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# REALITY★CHECK

## Staffing issues still plague the investigative unit at Cal-OSHA, imperiling workers

BY JOE RUBIN

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Julio Alfaro, a former senior criminal investigator for the Cal/OSHA Bureau of Investigation, speaks in May 2024 about the problems he found at the agency due to staffing shortages.

BY PAUL KITAGAKI JR.

***Reality Check** is a [Bee series](#) holding officials and organizations accountable and shining a light on their decisions. Have a tip? Email [realitycheck@sacbee.com](mailto:realitycheck@sacbee.com).*

“No one ever expects their co-worker to come to work and be killed in an accident on the job.”

That is an obvious observation from Julio Alfaro, a former senior criminal investigator for the Cal-OSHA Bureau of Investigation. It is a small but important unit tasked with investigating workplace grievous injuries and death as a result of criminal negligence.

But what workers do expect is a thorough investigation to ensure safety prevails the next time.

“Ideally,” Alfaro said, “we should show up if the same death or serious accident occurs and start gathering information. It’s similar to how a detective or CSI works.

But Alfaro said that has rarely been the case because of the current staffing.

The BOI is empowered to recommend manslaughter and violations of [Labor Code 6425](#), which makes criminal negligence related to worker deaths and accidents a felony and allows for imprisonment for employers up to three years, depending on the severity of the negligence, and with fines up to \$3.5 million.

But because of a severe staffing shortage at the BOI, it’s a tool that is rarely wielded despite its investigators’ protests dating back to at least 2017.

Since 2017, Alfaro had been the only criminal investigator assigned to Northern California, a 700-mile-long territory that stretches from the Oregon border to Fresno. It was allotted at least four investigators. Two investigators were assigned to Southern California, an area with a population of 23 million.

In 2018, after Alfaro and another whistleblower complained because of the staffing shortage they could not adequately investigate worker deaths, Cal-OSHA spokeswoman Erika Monteroza told the trade publication Inside Cal-OSHA that the agency “values the BOI” and that it was working on filling vacant positions.

Since then the staffing has only grown worse, declining from three to two, to just one investigator for the entire state since March when Alfaro resigned to take another job as a criminal investigator.

This is now worse than when The Sacramento Bee [published an investigation](#) in February detailing the overall staffing shortages at Cal-OSHA and how they endanger the state’s 18 million workers. [Since then](#), the agency has posted eight job openings at the BOI.

Cal-OSHA has been under further scrutiny following a March legislative hearing that resulted in a referral to California’s state auditor.

“The pervasive problems within Cal/OSHA do not only affect farmworkers,” Assemblywoman Liz Ortega, D-Hayward, wrote in a letter requesting an audit in March. “These problems are systemic and prevent the division from adequately enforcing labor laws, leaving millions of Californians without support from the state agency that is designed to help them when they face unsafe and hazardous working conditions...”

The worker protection agency said that it is making progress.

“Cal/OSHA has been aggressively recruiting to attract qualified candidates to apply for the Bureau of Investigations vacancies,” an agency spokesperson said. “We recently received nearly 100 applications and conducted nearly 50 interviews for vacant Bureau of Investigations positions. We have been interviewing to fill BOI investigator positions in Redding, Sacramento, Oakland, Modesto, Fresno, Bakersfield, Santa Barbara, and San Diego.”

Gov. Gavin Newsom has announced that unfilled positions are to be put on hold because of the budget shortfall. Whether this affects these openings is unclear.

## OUR FINDINGS

Jonathan Raven, the CEO of the [California District Attorneys Association](#) and a former senior DA in Yolo County, said he was concerned about the staffing shortages at the BOI.

“Any delays in the filing of these investigative reports is concerning, as investigations to determine the true facts related to a work-related death or injury rarely get better with time,” he said. “We have all heard the phrase ‘justice too long delayed is justice denied.’”

A Sacramento Bee investigation has found that the staffing shortages at BOI continue to plague the agency in ways Raven expressed his concerns:

Among The Bee’s findings

- Because of chronic understaffing, the BOI has failed to investigate adequately thousands of worker death and injury cases for criminal negligence.
- The case of a refinery worker with burns over 80% of his body from a November explosion at a biodiesel plant in Martinez was never referred to the BOI. The worker is presently a patient at UC Davis’s burn treatment center in Sacramento. A worker familiar with operations at the Marathon biodiesel refiners said the case should be criminal because the company ignored specific warning signs.
- In 2023, a worker died inside a house in Sacramento from carbon monoxide poisoning when a gas-powered paint compressor appears to have been set up inside a sealed home. A BOI investigator said because of a backlog of hundreds of cases the death had not been adequately investigated at the time Alfaro resigned. Cal-OSHA said the investigation remains open.
- The BOI has repeatedly failed to adhere to a legally required deadline to file an annual report. [The 2022 report](#) was not filed until April, 2024, 16 months late. A Cal-OSHA spokesperson blamed computer problems and “numbers not matching” with no further explanation.

- Referrals to prosecutors are nearly 10 times lower in 2022 (the last years an annual report has been filed) than they were a decade ago. In 2013, 29 deaths were referred to prosecutors. In 2022, three were. Cal-OSHA spokesperson Peter Melton said, without providing specific numbers, that BOI referrals are increasing. “BOI referred the same number of cases to prosecuting authorities in the first six months of 2024 as the entire previous year, with more referrals expected this year,” he said.

- Although the most at-risk workers are Latino agricultural workers, the BOI has no investigators in the Central Valley.

- Among the Central Valley cases that had not been investigated as of March: A grandfather drowned in 2023 in a vat of chicken waste at a chicken processing plant near Fresno. The same plant has had other deaths and a slew of injuries, according to a [recent investigation by The Fresno Bee](#).

- Calling the situation urgent, the executive director of UC Merced Labor & Community Center called on Attorney General Rob Bonta to review all worker deaths and critical injuries still within the statute of limitations.

“We should be living in a world where employers know they will be held accountable,” said Stephen Knight, the Executive Director of the influential non-profit Worksafe. “Instead, we’re living in a world where the opposite is true. Employers know they can get away with all kinds of violations.”

Melton offered an explanation for the long-term staffing shortage in an email.

“There are a variety of reasons for Cal/OSHA’s hiring challenges in the Bureau of Investigations, including the department losing its hiring authority for nearly two years, turnover, competing with other employers, and competing enforcement challenges during the COVID 19 pandemic,” he wrote. “Hiring was temporarily paused as the department focused on ensuring all merit hiring requirements were appropriately implemented, and vacancies were filled at a slower rate.”

Alfaro agreed to review several cases, including two connected to Sacramento, for The Bee. He said none has been investigated properly and one was never referred to the BOI.

## ONE CASE: AN OIL EXPLOSION

Since November, Jerome Serrano has been fighting for his life in an intensive care unit at UC Davis Hospital with burns over 80% of his body suffered in an explosion at a bio-diesel plant in Martinez operated by Marathon Oil in November.

A May update on a [GoFundMe site page for Serrano](#) said that two recent skin grafts had failed., and suggested prayers for Serrano.

On May 16, Cal-OSHA's civil division assessed \$185,000 in fines for eight serious accident-related safety violations for the November explosion. Yet the near-fatal accident was never referred to the BOI.

"We are there to try and get justice for people like Mr. Serrano," Alfaro said. "The real criminal thing here is that we never had a chance to examine this because Cal/OSHA simply does not follow the law and refer cases like this to the BOI."

A source who is a senior employee for the Marathon refinery in Martinez and who requested anonymity for fear of retribution, said Marathon executives ignored warning signs about the explosion days before a fireball explosion rocked the East Bay.

"There were telltale signs that would have confirmed the issue that caused the explosion," the source said.

Marathon responded to questions about the accident with a statement noting it was appealing the citations.

"As part of our commitment to continuous improvement, we have been and will continue implementing appropriate prevention and mitigation measures at Martinez Renewables and throughout our operations," the statement said. "We have filed an appeal of the Cal-OSHA citations and are continuing discussions with the agency. The U.S. Chemical Safety Board (CSB) and Marathon also have separate, ongoing investigations. Marathon, along with everyone else involved, wants to thoroughly understand the root cause(s) of last November's incident and any contributing factors, so appropriate steps can continue being taken to prevent a recurrence, not just at Martinez Renewables but throughout the industry."

The prognosis for Serrano is uncertain. He remains in an intensive care burn unit at UC Davis.

Alfaro said this case seemed like an ideal one for the BOI to take on.

“If there was evidence to suggest that Labor Code 6425 had been violated and there was criminal negligence,” Alfaro said, “I’m confident that Contra Costa’s DA Diana Becton would pursue the case. But we never had the chance.”

“Any serious injury where someone is hospitalized should be referred to the BOI,” Alfaro added. “That is just following the law.”

## **ANOTHER CASE: CARBON MONOXIDE POISONING**

Alfaro recalled an April 2023 case in Sacramento last year involving Sabastian Cuz, a 31-year-old painter who died of carbon monoxide poisoning. He was using a gas-powered spray painting machine inside a sealed home in Sacramento’s North Natomas neighborhood. Cuz’s helper was also hospitalized for four days.

A Cal-OSHA field inspector issued \$43,315 in fines against the contractor Luis Moncada, an [online OSHA](#) incident summary says.

“The house had no power, so a gas-powered sprayer had to be used,” the inspector wrote. “The sprayer was inside the house, and the house was taped and sealed for painting. Two employees suffered carbon monoxide poisoning.”

Cuz and his colleague were discovered at 11 a.m. on April 23, 2023. Alfaro said he was not informed until late in the afternoon that day, too late to make it to Sacramento from the Bay Area.

“Our job is akin to a detective or a crime scene investigator, showing up two days later is a problem,” he said. “Of course, having a caseload of 120 cases and not living in Sacramento is a bigger problem.”

Alfaro said that the Cuz case underscores the problem of having a caseload of over 120 cases.

“If I have a manageable caseload, I’m in the hospital interviewing the surviving



worker, canvassing the neighborhood, seeing if security cam footage is available,” he said.

Cal-OSHA said that the Cuz case is still open, but did not provide any details.

## **THE CASE OF JESUS SALAZAR**

All that was visible was a green helmet resting on top of sludge of chicken waste.

Alfaro said he was deeply troubled by the [death of Jesus Salazar](#). The Fresno Bee reported about it in an investigation into worker deaths and injuries at Pitman Farms, which produces [Mary’s Chicken sold at Whole Foods](#) and other upscale markets.

A grandfather, Salazar, 66, drowned in a pool of chicken waste in May 2023 due to a lack of safety protocols, according to a Cal-OSHA inspection report. The company was issued \$56,250 in fines, which they are appealing.

Police photos of the scene obtained by The Fresno Bee show Salazar’s green helmet resting on top of a sludge-like mix of chicken feathers, remains, waste, fat and water in the pit where he died.

The Fresno Bee’s [Melissa Montalvo](#) inquired about the investigation, and a Cal-OSHA spokesperson said in a May 8 email: “All that we can say is that both cases are open in BOI.”

But Alfaro said he knows the case was never investigated. “I read the case file, it was deeply disturbing,” he said.

Ana Padilla, the executive director of UC Merced’s Labor and Community Center, said that the BOI’s understaffing and lack of an investigator in the Central Valley represents a “kind of disregard” for the plight of Latino laborers.

“Agricultural work is some of the most dangerous work when it comes to fatalities,” she said. “Latino workers comprise three out of five deaths in California.”

Padilla said that she views the situation at the BOI as a crisis that needs to be



addressed in two ways.

First, she said that State Attorney General Rob Bonta should conduct a review of all cases still within the statute of limitations.

“This is urgent and there needs to be some kind of mitigative step to ensure that due diligence has occurred in every case,” she said.

Padilla also said an audit should be conducted by the state and perhaps a task force should “determine how we got here, and how the BOI should be structured going forward.”

## **ANNUAL REPORTS DELAYED**

Under California labor code, the bureau must, no later than Feb. 15, annually submit to the division for submission to the director a report on the activities of the bureau.

To try to get a handle on just those numbers, since November, The Bee has been requesting the annual report which should have been posted publicly in February 2023, and for an explanation.

In November Melton said:

“I’m following up on when the 2022 report” will be posted. In December Melton stated that it would be “soon.”

In April: “I have asked Cal/OSHA about the BOI reports and am waiting to hear back.”

When the 2022 report, was finally posted online in late April, Melton sent an explanation:

“Each entity checks accuracy and approves the report before it can be submitted to the Legislature. During the review of the 2022 report, numbers were not matching up as they should. Getting to the bottom of this issue took longer than we would have liked.”

Melton said the problems with the issuing of 2023 BOI report stem from migrating the information to a new system, which resulted in data errors.

“Timely public reporting by government agencies lies at the heart of holding them accountable, “ Worksafe’s Knight said. “This work needs to be prioritized by agency leadership and the excuses being offered are not acceptable.”

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***CORRECTION:*** This story was changed June 23, 2024 to correct the the brand name of the chicken sold by Pitman Farms.

CORRECTED JUN 23, 2024

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Joe Rubin, an Emmy award-winning investigative reporter for The Sacramento Bee, unpacks complex systems with an eye toward holding power to account. Rubin’s reporting for the San Francisco Chronicle, NPR and Capital & Main has led to state laws protecting workers from lead poisoning and has exposed wasteful spending.