (Apr. 8, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NCC-00000610-11_Redacted.pdf) (NCC-00000610-11).

⁸⁸ Briefing by Food Safety and Inspection Service, Department of Agriculture, to Staff, Select Subcommittee on the Coronavirus Crisis (Jan. 13, 2022).

⁸⁹ *See, e.g.*, Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Pete Thomson, Senior Vice President for Public and Legislative Affairs, North American Meat Institute, *et al.* (Mar. 18, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021688-91_Redacted.pdf) (NAMI00021688-91); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Sarah Little, Vice President of Communications, North American Meat Institute (Mar. 13, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021119-20_Redacted.pdf) (NAMI00021119-20); Email from Ashley Peterson, Senior Vice President of Scientific and Regulatory Affairs, National Chicken Council, to Robert O’Connor, Senior Vice President, Foster Farms, *et al.* (Apr. 8, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NCC-00000610-11_Redacted.pdf) (NCC-00000610-11); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Neil Dirks, Chief Executive Officer, National Pork Producers Council, *et al.* (Apr. 22, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025202-03_Redacted.pdf) (NAMI00025202-03); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Mar. 21, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00007508-09_Redacted.pdf) (NAMI00007508-09); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Warren Panico, President and Chief Executive Officer, Bar-S Foods Co., *et al.* (Apr. 21, 2020) (online at

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⁹⁰ Email from Charles Penry, Vice President of Federal Government Relations, Tyson Foods, Inc., to Julie Anna Potts, Chief Executive Officer, North American Meat Institute (Mar. 26, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00064030-32_Redacted.pdf) (NAMI00064030).

⁹¹ Email from Ashley Peterson, Senior Vice President of Scientific and Regulatory Affairs, National Chicken Council, to Robert O'Connor, Senior Vice President, Foster Farms (Aug. 27, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NCC-00003938-41_Redacted.pdf) (NCC-00003938-41).

⁹² Memorandum from Majority Staff to Members of the Select Subcommittee on the Coronavirus Crisis, Coronavirus Infections and Deaths Among Meatpacking Workers at Top Five Companies Were Nearly Three Times Higher than Previous Estimates (Oct. 27, 2021) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2021.10.27%20Meatpacking%20Report.Final_.pdf).

⁹³ Email from KatieRose McCullough, Director of Scientific and Regulatory Affairs, North American Meat Institute, to Nathan Fretz, Vice President of Legislative Affairs, North American Meat Institute, *et al.* (Dec. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00043482-83_Redacted.pdf) (NAMI00043482-83).

⁹⁴ Briefing by Food Safety and Inspection Service, Department of Agriculture, to Staff, Select Subcommittee on the Coronavirus Crisis (Jan. 13, 2022).

⁹⁵ Email from Carmen Rottenberg, Managing Director, Groundswell Strategy, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute (Apr. 22, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025232-34_Redacted.pdf) (NAMI00025232-34); Email from Carmen Rottenberg, Managing Director, Groundswell Strategy, to Director at the Association of State and Territorial Health Officials (Apr. 28, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00036020_Redacted.pdf) (NAMI00036020).

⁹⁶ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Sarah Little, Vice President of Communications, North American Meat Institute (Mar. 13, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021119-20_Redacted.pdf) (NAMI00021119-20).

⁹⁷ Texas Tech University, *Form: COI COC General* (submitted Sept. 20, 2021) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/TX-UT-22-0145-A%20Processed_Redacted.pdf). *See also* Lobbying Report, *Lobbying Disclosure Act of 1995 (Section 5)* (online at

<https://lda.senate.gov/filings/public/filing/bd7aa742-2b5e-478a-a25f-e92f5dc04298/print/>); BioSecurity Technology, *The Gold Standard in Food Safety* (accessed May 2, 2022) (online at <https://biosafetech.us/gold-standard/>).

⁹⁸ Survey Call by Majority Staff, Select Subcommittee on the Coronavirus Crisis, with Professor Jerold Mande (Jan. 6, 2022).

⁹⁹ Memorandum from Majority Staff to Members of the Select Subcommittee on the Coronavirus Crisis, Coronavirus Infections and Deaths Among Meatpacking Workers at Top Five Companies Were Nearly Three Times Higher than Previous Estimates (Oct. 27, 2021) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2021.10.27%20Meatpacking%20Report.Final_.pdf).

¹⁰⁰ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Sarah Little, Vice President of Communications, North American Meat Institute (Mar. 13, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021119-20_Redacted.pdf) (NAMI00021119-20) (meatpacking industry representative attending a retiring USDA official's send-off party where she discussed coronavirus issues with USDA officials, including Under Secretary Ibach and a Senior Advisor to Secretary Perdue, and the retiring USDA official "suggested to Greg Ibach . . . that [industry representatives] come in next week to talk with both Mindy [Brashears] and Greg together"); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Michael Dykes, International Dairy Foods Association, *et al.* (Mar. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021320_Redacted.pdf) (NAMI00021320-22); Meeting Invitation from Lorren Walker, Office of the Secretary of Agriculture, Department of Agriculture (Mar. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021266_Redacted.pdf) (NAMI00021266) (emails confirming meatpacking industry representatives spoke with Brashears and Ibach on March 16, 2020 regarding coronavirus-related "meat industry questions"). While meatpacking companies and their representatives did not produce any documents indicating the substance of the March 16, 2020 discussions, prior conversations among meatpacking companies and their representatives show they were heavily focused on getting meatpacking workers exempt from social distancing requirements. *See, e.g.*, Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Pete Thomson, Senior Vice President for Public and Legislative Affairs, North American Meat Institute, *et al.* (Mar. 13, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021100_Redacted.pdf) (NAMI00021100) (meatpacking industry representative saying that different, allied trade associations "have some outside firms looking at all the authorities like the Bioterrorism Act to understand how food/grocery might be designated as 'critical infrastructure'"); Email from Randy Strait, Tyson Foods, Inc., to Matthew Mika, Director of Government Relations, Tyson Foods, Inc., *et al.* (Mar. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021386-88_Redacted.pdf) (NAMI00021386-87) (Tyson executives asking "Can we find an exclusion to keep meat moving as an 'essential service'?"); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Warren Panico, President and Chief Executive Officer, Bar-S Foods Co., *et al.* (Mar. 14, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021125-26_Redacted.pdf) (NAMI00021125-26) (meatpacking industry representative saying they are "seeking . . . to be designated as 'critical infrastructure'"); Email from Pete Thomson, Senior Vice President for Public and Legislative Affairs, North American Meat Institute, to Nathan Fretz, Vice President of Legislative Affairs, North American Meat Institute, *et al.* (Mar. 14, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00011472-75_Redacted.pdf) (NAMI00011472-75) ("Need affirmative assertion that food production and its supply chain are, and will remain, essential activities").

¹⁰¹ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Pete Thomson, Senior Vice President for Public and Legislative Affairs, North American Meat Institute, *et al.* (Mar. 18, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021688-91_Redacted.pdf) (NAMI00021688-91).

¹⁰² Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mindy Brashears, Under Secretary for Food Safety, Department of Agriculture (Mar. 19, 2020) (online at

https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021763_Redacted.pdf (NAMI00021763).

¹⁰³ Email from Alison Bodor, President and Chief Executive Officer, American Frozen Foods Institute, to American Bakers Association, *et al.* (Mar. 18, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021662-68_Redacted.pdf) (NAMI00021662-68).

¹⁰⁴ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Warren Panico, President and Chief Executive Officer, Bar-S Foods Co., *et al.* (Mar. 19, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021850-62_Redacted.pdf) (NAMI00021850-62).

¹⁰⁵ *Id.*

¹⁰⁶ Memorandum from Majority Staff to Members of the Select Subcommittee on the Coronavirus Crisis, Coronavirus Infections and Deaths Among Meatpacking Workers at Top Five Companies Were Nearly Three Times Higher than Previous Estimates (Oct. 27, 2021) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2021.10.27%20Meatpacking%20Report.Final_.pdf).

¹⁰⁷ *See, e.g.*, Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Pete Thomson, Senior Vice President for Public and Legislative Affairs, North American Meat Institute, *et al.* (Mar. 13, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021100_Redacted.pdf) (NAMI00021100); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Warren Panico, President and Chief Executive Officer, Bar-S Foods Co., *et al.* (Mar. 14, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00021125-26_Redacted.pdf) (NAMI00021125-26); Email from Pete Thomson, Senior Vice President for Public and Legislative Affairs, North American Meat Institute, to Nathan Fretz, Vice President of Legislative Affairs, North American Meat Institute, *et al.* (Mar. 14, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00011472-75_Redacted.pdf) (NAMI00011472-75). Notably, while other trade associations such as the Consumer Brands Association included procuring “safety gear” and “testing kits” as a short-term priority, discussions among NAMI personnel focused largely on “continuity of operations” and “getting a calming of nerves” from government officials. *See id.*

¹⁰⁸ Survey Call by Majority Staff, Select Subcommittee on the Coronavirus Crisis, with Professor Jerold Mande (Jan. 6, 2022).

¹⁰⁹ Email from Sharon Beals, CTI Foods, to Norm Robertson, Vice President of Regulatory Services, North American Meat Institute, *et al.* (Mar. 26, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00058641-42_Redacted.pdf) (NAMI00058641-42).

¹¹⁰ Email from Sarah Little, Vice President of Communications, North American Meat Institute, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute (Apr. 9, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024122_Redacted.pdf) (NAMI00024122).

¹¹¹ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Noel White, Chief Executive Officer, Tyson Foods, Inc., *et al.* (Apr. 2, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00023117-18_Redacted.pdf) (NAMI00023117-18).

¹¹² Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Secretary Sonny Perdue, Department of Agriculture (Apr. 3, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00023173_Redacted.pdf) (NAMI00023173).

¹¹³ Email from Bret Wilson, Vice President and General Counsel, National Beef Packing Company LLC, to Mike Eckman, Executive Vice President of Human Resources and Administration, National Beef Packing Company

LLC (Mar. 31, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00046481_Redacted.pdf) (NAMI00046481).

¹¹⁴ Email from Greg Ibach, Under Secretary for Marketing and Regulatory Programs, Department of Agriculture, to Mark Dopp, General Counsel, North American Meat Institute (Mar. 31, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00046475_Redacted.pdf) (NAMI00046475).

¹¹⁵ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Noel White, Chief Executive Officer, Tyson Foods, Inc., *et al.* (Apr. 2, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00023117-18_Redacted.pdf) (NAMI00023117-18).

¹¹⁶ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Greg Ibach, Under Secretary for Marketing and Regulatory Programs, Department of Agriculture (Apr. 3, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00023098-99_Redacted.pdf) (NAMI00023098); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mindy Brashears, Under Secretary for Food Safety, Department of Agriculture (Apr. 3, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00023112-13_Redacted.pdf) (NAMI00023112).

¹¹⁷ Email from Ken Sullivan, Chief Executive Officer, Smithfield Foods, to Noel White, Chief Executive Officer, Tyson Foods, Inc., *et al.* (Apr. 3, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00023117-18_Redacted.pdf) (NAMI00023117-18).

¹¹⁸ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Noel White, Chief Executive Officer, Tyson Foods, Inc., *et al.* (Apr. 2, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00023117-18_Redacted.pdf) (NAMI00023117-18).

¹¹⁹ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Noel White, Chief Executive Officer, Tyson Foods, Inc., *et al.* (Apr. 7, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00023937-38_Redacted.pdf) (NAMI00023937-38).

¹²⁰ *Vice President Pence with Coronavirus Task Force Briefing*, C-SPAN (Apr. 7, 2020) (online at www.c-span.org/video/?471020-101/vice-president-pence-coronavirus-task-force-briefing); Email from Sarah Little, Vice President of Communications, North American Meat Institute, to Casey Kammerle, North American Meat Institute, *et al.* (Apr. 8, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00012047-48_Redacted.pdf) (NAMI00012047-48); Email from Sarah Little, Vice President of Communications, North American Meat Institute, to Eric Mittenthal, Vice President of Sustainability, North American Meat Institute (Apr. 8, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00012056_Redacted.pdf) (NAMI00012056).

¹²¹ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Mar. 21, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00007508-09_Redacted.pdf) (NAMI00007508-09); Email from Mark Dopp, General Counsel, North American Meat Institute, to Sarah Little, Director of Communications, North American Meat Institute (Apr. 23, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00035404-05_Redacted.pdf) (NAMI00035404).

¹²² Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Mar. 21, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00007508-09_Redacted.pdf) (NAMI00007508-09).

¹²³ See Section I(c); Memorandum from Majority Staff to Members of the Select Subcommittee on the Coronavirus Crisis, *Coronavirus Infections and Deaths Among Meatpacking Workers at Top Five Companies Were Nearly Three Times Higher than Previous Estimates* (Oct. 27, 2021) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2021.10.27%20Meatpacking%20Report.Final_.pdf).

¹²⁴ *The CDC Softened a Report on Meatpacking Safety During the Pandemic. Democrats Say They Want to Know Why*, Washington Post (Sept. 30, 2020) (online at www.washingtonpost.com/business/2020/09/30/cdc-meatpacking-smithfield/).

¹²⁵ *Id.*

¹²⁶ Compare Email from Maggie Seidel, Senior Advisor and Policy Director, Office of Governor Kristi Noem, to Keira Lombardo, Executive Vice President of Corporate Affairs and Compliance, Smithfield Foods (Apr. 21, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000788-802_Redacted.pdf) (HSSCV-Smith 00000788-802) with Email from Kim Malsam-Rysdon, South Dakota Secretary of Health, to Ken Sullivan, Chief Executive Officer, Smithfield Foods (Apr. 23, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000857-73_Redacted.pdf) (HSSCV-Smith 00000857-73).

¹²⁷ Email from Maggie Seidel, Senior Advisor and Policy Director, Office of Governor Kristi Noem, to Keira Lombardo, Executive Vice President of Corporate Affairs and Compliance, Smithfield Foods (Apr. 21, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000788-802_Redacted.pdf) (HSSCV-Smith 00000788-802).

¹²⁸ Email from Michael Grant, Lead, COVID-19 Sioux Falls Field Team, Centers for Disease Control and Prevention, to Russ Dokken, Executive Vice President of U.S. Packaged Meats, Smithfield Foods (Apr. 20, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000804-05_Redacted_.pdf) (HSSCV-Smith 00000804-05).

¹²⁹ Email from Ken Sullivan, Chief Executive Officer, Smithfield Foods, to Greg Ibach, Under Secretary for Marketing and Regulatory Programs, Department of Agriculture (Apr. 21, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000806-820_Redacted_0.pdf) (HSSCV-Smith 00000806-20); Email from Ken Sullivan, Chief Executive Officer, Smithfield Foods, to Blake Rollins, Deputy Chief of Staff, Office of the Secretary, Department of Agriculture (Apr. 22, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000849-51_Redacted.pdf) (HSSCV-Smith 00000849-51).

¹³⁰ Email from Ken Sullivan, Chief Executive Officer, Smithfield Foods, to Greg Ibach, Under Secretary for Marketing and Regulatory Programs, Department of Agriculture (Apr. 21, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000806-820_Redacted_0.pdf) (HSSCV-Smith 00000806-20). See also Memorandum from Majority Staff to Members of the Select Subcommittee on the Coronavirus Crisis, *Coronavirus Infections and Deaths Among Meatpacking Workers at Top Five Companies Were Nearly Three Times Higher than Previous Estimates* (Oct. 27, 2021) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2021.10.27%20Meatpacking%20Report.Final_.pdf).

¹³¹ Centers for Disease Control and Prevention, *COVID-19 Outbreak Among Employees at a Meat Processing Facility — South Dakota, March–April 2020* (Aug. 7, 2020) (online at www.cdc.gov/mmwr/volumes/69/wr/mm6931a2.htm).

¹³² Email from Ken Sullivan, Chief Executive Officer, Smithfield Foods, to Greg Ibach, Under Secretary for Marketing and Regulatory Programs, Department of Agriculture (Apr. 21, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000806-820_Redacted_0.pdf) (HSSCV-Smith 00000806-20). This claim may be partially attributable to Governor Noem, who reportedly said in connection with the Sioux Falls outbreak that 99% of the coronavirus infections started at home. See *Immigrant Meatpackers Say They're Being Blamed for Spread of COVID-19*, National Public Radio (Aug. 10, 2020) (online at www.npr.org/2020/08/10/900766712/immigrant-meatpackers-say-theyre-being-blamed-for-spread-of-covid-19). Smithfield workers accounted for over half of all coronavirus cases in South Dakota as of April 17, 2020, suggesting this claim is false. See *Smithfield Crisis Exacerbated by Chinese Ownership, Expert*

Says, South Dakota Public Broadcasting (Apr. 17, 2020) (online at <https://listen.sdpb.org/news/2020-04-17/smithfield-crisis-exacerbated-by-chinese-ownership-expert-says>).

¹³³ Email from Michael Skahill, Vice President of Government Affairs, Smithfield Foods, to Christopher Armstrong, Holland and Knight LLP (Apr. 22, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000852-53_Redacted.pdf) (HSSCV-Smith 00000852-53); Email from Christopher Armstrong, Holland and Knight LLP, to Russ Dokken, Executive Vice President of U.S. Packaged Meats, Smithfield Foods (Apr. 22, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000852-53_Redacted.pdf) (HSSCV-Smith 00000852-53).

¹³⁴ Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Henry Walke (Feb. 18, 2022) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022.02.18%20SSCC%20Interview%20of%20Henry%20Walke%2C%20M%20%5BExcerpted%5D.pdf>).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Robert Redfield (Mar. 17, 2022) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Excerpts%20from%20Interview%20of%20R.%20Redfield.pdf>).

¹³⁹ *Id.*

¹⁴⁰ *Compare* Email from Maggie Seidel, Senior Advisor and Policy Director, Office of Governor Kristi Noem, to Keira Lombardo, Executive Vice President of Corporate Affairs and Compliance, Smithfield Foods (Apr. 21, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000788-802_Redacted.pdf) (HSSCV-Smith 00000788-802) *with* Email from Kim Malsam-Rysdon, South Dakota Secretary of Health, to Ken Sullivan, Chief Executive Officer, Smithfield Foods (Apr. 23, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000857-73_Redacted.pdf) (HSSCV-Smith 00000857-73).

¹⁴¹ Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Henry Walke (Feb. 18, 2022) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022.02.18%20SSCC%20Interview%20of%20Henry%20Walke%2C%20M%20%5BExcerpted%5D.pdf>).

¹⁴² Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Robert Redfield (Mar. 17, 2022) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Excerpts%20from%20Interview%20of%20R.%20Redfield.pdf>).

¹⁴³ Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Henry Walke (Feb. 18, 2022) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022.02.18%20SSCC%20Interview%20of%20Henry%20Walke%2C%20M%20%5BExcerpted%5D.pdf>).

¹⁴⁴ Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Robert Redfield (Mar. 17, 2022) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Excerpts%20from%20Interview%20of%20R.%20Redfield.pdf>).

¹⁴⁵ *See* Section II(b). Director Redfield’s decision also appears to have been driven by another mistaken view—once again derived from meatpacking industry talking points—that “the real risk to these workers was not because they were in the plant” but rather because “these workers lived in congregate settings” susceptible to community spread. *See* Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Robert Redfield (Mar. 17, 2022) (online at

<https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Excerpts%20from%20Interview%20of%20OR.%20Redfield.pdf>). However, the meatpacking companies were often the ones who decided how these workers were housed. See Transcribed Interview of Robert Redfield (Mar. 17, 2022) (“I came to the conclusion the plant wasn’t my problem, *how they housed these people was the problem*, the vans was the problem.”) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Excerpts%20from%20Interview%20of%20OR.%20Redfield.pdf>) (emphasis added). In any case, whatever degree of risk congregate living settings may have contributed to viral spread within workers’ families, this does not undermine the acute risks of coronavirus transmission between meatpacking workers (and thus across workers’ households) working side-by-side in crowded plants posed by plant conditions. See Memorandum from Majority Staff to Members of the Select Subcommittee on the Coronavirus Crisis, *Coronavirus Infections and Deaths Among Meatpacking Workers at Top Five Companies Were Nearly Three Times Higher than Previous Estimates* (Oct. 27, 2021) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2021.10.27%20Meatpacking%20Report.Final_.pdf); Department of Agriculture, Economic Research Service, *COVID-19 Working Paper: Meatpacking Working Conditions and the Spread of COVID-19* (Sept. 27, 2021) (online at www.ers.usda.gov/webdocs/publications/102206/ap-092.pdf?v=1357.4).

¹⁴⁶ Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Robert Redfield (Mar. 17, 2022) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Excerpts%20from%20Interview%20of%20OR.%20Redfield.pdf>).

¹⁴⁷ *Id.*

¹⁴⁸ Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Henry Walke (Feb. 18, 2022) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022.02.18%20SSCC%20Interview%20of%20Henry%20Walke%2C%20M%20%5BExcerpted%5D.pdf>).

¹⁴⁹ Memorandum from Majority Staff to Members of the Select Subcommittee on the Coronavirus Crisis, *Coronavirus Infections and Deaths Among Meatpacking Workers at Top Five Companies Were Nearly Three Times Higher than Previous Estimates* (Oct. 27, 2021) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2021.10.27%20Meatpacking%20Report.Final_.pdf).

¹⁵⁰ Email from Michael Grant, Lead, COVID-19 Sioux Falls Field Team, Centers for Disease Control and Prevention, to Russ Dokken, Executive Vice President of U.S. Packaged Meats, Smithfield Foods (Apr. 20, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000804-05_Redacted_.pdf) (HSSCV-Smith 00000804-05).

¹⁵¹ Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Henry Walke (Feb. 18, 2022) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022.02.18%20SSCC%20Interview%20of%20Henry%20Walke%2C%20M%20%5BExcerpted%5D.pdf>).

¹⁵² *Id.*

¹⁵³ See *Little Enforcement in Place to Protect Meatpacking Workers from Coronavirus; New OSHA, CDC Guidance Isn’t Mandatory*, Des Moines Register (May 21, 2020) (online at www.desmoinesregister.com/story/news/politics/2020/05/21/osha-cdc-meatpacking-safety-recommendations-largely-unenforceable/5239950002/); Centers for Disease Control and Prevention, *Meat and Poultry Processing Workers and Employers: Interim Guidance from CDC and the Occupational Safety and Health Administration* (Apr. 26, 2020) (online at <https://web.archive.org/web/20200426214338/https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html>).

¹⁵⁴ Email from Douglas Clemens, Chief Executive Officer and Chairman of the Board, Clemens Food Group, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute (Apr. 26, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025709-11_Redacted.pdf) (NAMI00025709).

¹⁵⁵ Email from KatieRose McCullough, Director of Scientific and Regulatory Affairs, North American Meat Institute, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute, *et al.* (Apr. 26, 2020)

(https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00012422_Redacted_.pdf) (NAMI00012422).

¹⁵⁶ Select Subcommittee on the Coronavirus Crisis, Transcribed Interview of Henry Walke (Feb. 18, 2022) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022.02.18%20SSCC%20Interview%20of%20Henry%20Walke%2C%20M%20%5BExcerpted%5D.pdf>).

¹⁵⁷ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Andre Nogueira, Chief Executive Officer, JBS USA Holdings, Inc., *et al.* (Apr. 26, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025716_Redacted.pdf) (NAMI00025716); Email from Douglas Clemens, Chief Executive Officer and Chairman of the Board, Clemens Food Group, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute (Apr. 26, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025709-11_Redacted.pdf) (NAMI00025709); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Colin Woodall, National Cattlemen’s Beef Association, *et al.* (Apr. 27, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025756_Redacted.pdf) (NAMI00025756); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Paul Schlegel, Vice President of Public Affairs, American Farm Bureau Federation (Apr. 27, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025746-47_Redacted.pdf) (NAMI00025746-47); Email from Mark Dopp, General Counsel, North American Meat Institute, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute, *et al.* (Apr. 26, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00072067_Redacted.pdf) (NAMI00072067); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mark Dopp, General Counsel, North American Meat Institute (Apr. 26, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00072067_Redacted.pdf) (NAMI00072067).

¹⁵⁸ Emails between Nathan Fretz, Vice President of Legislative Affairs, North American Meat Institute, and Sarah Little, Director of Communications, North American Meat Institute (Apr. 28, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00054136-37_Redacted.pdf) (NAMI00054136-37).

¹⁵⁹ Email from Alison Bodor, President and Chief Executive Officer, American Frozen Foods Institute, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute (May 11, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00026805_Redacted.pdf) (NAMI00026805).

¹⁶⁰ Emails between, Ashley Peterson, Senior Vice President of Scientific and Regulatory Affairs, National Chicken Council, and Mark Kaminsky, Chief Operating Officer, Koch Foods (May 22, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NCC-00003971_Redacted.pdf) (NCC-00003971).

¹⁶¹ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Jonathan Hickey, Special Advisor for Domestic Policy, Office of the Vice President, White House (Apr. 9, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024108_Redacted.pdf) (NAMI00024108). *See also* Email from Jonathan Hickey, Special Advisor for Domestic Policy, Office of the Vice President, White House, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute (Apr. 10, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024159-66_Redacted.pdf) (NAMI00024159-66).

¹⁶² *Id.*

¹⁶³ *Coronavirus Outbreak at Greeley Plant Forces Two-week Closure, Burdens Local Health Facilities*, The Denver Post (Apr. 13, 2020) (online at www.denverpost.com/2020/04/13/coronavirus-jbs-greeley-plant-closure/).

¹⁶⁴ Emails between Jonathan Hickey, Special Advisor for Domestic Policy, Office of the Vice President, White House, and Julie Anna Potts, Chief Executive Officer, North American Meat Institute (Apr. 10, 2020) (online

at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024159-66_Redacted.pdf) (NAMI00024159-66).

¹⁶⁵ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Jonathan Hickey, Special Advisor for Domestic Policy, Office of the Vice President, White House (Apr. 10, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024233_Redacted.pdf) (NAMI00024233).

¹⁶⁶ *He Fled Congo to Work in a U.S. Meat Plant. Then He—and Hundreds of His Co-workers—Got the Coronavirus*, Washington Post (Aug. 6, 2020) (online at www.washingtonpost.com/national/he-fled-the-congo-to-work-in-a-us-meat-plant-then-he--and-hundreds-of-his-co-workers--got-the-coronavirus/2020/08/06/11e7e13e-c526-11ea-8ffe-372be8d82298_story.html).

¹⁶⁷ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Eric Zito, Vice President of Membership and Exposition Services, North American Meat Institute, *et al.* (Apr. 12, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00018786-87_Redacted.pdf) (NAMI00018786-87).

¹⁶⁸ Emails between Ken Sullivan, Chief Executive Officer, Smithfield Foods, and Julie Anna Potts, Chief Executive Officer, North American Meat Institute, *et al.* (Apr. 12, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/TYSON-SSCC-00033562-65_Redacted.pdf) (TYSON-SSCC-00033562-65).

¹⁶⁹ Email from Mark Dopp, General Counsel, North American Meat Institute, to Blake Rollins, Deputy Chief of Staff, Office of the Secretary, Department of Agriculture (Apr. 14, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024564-65_Redacted.pdf) (NAMI00024564-65). *See also* Email from Ken Sullivan, Chief Executive Officer, Smithfield Foods, to Noel White, Chief Executive Officer, Tyson Foods, Inc., *et al.* (Apr. 12, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000737-38_Redacted.pdf) (HSSCV-Smith 00000737-38).

¹⁷⁰ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Apr. 14, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00046925-26_Redacted.pdf) (NAMI00046925-26).

¹⁷¹ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Neil Dirks, Chief Executive Officer, National Pork Producers Council, *et al.* (Apr. 15, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024690-91_Redacted.pdf) (NAMI00024690-91).

¹⁷² Email from Mindy Brashears, Under Secretary for Food Safety, Department of Agriculture, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute, *et al.* (May 15, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00027041_Redacted.pdf) (NAMI00027041).

¹⁷³ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Elizabeth Avery, President and Chief Executive Officer, SNAC International (May 15, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00027065-70_Redacted.pdf) (NAMI00027065-70). *See also* Section III(b)(iii) & (v).

¹⁷⁴ Emails between Mark Dopp, General Counsel, North American Meat Institute, and Shawna Newsome, Chief of Staff, Office of Food Safety, Department of Agriculture (Aug. 5, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00049771-72_Redacted.pdf) (NAMI00049771-72).

¹⁷⁵ Email from Shawna Newsome, Chief of Staff, Office of Food Safety, Department of Agriculture, to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Aug. 6, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00049790-92_Redacted.pdf) (NAMI00049790-92).

¹⁷⁶ Survey Call by Majority Staff, Select Subcommittee on the Coronavirus Crisis, with Merced County Department of Public Health (Aug. 30, 2021); *After Eight Workers Die of COVID-19, Officials Want Merced County Foster Farms Plant Closed*, Los Angeles Times (Aug. 27, 2020) (online at www.latimes.com/california/story/2020-08-27/a-foster-farms-plant-is-home-to-one-of-californias-worst-covid-19-outbreaks-officials-want-it-shut-down).

¹⁷⁷ U.S. Government Tried to “Intimidate” California County Health Department to Keep Poultry Plant Open After COVID Deaths, Director Says, CBS News (Oct. 1, 2020) (online at www.cbsnews.com/news/foster-farms-california-covid-19-deaths-us-government/).

¹⁷⁸ *Id.*

¹⁷⁹ Survey Call by Majority Staff, Select Subcommittee on the Coronavirus Crisis, with Merced County Department of Public Health (Aug. 30, 2021).

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *After Eight Workers Die of COVID-19, Officials Want Merced County Foster Farms Plant Closed*, Los Angeles Times (Aug. 27, 2020) (online at www.latimes.com/california/story/2020-08-27/a-foster-farms-plant-is-home-to-one-of-californias-worst-covid-19-outbreaks-officials-want-it-shut-down).

¹⁸³ Survey Call by Majority Staff, Select Subcommittee on the Coronavirus Crisis, with Merced County Department of Public Health (Aug. 30, 2021).

¹⁸⁴ Email from Ashley Peterson, Senior Vice President of Scientific and Regulatory Affairs, National Chicken Council, to Robert O’Connor, Senior Vice President, Foster Farms (Aug. 27, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NCC-00003938-41_Redacted.pdf) (NCC-00003938-41); *see also* Email from Ashley Peterson, Senior Vice President of Scientific and Regulatory Affairs, National Chicken Council, to Mindy Brashears, Under Secretary for Food Safety, Department of Agriculture (Aug. 27, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NCC-00000304-12_Redacted.pdf) (NCC-00000304-12).

¹⁸⁵ Email from Ashley Peterson, Senior Vice President of Scientific and Regulatory Affairs, National Chicken Council, to Robert O’Connor, Senior Vice President, Foster Farms (Aug. 27, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NCC-00003947-52_Redacted.pdf) (NCC-00003947-52).

¹⁸⁶ Survey Call by Majority Staff, Select Subcommittee on the Coronavirus Crisis, with Merced County Department of Public Health (Aug. 30, 2021).

¹⁸⁷ *See* Section III(b)(v).

¹⁸⁸ Survey Call by Majority Staff, Select Subcommittee on the Coronavirus Crisis, with Merced County Department of Public Health (Aug. 30, 2021).

¹⁸⁹ Survey Call by Majority Staff, Select Subcommittee on the Coronavirus Crisis, to Merced County Department of Public Health (Aug. 30, 2021); Survey Call by Majority Staff, Select Subcommittee on the Coronavirus Crisis, to Merced County Department of Public Health (Mar. 8, 2022).

¹⁹⁰ *Id.*

¹⁹¹ Survey Call by Majority Staff, Select Subcommittee on the Coronavirus Crisis, to Merced County Department of Public Health (Aug. 30, 2021).

¹⁹² *Compare* Email from Jane Duke, Vice President and Associate General Counsel, Tyson Foods, Inc., to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Apr. 13, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00046974-76_Redacted.pdf) (NAMI00046974-76) *with* Exec. Order No. 13917, 85 Fed. Reg. 26313 (May 1, 2020). The meatpacking industry’s draft “order[ed] that critical infrastructure food companies continue their operations to the fullest extent possible,” while the Executive Order ultimately issued delegated the President’s authority under the DPA to the Secretary of Agriculture, to “ensure the continued supply of meat and poultry, consistent with the guidance for the operations of meat and poultry processing facilities jointly issued by the CDC and OSHA.” The Executive Order that was

ultimately issued also adopted the themes of meatpacking operations being essential to supporting the country and being impacted negatively by coronavirus mitigation measures, which were also set forth in the industry draft provided to USDA.

¹⁹³ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Eric Zito, Vice President of Membership and Exposition Services, North American Meat Institute, *et al.* (Apr. 11, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00018786-87_Redacted.pdf) (NAMI00018786-87).

¹⁹⁴ Letter from Outside Counsel, JBS USA Holdings, Inc., to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis (Sept. 10, 2021) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/JBS%202021.09.10%20WH%20Production%20Letter%20to%20SSCC.pdf>); Letter from Outside Counsel, JBS USA Holdings, Inc., to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis (May 28, 2021) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/JBS%202021.05.28%20Production%20Letter.pdf>); Letter from Outside Counsel, Tyson Foods, Inc., to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, (Apr. 30, 2021) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Tyson%202021.04.30%20Letter%20to%20House%20SSCC.PDF>); HSSCV-Smith 00000582-84 (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000582-84.pdf>).

¹⁹⁵ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Eric Zito, Vice President of Membership and Exposition Services, North American Meat Institute, *et al.* (Apr. 11, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00018786-87_Redacted.pdf) (NAMI00018786-87).

¹⁹⁶ Memorandum from Majority Staff to Members of the Select Subcommittee on the Coronavirus Crisis, Coronavirus Infections and Deaths Among Meatpacking Workers at Top Five Companies Were Nearly Three Times Higher than Previous Estimates (Oct. 27, 2021) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2021.10.27%20Meatpacking%20Report.Final_.pdf).

¹⁹⁷ Email from Ken Sullivan, Chief Executive Officer, Smithfield Foods, to Noel White, Chief Executive Officer, Tyson Foods, Inc. (Apr. 11, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000736_Redacted.pdf) (HSSCV-Smith 00000736). *See also Smithfield Temporarily Shuts Pork Plant Due to Coronavirus*, Associated Press (Apr. 9, 2020) (online at <https://apnews.com/article/sioux-falls-south-dakota-virus-outbreak-us-news-ia-state-wire-8035761ce47cbe3796c19d6bb900547a>).

¹⁹⁸ Email from Ken Sullivan, Chief Executive Officer, Smithfield Foods, to Noel White, Chief Executive Officer, Tyson Foods, Inc., *et al.* (Apr. 12, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000737-38_Redacted.pdf) (HSSCV-Smith 00000737-38).

¹⁹⁹ Email from Jane Duke, Vice President and Associate General Counsel, Tyson Foods, Inc., to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Apr. 13, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00046974-76_Redacted.pdf) (NAMI00046974-76); Email from Mark Dopp, General Counsel, North American Meat Institute, to Michael Fleming, Smithfield Foods, *et al.* (Apr. 14, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00049421-36_Redacted.pdf) (NAMI00049421-36).

²⁰⁰ Email from Jane Duke, Vice President and Associate General Counsel, Tyson Foods, Inc., to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Apr. 13, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00046974-76_Redacted.pdf) (NAMI00046974-76).

²⁰¹ *See infra*. *See also* Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Charles Penry, Vice President of Federal Government Relations, Tyson Foods, Inc. (Apr. 16, 2020)

(online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024792_Redacted.pdf) (NAMI00024792).

²⁰² Email from Jane Duke, Vice President and Associate General Counsel, Tyson Foods, Inc., to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Apr. 13, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00046853-61_Redacted.pdf) (NAMI00046853-61) (emphasis in original).

²⁰³ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Michael Townsley, Bob Evans Foods (Apr. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024801_Redacted.pdf) (NAMI00024801).

²⁰⁴ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Tim Klein, Chief Executive Officer, National Beef Packing Company LLC (Apr. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024711-12_Redacted.pdf) (NAMI00024711-12).

²⁰⁵ Email from Charles Penry, Vice President of Federal Government Relations, Tyson Foods, Inc., to Julie Anna Potts, Chief Executive Officer, North American Meat Institute (Apr. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024792_Redacted.pdf) (NAMI00024792).

²⁰⁶ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Neil Dirks, Chief Executive Officer, National Pork Producers Council (Apr. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024805-06_Redacted.pdf) (NAMI00024805-06); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Tim Klein, Chief Executive Officer, National Beef Packing Company LLC (Mar. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024711-12_Redacted.pdf) (NAMI00024711-12); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Colin Woodall, National Cattlemen's Beef Association (Apr. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024813-14_Redacted.pdf) (NAMI00024813-14); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Dale Moore, American Farm Bureau Federation (Apr. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024815-16_Redacted.pdf) (NAMI00024815-16); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mike Brown, National Chicken Council, *et al.* (Apr. 17, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024817-18_Redacted.pdf) (NAMI00024817-18); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Michael Townsley, Bob Evans Foods (Apr. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024801_Redacted.pdf) (NAMI00024801); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Charles Penry, Vice President of Federal Government Relations, Tyson Foods, Inc. (Apr. 16, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024792_Redacted.pdf) (NAMI00024792).

²⁰⁷ Email from Sarah Little, Vice President of Communications, North American Meat Institute, to Terri Moore, American Farm Bureau Federation (Apr. 29, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00072647-48_Redacted.pdf) (NAMI00072647-48).

²⁰⁸ Email from Nick Merigglioli, Johnsonville LLC, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute (Apr. 17, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024909-10_Redacted.pdf) (NAMI00024909-10).

²⁰⁹ Email from Dale Moore, American Farm Bureau Federation to Julie Anna Potts, Chief Executive Officer, North American Meat Institute (Apr. 17, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024916-17_Redacted.pdf) (NAMI00024916-17).

²¹⁰ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Noel White, Chief Executive Officer, Tyson Foods, Inc., *et al.* (Apr. 17, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024930-32_Redacted.pdf) (NAMI00024930-32).

²¹¹ Email from Noel White, Chief Executive Officer, Tyson Foods, Inc., to Julie Anna Potts, Chief Executive Officer, North American Meat Institute, *et al.* (Apr. 17, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024930-32_Redacted.pdf) (NAMI00024930-32) (Tyson’s CEO agreed for the time being with this “softer” approach, but noted they would “need to revert to the ‘harder’ approach by early next week” if it did not yield results, while Smithfield’s CEO responded that he did not “believe this will have the desired effect,” but was “in favor of sending something, anything, immediately.”); Email from Ken Sullivan, Chief Executive Officer, Smithfield Foods, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute, *et al.* (Apr. 17, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000749-51_Redacted.pdf) (HSSCV-Smith 00000749-51) (Smithfield CEO saying “I’ve voiced this already, but I don’t think the letter is strong enough. We are at the precipice . . . I submit the attached alternative, sounding a sharper warning. Indicate which you prefer asap.”).

²¹² Email from Christopher Chaffee, Associate Director, Office of Public Liaison, White House, to Dale Moore, American Farm Bureau Federation, *et al.* (Apr. 18, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024975_Redacted.pdf) (NAMI00024975); Email from Dale Moore, American Farm Bureau Federation to Joby Young, Chief of Staff, Office of the Secretary, Department of Agriculture, *et al.* (Apr. 18, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024964-66_Redacted.pdf) (NAMI00024964-66); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Apr. 18, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00024967_Redacted.pdf) (NAMI00024967).

²¹³ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Noel White, Chief Executive Officer, Tyson Foods, Inc., *et al.* (Apr. 18, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000761-62_Redacted.pdf) (HSSCV-Smith 00000761-62).

²¹⁴ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Noel White, Chief Executive Officer, Tyson Foods, Inc. (Apr. 19, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/TYSON-SSCC-00033631-32_Redacted.pdf) (TYSON-SSCC-00033631-32).

²¹⁵ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Neil Dirks, Chief Executive Officer, National Pork Producers Council, *et al.* (Apr. 22, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025202-03_Redacted.pdf) (NAMI00025202-03); Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Warren Panico, President and Chief Executive Officer, Bar-S Foods Co., *et al.* (Apr. 21, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000763_Redacted.pdf) (HSSCV-Smith 00000763).

²¹⁶ *Emails Show the Meatpacking Industry Drafted an Executive Order to Keep Plants Open*, ProPublica (Sept. 14, 2020) (online at www.propublica.org/article/emails-show-the-meatpacking-industry-drafted-an-executive-order-to-keep-plants-open). *See also* Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Stephen Censky, Deputy Secretary of Agriculture, Department of Agriculture, *et al.* (Apr. 21, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00052977-79_Redacted.pdf) (NAMI00052977-79).

²¹⁷ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Noel White, Chief Executive Officer, Tyson Foods, Inc., *et al.* (Apr. 18, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025161-62_Redacted.pdf) (NAMI00025161-62).

²¹⁸ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Neil Dirks, Chief Executive Officer, National Pork Producers Council, *et al.* (Apr. 22, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025202-03_Redacted.pdf) (NAMI00025202-03).

²¹⁹ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Andre Nogueira, Chief Executive Officer, JBS USA Holdings, Inc., *et al.* (Apr. 23, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025346-47_Redacted.pdf) (NAMI00025346-47); Email from Mark Dopp, General Counsel, North American Meat Institute, to Neil Dirks, Chief Executive Officer, National Pork Producers Council, *et al.* (Apr. 22, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00047171-75_Redacted.pdf) (NAMI00047171-175); Email from Ken Sullivan, Chief Executive Officer, Smithfield Foods, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute, *et al.* (Apr. 25, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025671-72_Redacted.pdf) (NAMI00025671-72).

²²⁰ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Andre Nogueira, Chief Executive Officer, JBS USA Holdings, Inc., *et al.* (Apr. 23, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025346-47_Redacted.pdf) (NAMI00025346-47); Email from Christopher Chaffee, Associate Director, Office of Public Liaison, White House, to Cameron Bruett, Head of Corporate Affairs, JBS USA Holdings, Inc. (Apr. 23, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/JBS-SSCC_000003562-63_Redacted.pdf) (JBS-SSCC_000003562-63); Email from Michael Skahill, Vice President of Government Affairs, Smithfield Foods, to Ken Sullivan, Chief Executive Officer, Smithfield Foods, *et al.* (Apr. 23, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000772-73_Redacted.pdf) (HSSCV-Smith 00000772-73).

²²¹ Email from Julie Anna Potts, Chief Executive Officer, North American Meat Institute, to Tim Klein, Chief Executive Officer, National Beef Packing Company LLC, *et al.* (Apr. 23, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000771_Redacted.pdf) (HSSCV-Smith 00000771).

²²² Email from Ken Sullivan, Chief Executive Officer, Smithfield Foods, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute, *et al.* (Apr. 25, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025671-72_Redacted.pdf) (NAMI00025671-72).

²²³ Email from Eliza Thurston, Office of the Chief of Staff, White House, to Cynthia Edwards, Executive Assistant, Smithfield Foods (Apr. 27, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000777_Redacted.pdf) (HSSCV-Smith 00000777).

²²⁴ Email from Marc Short, Chief of Staff, Office of the Vice President, White House, to Russel Vought, Acting Director, Office of Management and Budget (Apr. 28, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/OMB-SSCC-0010771-72_Redacted.pdf) (OMB-SSCC-0010771-72).

²²⁵ Email from Noel White, Chief Executive Officer, Tyson Foods, Inc., to Julie Anna Potts, Chief Executive Officer, North American Meat Institute (Apr. 27, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00025828_Redacted.pdf) (NAMI00025828).

²²⁶ Email from Catherine Keller, Deputy White House Staff Secretary, White House, to Ken Sullivan, Chief Executive Officer, Smithfield Foods, *et al.* (Apr. 28, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000786_Redacted.pdf) (HSSCV-Smith 00000786).

²²⁷ Email from Ken Sullivan, Chief Executive Officer, Smithfield Foods, to Andre Nogueira, Chief Executive Officer, JBS USA Holdings, Inc., *et al.* (Apr. 28, 2020) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV->

Smith%2000000780_Redacted.pdf) (HSSCV-Smith 00000780); Email from Christopher Chaffee, Associate Director, Office of Public Liaison, White House, to Ken Sullivan, Chief Executive Officer, Smithfield Foods, *et al.* (Apr. 28, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000781-84_Redacted.pdf) (HSSCV-Smith 00000781-84); Email from Cassidy Hutchinson, Office of the Chief of Staff, White House, to Ken Sullivan, Chief Executive Officer, Smithfield Foods, *et al.* (Apr. 29, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/HSSCV-Smith%2000000785_Redacted.pdf) (HSSCV-Smith 00000785).

²²⁸ See, e.g., Email from KatieRose McCullough, Director of Scientific and Regulatory Affairs, North American Meat Institute, to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Apr. 29, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00026227-28_Redacted.pdf) (NAMI00026227-28); Email from Ashley Peterson, Senior Vice President of Scientific and Regulatory Affairs, National Chicken Council, to Robert O'Connor, Senior Vice President, Foster Farms (Aug. 27, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NCC-00003938-41_Redacted.pdf) (NCC-00003938-41).

²²⁹ Exec. Order No. 13917, 85 Fed. Reg. 26313 (May 1, 2020). See also, e.g., Congressional Research Service, *Executive Order on the Food Supply Chain and the Defense Production Act: FAQs* (May 1, 2020) (online at <https://crsreports.congress.gov/product/pdf/LSB/LSB10456>) (“Based on a plain reading of the text, the EO itself does not order any plants to remain open. Rather, it permits the Secretary to issue regulations, orders, or take other actions to address continued operation of processors, while also ensuring that processors adhere to the CDC/OSHA guidance.”). While Secretary Perdue told various state governors in a May 5, 2020 letter that he had “directed meat and poultry processors to utilize the” CDC/OSHA guidance “to implement practices and protocols for staying operational or resuming operations” and submit timetables for resuming operations, this informal action—unaccompanied by any official rulemaking, policy, or other deliberative agency action—likely did not suffice to operationalize USDA and meatpacking companies’ goals of pre-empting state and local health authorities. See Letter from Secretary Sonny Perdue, Department of Agriculture, *Re: Executive Order Delegating Authority Under the Defense Production Act with Respect to the Food Supply Chain Resources During the National Emergency Caused by the Outbreak of COVID-19* (May 5, 2020) (online at www.usda.gov/sites/default/files/documents/governor-letters-covid.pdf).

²³⁰ Briefing by Food Safety and Inspection Service, Department of Agriculture, to Staff, Select Subcommittee on the Coronavirus Crisis (Jan. 13, 2022); Survey Call by Majority Staff, Select Subcommittee on the Coronavirus Crisis, with Professor Jerold Mande (Jan. 6, 2022).

²³¹ Email from Jane Duke, Vice President and Associate General Counsel, Tyson Foods, Inc., to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Apr. 13, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00046853-61_Redacted.pdf) (NAMI00046853-61).

²³² Email from KatieRose McCullough, Director of Scientific and Regulatory Affairs, North American Meat Institute, to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Apr. 29, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00026227-28_Redacted.pdf) (NAMI00026227-28).

²³³ Survey Call by Majority Staff, Select Subcommittee on the Coronavirus Crisis, with Merced County Department of Public Health (Aug. 30, 2021).

²³⁴ Email from Sarah Little, Vice President of Communications, North American Meat Institute, to Sarah Little, Vice President of Communications, North American Meat Institute, *et al.* (Apr. 29, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00012490-92_Redacted.pdf) (NAMI00012490-92).

²³⁵ Email from Greg Ibach, Under Secretary for Marketing and Regulatory Programs, Department of Agriculture, to Julie Anna Potts, Chief Executive Officer, North American Meat Institute (May 6, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00026608-32_Redacted.pdf) (NAMI00026608-32).

²³⁶ Email from Katie Smith, State Government Affairs Director, Cargill, Inc., to Deanna Petersen, Senior Director of Global Communications, Cargill, Inc., *et al.* (May 6, 2020) (online at

https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/CMS-HSSC-000731-33_Redacted.pdf) (CMS-HSSC-000731-33).

²³⁷ See, e.g., Email from Ashley Peterson, Senior Vice President of Scientific and Regulatory Affairs, National Chicken Council, to Robert O'Connor, Senior Vice President, Foster Farms (Aug. 27, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NCC-00003938-41_Redacted.pdf) (NCC-00003938-41); Email from Ashley Peterson, Senior Vice President of Scientific and Regulatory Affairs, National Chicken Council, to Mindy Brashears, Under Secretary for Food Safety, Department of Agriculture (Aug. 27, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NCC-00000304-12_Redacted.pdf) (NCC-00000304-12); Email from KatieRose McCullough, Director of Scientific and Regulatory Affairs, North American Meat Institute, to Mark Dopp, General Counsel, North American Meat Institute, *et al.* (Apr. 29, 2020) (online at https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/NAMI00026227-28_Redacted.pdf) (NAMI00026227-28).