

ADEQUACY OF LABOR LAW ENFORCEMENT IN NEW ORLEANS

HEARING

BEFORE THE
SUBCOMMITTEE ON DOMESTIC POLICY
OF THE
COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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ADEQUACY OF LABOR LAW ENFORCEMENT IN NEW ORLEANS

TUESDAY, JUNE 26, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC POLICY,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:05 p.m. in room 2147, Rayburn House Office Building, Hon. Dennis J. Kucinich (chairman of the subcommittee) presiding.

Present: Representatives Kucinich, Watson, Davis of Illinois, Tierney, Issa, Mica, Cannon, and Bilbray.

Staff present: Jaron R. Bourke, staff director; Noura Erakat, counsel; Jean Gosa, clerk; Evan Schlom, intern; Natalie Laber, press secretary, Office of Congressman Dennis J. Kucinich; Kristina Husar, minority professional staff member; John Cuaderes and Larry Brady, minority senior investigators and policy advisors; and Benjamin Chance, minority clerk.

Mr. KUCINICH. The hearing will come to order.

Thank you very much for your attendance here today. This is a meeting of the Domestic Policy Subcommittee of the Oversight and Government Reform Committee.

Today's hearing deals with the adequacy of labor law enforcement in New Orleans. We have an extensive witness list, and in the interest of moving this hearing forward I am going to make my opening statement. The ranking member, my friend from California, Mr. Issa, will be joining us shortly. He just returned from a trip to Lebanon. With his permission communicated through his staff, we are going to start. He will be joining us.

We are also joined by my friend and colleague from Illinois, the Honorable Danny Davis.

I want to welcome all of the guests and people that are testifying here today. This is the third hearing in a series of hearings on the state of urban America. The series intends to take a closer look at American cities, their progress, their problems, and their future. Today's hearing will take a closer look at the adequacy of labor law enforcement in New Orleans in the aftermath of Hurricanes Katrina and Rita. Our previous hearings looked at taxpayer financed debt for the reconstruction of sports stadiums, as well as the sub-prime mortgage industry, the problem with foreclosure, the payday lending industry, and the enforcement of the Community Reinvestment Act.

Today we will examine the adequacy of labor law enforcement in New Orleans post-Katrina. On August 29, 2005, Hurricane Katrina

broke levees and flooded New Orleans with more than 100 billion gallons of water. The flooding killed at least 1,400 people, half of whom were from New Orleans, and left hundreds of thousands of others homeless.

The no-bid, cost-plus contracts that characterized the reconstruction have received some scrutiny. Companies such as AshBritt, Inc.; Bechtel Group, Inc.; Ceres Environmental; Fluor Corp.; and Kellogg Brown & Root, a subsidiary of Halliburton, amongst many others, received billions of dollars for rebuilding New Orleans in much the same process as was followed in Iraq, and many of the same players, as well. But what has not yet received sufficient scrutiny and is the focus of today's hearing is this: in addition to getting cost-plus and no-bid contracts, the corporations received Federal contracts and subcontracts that also benefited from the suspension of many labor laws and the non-enforcement of others.

In the aftermath of the hurricanes, President Bush issued a number of Executive orders to suspend labor laws and documentation requirements. These included the suspension of the Davis-Bacon Act, the suspension of Affirmative Action requirements, the suspension of regular enforcement of Occupational, Safety, and Health Administration standards, and the suspension of documentation requirements by the Department of Homeland Security.

The Department of Labor is the Federal cop in the workplace safety, wages, and hours beat. Where was Sheriff Labor during the early months of the reconstruction?

Here is just one troubling statistic: the number of Department of Labor investigations in New Orleans decreased from 70 in the year before Katrina to 44 in the year after Katrina, a 37 percent decrease.

In the meantime, the crimes of employers against workers stacked up. Matt Redd, a New Orleans real estate mogul, filed with the Department of Labor to sponsor guest workers from countries such as Mexico, but he apparently lied when he stated that these H2-B workers had jobs waiting for them. Rather, he was a human trafficker, and he rented those unfortunate migrant workers out to garbage collection companies and restaurants at an hourly wage. Our witness from the New Orleans Workers' Center for Racial Justice will share the story of their struggle on behalf of the guest workers to redress their grievances with Matt Redd, as well as their struggle to get the Department of Labor to do something about it.

The stories of violations are abundant. Consider the story of Antonia, which has been documented by the Southern Poverty Law Center. There is a picture of Antonia there. Now, Antonia has been living in New Orleans for 4 years. She complained she was never paid for her work.

She recounts, "The company owners kept telling us we were going to receive our checks. First it was Monday, then it was going to be Wednesday. We would wait in a long line for our paychecks from 6 p.m. until midnight or 2 a.m., after working all day. When my turn arrived to get my check, I had already been working 2 weeks, and I was angry because I hadn't been paid. I had been working to make money in order to buy food. It was Christmas time. And after not being paid, I went to New York to visit my chil-

dren. I had to go there without a cent. Now, 2 months later, I still haven't received a single check for that work."

Unfortunately, Antonia's story is not unique. Today our witness, Mr. Jeffrey Steele, has a very similar story to recount. Part of the problem seems to be that the Department of Labor was slow to adapt to the need and to respond to labor abuses against a new immigrant population. For instance, our investigation has revealed that the New Orleans District Office took 1 year and 4 months after the hurricanes to hire a new Spanish-speaking investigator, bringing the total capacity to two. Nearly 2 years later, the office has only 3 Spanish-speaking investigators out of a total of 12 investigators. At least for workers from Guatemala and Mexico there is a chance of being helped, but for the workers who are coming from Brazil there is not a single Portuguese-speaking investigator on staff. Our witness from the Southern Poverty Law Center will tell us how this shortcoming has affected workers in New Orleans.

Part of the problem seems to reside with the National Department of Labor office. After the hurricanes deprived hundreds of thousands of people of their homes, including most, if not all, of the staff and investigators of the New Orleans Department of Labor office, what supplemental support did the Washington office provide? Our inquiry reveals that Washington sent the first detailed employee to help for a period of 2 weeks nearly 3 months after the hurricanes.

Part of the problem seems to be the administration of the law. Guest workers who came to work in the United States on H2-B visas are susceptible to other labor violations, as well, oftentimes after paying a fee for their visa, after paying for a plane ticket, as well as substantial fee to the labor broker who invited them to work in the United States. They arrive in the United States only to find there is no work for them. In many cases they are subjected to hostile or horrible living conditions, non-payment for overtime, and non-payment at all.

In worst case these guest workers have their passports and visas confiscated by employers, rendering them virtual slaves at the hands of someone who has used legal means to import them into the United States.

Now, the Department of Labor claims that it has little or no authority to act on behalf of H2-B visa holders. Unlike statutes protecting agricultural workers, or H2-A visa holders, no similar legislation exists to protect non-agricultural guest workers. The Department of Labor, which has the authority to grant or deny certificate for a foreign labor contract through its Office of Foreign Labor Certification, cannot do so much as deny certification for an employer who has been prosecuted for labor law violations. Instead, the Department of Homeland Security is granted complete authority over the enforcement of H2-B contract terms.

Now, irrespective of the statutory limitations impeding Department of Labor advocacy on behalf of H2-B workers, the Department of Labor Wage and Hour Division still has the authority and the responsibility to prosecute employers for violations of the Federal Labor Standards Act and the Davis Bacon Act.

The interplay of labor law suspensions, an influx of workers, huge contractors, and non-enforcement of labor law created an en-

vironment, according to some of our witnesses, of virtual lawlessness in New Orleans, an environment they have described to us as a wild, wild west.

Today I hope we can discover why and how this occurred and, in hearing from the witnesses, perhaps develop a path toward addressing these issues for the benefit of the people in New Orleans.
[The prepared statement of Hon. Dennis J. Kucinich follows:]

**Opening statement
Dennis Kucinich, Chairman
Domestic Policy Subcommittee
Adequacy of Labor Law Enforcement in New Orleans
Tuesday June 26, 2007
2247 Rayburn HOB – 2:00 P.M.**

Good afternoon and welcome.

This is the third hearing in a series of hearings on the State of Urban America. The series intends to take a closer look at American cities, their progress, their problems, and their future. Today's hearing will take a closer look at the adequacy of labor law enforcement in New Orleans in the aftermath of Hurricanes Katrina and Rita. Our previous hearings looked at taxpayer-financed debt for the construction of sports stadiums as well as the subprime mortgage industry, the problem of foreclosure, the pay day lending industry and the enforcement of the Community Reinvestment Act.

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people, half of whom were from New Orleans, and left hundreds of thousands of others homeless.

The no-bid, cost-plus contracts that characterized the reconstruction have received some scrutiny. Companies such as AshBritt Inc., Bechtel Group Inc., Ceres Environmental, Fluor Corporation, and Kellogg Brown & Root, a subsidiary of Halliburton, amongst many others received billions of dollars for rebuilding New Orleans, in much the same process as was followed in Iraq. And many of the same players as well.

But what has not yet received sufficient scrutiny, and is the focus of today's hearing, is this: in addition to getting cost-plus and no-bid contracts, the corporations receiving federal contracts and subcontracts also benefited from the suspension of many labor laws and the non-enforcement of others.

In the aftermath of the hurricanes, President Bush issued a number of executive orders to suspend labor laws and documentation requirements. These included the suspension of the Davis-Bacon Act, the suspension of Affirmative Action requirements, the suspension of regular enforcement of Occupational, Safety, and Health Administration standards, and

the suspension of documentation requirements by the Department of Homeland Security.

The Department of Labor is the federal cop on the workplace safety, wages, and hours beat. Where was Sherriff Labor during the early months of the reconstruction? Here is just one troubling statistic: the number of DOL investigations in New Orleans decreased from 70 in the year before Katrina to 44 in the year after Katrina, a 37% decrease.

In the meantime, the crimes of employers against workers stacked up. Matt Redd, a New Orleans real estate mogul, filed with the Department of Labor to sponsor guest workers from countries such as Mexico. But he apparently lied when he stated that these “H2B” workers had jobs waiting for them. Rather, he was a human trafficker, and he rented those unfortunate migrant workers out to garbage collection companies and restaurants at an hourly wage. Our witness from the New Orleans Workers’ Center for Racial Justice will share the story of their struggle on behalf of the guest workers to redress their grievances with Matt Redd as well their struggle to get the DOL to do something about it.

The stories of violations are abundant. Consider the story of Antonia which has been documented by the Southern Poverty Law Center [**Point to picture of Antonia on the screen**]. Antonia has been living in New Orleans for four years. She complains that she was never paid for her work. She recounts,

The company owners kept telling us we're going to receive our checks—first it was Monday and then it was going to be Wednesday. We would wait in a long line for our paychecks from 6 p.m. until midnight or 2 a.m. after working all day... When my turn arrived to get my check, I'd already been working two weeks, and I was angry because I hadn't been paid. I'd been working to make money in order to buy food... It was Christmas time and, after not being paid, I went to New York to visit my children. I had to go there without a cent. Now, two months later, I still haven't received a single check for that work.

Unfortunately, Antonia's story is not unique. Today our first witness is Mr. Jeffrey Steele who has a very similar story to recount.

Part of the problem seems to be that the DOL was slow to adapt to the need and to respond to labor abuses against a new immigrant population. For instance, our investigation has revealed that the New Orleans District Office took one year and four months after the hurricanes to hire a new Spanish speaking investigator, bringing the total capacity to 2.

Nearly two years later, the Office only has 3 Spanish speaking investigators out of a total of 12 investigators. At least for workers from Guatemala and Mexico, there is a chance of being helped but for the workers who have come from Brazil—there is not a single Portuguese-speaking investigator on staff. Our witness from the Southern Poverty Law Center will tell us how this shortcoming has affected dozens of workers in New Orleans.

Part of the problem seems to reside with the national DOL office. After the hurricanes deprived hundreds of thousands people of their homes, including most if not all of the staff and investigators of the New Orleans DOL office, what supplemental support did the Washington office provide? Our inquiry reveals that Washington sent the first detailed employee to help, for a period of two weeks, nearly three months after the hurricanes.

Part of the problem seems to be the administration of the law. Guest workers, who come to work in the U.S. on H2-B visas, are susceptible to other labor violations as well. Often times, after paying a fee for their visa, after paying for a plane ticket, as well as a substantial fee to the labor broker who invited them to work in the United States, they arrive in the U.S. only find that there is no work for them. In many cases, they are subjected to horrible living conditions, non-payment for overtime, and non-payment at all. In the worst case, these guest workers have their passports and visas confiscated by employers rendering them virtual slaves at the hands of someone who used legal means to import them into the U.S.

The DOL claims that it has little to no authority to act on behalf of the H2-B visa holders. Unlike statutes protecting agricultural guest workers, or H2-A visa holders, no similar legislation exists to protect non-agricultural guest workers. The DOL, which has the authority to grant or deny certification for a foreign labor contract through its Office of Foreign Labor Certification, can not do so much as deny certification for an employer who has been prosecuted for labor law violations. Instead, the DHS is granted complete authority over the enforcement of H2-B contract terms. Irrespective of the statutory limitations impeding

DOL advocacy on behalf of H2-B workers, the DOL Wage and Hour Division still has the authority and the responsibility to prosecute employers for violations of the Federal Labor Standards Act and the Davis-Bacon Act.

The interplay of labor law suspensions, an influx of workers, huge contractors, and non-enforcement of labor law created an environment, according to some of our witnesses, of virtual lawlessness in New Orleans. An environment they have described to us as the “wild wild west.”

Today, I hope we can discover why and how this occurred.

Mr. KUCINICH. At this time the Chair recognizes Mr. Davis from Illinois.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman. I will submit a statement for the record, but I just want to thank you for calling this hearing.

None of us have ever experienced a tragedy as horrendous and severe as what has taken place in New Orleans, and I think we owe the world the opportunity to get as much as a look at what has taken place after, as we go through the process of rebuilding.

I look forward to the witnesses and again thank you for calling the hearing. I will submit a statement for the record.

[The prepared statement of Hon. Danny K. Davis follows:]

**OPENING STATEMENT
CONGRESSMAN DANNY K. DAVIS
DOMESTIC POLICY SUBCOMMITTEE
OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
“ADEQUACY OF LABOR LAW ENFORCEMENT
IN
NEW ORLEANS”
2247 RAYBURN HOB- 2:00 P.M.
TUESDAY, JUNE 26, 2007**

Thank you Chairman Kucinich and Ranking Member Issa for holding today’s hearing post Hurricane Katrina and federal efforts to repair and reconstruct Louisiana and Mississippi. Long before the onslaught of Hurricane Katrina or the chaos of evacuation, New Orleans’ social infrastructure was failing. News coverage of the overcrowded Superdome and the city’s flooded streets exposed the poverty and vulnerability of many residents, especially African Americans.

Despite federal efforts to open up opportunities for economic security and success, preexisting social dislocations—unemployment; poverty; public schools and quality education; health and safety issues; to name a few—were exacerbated. It’s a common fact that many New Orleanians had trouble becoming and remaining employed before Katrina. As of 2004, the city’s unemployment rate stood at nearly 12 percent, over twice the national rate. While blacks represent over two-thirds of residents, the overall city unemployment rate was 20 percent higher than the national unemployment rate of all black workers. Poverty rates of individuals in the city (at 23 percent) were 10 percentage points higher than the national average in 2004, and median family incomes were only two-thirds of the national average.

Significantly, the precarious employment status of New Orleans residents before the storm at least partly reflected their limited

educational attainment and cognitive skills and the concentration of jobs in lower-wage industries. For example, nearly 13 percent of workers in the city of New Orleans were employed in the relatively low-wage food and accommodations industry, compared with only 9 percent of all workers nationally. Other factors probably reinforced the effects of poor skills and low-paying jobs for New Orleanians. For instance, racial segregation in the New Orleans metropolitan area was among the highest in the South in the 2000 Census. Residential segregation by race is usually associated with low levels of employment and earnings among blacks.

The latter is self-evident as it relates to education as well, where schools located in segregated (distress) communities continue to be overwhelmed by molds, toxic dust, bad sanitation, and other health hazards menacing most flooded neighborhoods. As an advocate of education, I'm deeply disturbed by the current education situation in New Orleans, which is dire. In the central city's Orleans Parish schools, fewer than 20 of approximately 120 school buildings remain usable. The relatively few parents who returned to the city to take jobs and to restore houses are likely to leave their child in safer places.

Significantly, many obstacles to recovery remain:

- The Road Home program will stop accepting applications after July 31, largely due to the estimated \$5 billion shortfall in the program. Neither Congress nor Louisiana legislature have committed to providing additional funding for Road Home.
- Funding for the city's plan to redevelop 17 targeted neighborhoods has yet to be secured, stalling recovery czar Ed Blakely's plans to have "cranes up in the skyline" by September.
- Skyrocketing insurance rates continue to place a tremendous burden on residents and small businesses alike, leading to the

termination of several plans to develop high rises and multi-family dwellings already approved by the state and city.

- Lastly, the adequacy of labor law enforcement on the part of the DOL Wage and Hour Division, specifically, as it relates to an influx of labor from neighboring states and countries.

We're here today to evaluate the consequences that this social and legal environment had on the enforcement of workplace law.

To this end, I welcome today's panelist.

Mr. MILLER. I appreciate it very much.

The Chair welcomes to this hearing Mr. Tierney from Massachusetts. Thank you for being present.

At this point I will make some introductions.

I am going to ask the members of the panel first to rise and to raise your right hands.

It is the policy of our subcommittee to swear in all witnesses before they testify.

[Witnesses sworn.]

Mr. KUCINICH. Let the record reflect that the witnesses answered in the affirmative. Thank you.

I will introduce each speaker, and after the introduction I will ask you to give a brief statement of your testimony and to keep the summary under 5 minutes in duration. I want you to bear in mind that your complete written statement will be included in the hearing record.

We are going to begin with Mr. Jacob Horowitz. Mr. Horowitz is an organizer at the New Orleans Workers Center for Racial Justice, an organization that advocates on behalf of workers in post-Katrina New Orleans. Mr. Horowitz' role at the Workers Center is as organizer with the Alliance of Guest Workers for Dignity, a membership lead organization that defends the rights of guest workers in the Gulf Coast.

Originally from California with a background in union organizing, over the last year Mr. Horowitz has worked directly with hundreds of guest workers in post-Katrina New Orleans and across the Gulf Coast.

I want to thank you very much for being here, and I would ask you to proceed.

Mr. SONI. Thank you, Mr. Chairman. On behalf of Mr. Horowitz, I am speaking. My name is Saket Soni. I am the lead organizer for the New Orleans Workers Center for Racial Justice. We will be giving this testimony, and Jacob Horowitz will be joining me for the Q&A session.

Mr. KUCINICH. OK. What I will do, then, let me introduce you and then we will introduce everyone else and then we will begin with you. OK?

Mr. SONI. Sure.

Mr. KUCINICH. Mr. Saket Soni is a co-founder and organizer for the New Orleans Workers Center for Racial Justice and a member of Advancement Project, the Workers Justice Center for Racial Equality and New Orleans Worker Justice Coalition, an independent community-based organization advocating for and organizing workers in post-Katrina New Orleans. Mr. Soni also works to bring together immigrant Latinos and displaced New Orleanians. He is co-author of "And Injustice for All," a comprehensive documentation of the conditions for workers in post-Katrina New Orleans.

Ms. Jennifer Rosenbaum is staff attorney for the Immigrant Justice Project for the Southern Poverty Law Center. Founded in 1971, the Southern Poverty Law Center is a civil rights organization dedicated to advancing and protecting the rights of minorities, the poor, and victims of injustice and significant civil rights and social justice matters.

The Center's Immigrant Justice Project represents low-income immigrant workers in litigation across the southeast. Ms. Rosenbaum has coordinated the Center's post-Katrina advocacy on behalf of workers in New Orleans, including serving as lead counsel to migrant workers in several.

Before joining the legal staff at the Immigrant Justice Project, Ms. Rosenbaum served as a scodant fellow at Texas Rio Grande Legal Aid representing farm workers in labor and employment litigation.

Mr. Ted Smukler is the director of public policy at Interfaith Worker Justice. Interfaith Worker Justice uses faith values to organize, educate, and mobilize the religious community in the United States on issues and campaigns that will improve wages, benefits, and working conditions for workers, especially low-wage workers.

Mr. Smukler is the lead author of several Interfaith Worker Justice publications, including "Working on Faith: A Faithful Response to Worker Abuse in New Orleans," which details how the U.S. Department of Labor fails to enforce labor and employment law in New Orleans and the country at large, and another publication, "For You Were Once a Stranger: Immigration in the U.S. through the Lens of Faith."

The final witness on the first panel, Mr. Jeffrey Steele. Mr. Steele has worked a number of jobs in a wide range of fields, from mortuary science to culinary arts. He has an environmental justice degree from Clark College in Atlanta, and it was there that he became active as a homeless advocate. He has worked with Atlanta's Hosea Williams Foundation, and was working at a men's shelter when he met displaced New Orleans residents after Hurricane Katrina hit.

Mr. Steele moved to New Orleans to do debris cleanup for various contractors, where he was subject to safety hazards and wage theft. Mr. Steele filed charges with the Department of Labor in September 2006, but has not yet received any resolution in the form of back wages he is entitled to.

I think what we will do, considering your case, Mr. Steele, let's start with you, and then we will go down the line.

STATEMENTS OF JEFFREY STEELE, FORMER EMPLOYEE OF THE ARMY CORPS OF ENGINEERS; TED SMUKLER, DIRECTOR OF PUBLIC POLICY, IMMIGRANT WORKER JUSTICE; JENNIFER ROSENBAUM, STAFF ATTORNEY, IMMIGRANT JUSTICE PROJECT, SOUTHERN POVERTY LAW CENTER; AND SAKET SONI AND JACOB HOROWITZ, NEW ORLEANS WORKERS CENTER FOR RACIAL JUSTICE

STATEMENT OF JEFFREY STEELE

Mr. STEELE. My name is Jeffrey Steele. I currently live in Montgomery, AL. I lived in Atlanta for 27 years, and I worked at the Georgia World Congress Center in Georgia doing trade shows, and I was a part-time chef. I ran the men's shelter at night in Atlanta, GA, and I am a displaced evacuee from New Orleans, and I wanted to be part of history and I wanted to help rebuild New Orleans.

Pastor Braddy had flyers all over Atlanta, Georgia, to recruit workers for New Orleans—free room, board, free food, pay \$10 an

hour. I left Atlanta October 16th and arrived October 17th. We started work after being on the road all night at 6 a.m. that morning.

We worked all day for 12 hours with no food, no rest. We had to sleep in the same van that we came down in for several days.

For the next year I worked for seven different subcontractors cleaning up in New Orleans: WorkForce Development, Phoenix Global, Copeland Construction, Express Staff, and JNE. They were connected to the Omni Pinnacle Waste Management ECC and the Army Corps of Engineers. I worked for U.S. Boat for Coastal Catering from September 2006, until this February, when I injured my hand on the job. They are still refusing to pay me Workers Compensation.

The work in New Orleans was very hard. The days and nights were very long and hot. The work was dangerous because of the many hazards in the city and the flooding. We were given 1 hour of safety training. We had no health insurance, no workman's compensation or other benefits. We worked 16 to 18 hours for 7 days a week. I lived with 40 to 60 men in a house. We were crammed into a small apartment or makeshift housing. We had very little to eat. Restaurants and grocery stores were closed, and even if they had been open we had no money to buy food. We had to eat relief handouts or MREs, or most of the time we were starving.

None of the companies paid me correctly for the work I did. The pay was always very late. Every paycheck was short. There was no overtime paid. They even took deductions out for housing and food.

For the first 3 months I received only \$2,000 out of the \$17,000 that I earned, no overtime. I tried to get back what was owed to me. I talked with the law clinic. They sent my case to the Department of Labor in 2006. I hadn't heard anything for a long period of time. I checked back. I was told I had to call the woman at DOL. I called her February 2007. She asked me if I had information about my previous companies. I didn't have any current numbers.

In March the woman from DOL called back and asked if I had more information for her. I gave her what I had. She said she would file my claim.

When I called back a month later to find out what was happening, she said when she find out she will let me know. I did not hear anything back from the DOL until Wednesday, June 20th, when a woman supervisor called me and immediately began what I felt was an interrogation. She ended abruptly as she had started by saying she wanted me to call her when I had more information. She treated me as though I was the bad guy.

I went to New Orleans to be part of history. I did the dirty and hard work that was needed, and yet I was taken advantage of by contractor after contractor who crammed workers into filthy living space, provided almost nothing to eat, offered practically no safety precautions, no equipment, and paid us late, and much less than the little than they had promised.

It is not about me. It is not about Jeff. It is about the small men and women like me who don't have a voice. A country cannot clean up after a disaster without people like me. If this country allows companies to get away with treating hard-working citizens like they are nothing, then shame on us. I worked hard all my life. I

paid taxes. I am a U.S. citizen. I have been working since I was 9 years old. I have never been to jail. I have never asked the Government for nothing. If anything like Hurricane Katrina happens again in this country, I hope you never let anyone treat workers and the people they are trying to help the way that people was treated in New Orleans.

Thank you.

[The prepared statement of Mr. Steele follows:]

New Orleans laborers to protest 'inhumane' recovery work

CityBusiness Staff Report

Jeffrey Steele came to New Orleans from Atlanta last fall hoping to earn \$10 an hour or more in the aftermath of Hurricane Katrina. Steele thought he found a job working for subcontractors of Burlingame, Calif.-based ECC, which has a \$500-million contract with the Army Corps of Engineers. But Glenn Sweatt, ECC general counsel, said Steele was not contracted with ECC. Steele said he worked from 5:30 a.m. to about 7 p.m. seven days a week from October to December removing debris from Elysian Fields, the French Quarter and other nearby areas. When pay time rolled around, Steele received just \$500 of an expected \$5,000. Steele and other workers will be at a 3 p.m. rally and march Tuesday organized by the Greater New Orleans American Federation of Labor Congress of Industrial Organizations. The event aims to spotlight what the AFL-CIO considers dangerous and inhumane conditions for workers rebuilding New Orleans. The event will begin at the Hilton Riverside hotel, 2 Poydras St., and end at the Hale Boggs Federal Building, 500 Poydras St. Teachers, construction workers and others rebuilding the metro area are expected to march down Poydras Street demanding change. Steele, now working in New Orleans for a different company, said he was one of 65 workers who came from the Atlanta area last year to work in New Orleans. Many went back to Atlanta a week before Thanksgiving dead broke, he said. Sweatt said ECC has heard other reports of phony contractors. It's happened more than once. That's all I have to say about that, Sweatt said. Complaints are turned over to federal officials, he said. ECC has a pretty aggressive program to investigate complaints, he said. ECC has a person working full time to resolve payment disputes. Sweatt said a lesson can be learned from Steele's experience. Sweatt's advice to workers is to have a written contract. People need to have everything in writing before they commit themselves to anything, Sweatt said. When it's time to pay the bills, a handshake is a handshake. As for inhumane working conditions, Sweatt said federally funded jobs are swarming with safety inspectors. I think somebody would be hard pressed to say there's dangerous and inhumane conditions (with) the federal work, he said. The Corps could not be reached for comment.

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Jeffrey Steele
Domestic Policy Subcommittee
Oversight and Government Reform Committee
2247 Rayburn HOB – 2:00 P.M.
Tuesday, June 26, 2007

Katrina Clean Up

My name is Jeffrey Steele. I currently live in Montgomery, Alabama. Over the years, I've worked a number of jobs in a wide range of fields from mortuary science to culinary arts. I have a license in environmental clean up from Clark College in Atlanta.

Before Katrina, I had been working at the World Congress Center and Atlanta Dome in Atlanta, Georgia. I worked there during the day and, at night, ran a men's shelter in Atlanta that was connected to the Hosea Williams foundation. I was working at the shelter when I met displaced New Orleans residents who had evacuated to Atlanta after Hurricane Katrina hit. More and more people from New Orleans were coming in every day.

I decided I wanted to be part of history. I wanted to help rebuild New Orleans and help do right by the people who had been abandoned after the hurricane. For me, it was like the civil rights movement and I wanted to be part of it. What I found once I got there was the horrible treatment given to the workers who were rebuilding the city. There were terrible working and living conditions and hazardous work with practically no safety training. Early on I tried to hook up with FEMA and the Red Cross to help out in New Orleans, and then heard about a contractor from Atlanta who was looking for workers. The Reverend Carroll Harrison Braddy had flyers up all over Atlanta – "Free Room and Board. Free Food. Pay \$10 /hour." I left on Oct 16, 2005 from Atlanta on a van with others who had been recruited by Braddy who called his company "Workforce Development Corp., Inc."

After over 12 hours on the road, we got into Slidell around 6:00am on October 17th and got straight to work. We didn't get off until about 6:00pm that night. We had had nothing to eat since we left Atlanta. When we finished that night, we came back over the lake to New Orleans to take a shower and sleep, but there was no place to eat – no restaurant or grocery stores were open. We went to the park to eat because relief workers were feeding people in the park. When we came back we ended up sleeping in the van we had come down in. We had nothing to eat. We stayed somewhere off Elysian Fields.

That next day on October 18th, we got up around 5am after sleeping in the van. We were able to go to a man's house off Rampart Street to brush our teeth and wash off. That man was someone the contractors used to help provide places for their workers to stay. Braddy kept putting the man off with the money he owed him for housing. He wrote bogus checks – he probably still owes that man.

It wasn't until a week after we arrived that we were taken to get free shots that the Army medic units were providing. It was a few weeks before we got a quick 1 hour safety training run by ECC and a fit test for our aspirators. ECC had supervisors driving around all the time observing crews working in New Orleans as did the Army Corps of Engineers. Omni Pinnacle, Phoenix and Global and Copeland Construction were around in the beginning and used Braddy's workers.

About two weeks after getting to New Orleans, Braddy was supposed to pay us. We waited in the parking lot until 9:00 or 10:00pm that night after we had finished working. I got about \$230 in pay - I should have gotten about \$1400, not including any extra for overtime. There was never any overtime or any benefits. Braddy said he had taken out money for rent and taxes to explain why I had gotten so little. I said, "How could you take out rent and we didn't have any place to stay for the first few days?" He told me I would have to go to court to get my money from him.

On October 19th, they rearranged things at that house on Rampart. All of the guys from Atlanta who had come down with me – about 7 of us – stayed in one room and slept on the floors. Someone had to get MRE's for us to eat. On October 29th, we were put everyone out of that house around 10:00 or 11:00pm at night because Braddy hadn't paid the man. About 65 folks had to pack up and move to the Clyde Banks apartments on the West Bank. Mike Noble was a contractor who arranged for housing for his workers and let Braddy put his workers there. He seemed to be the only decent contractor at the time. Noble was bringing guys out of Memphis and Nashville and Mississippi. All of his guys at that time were supposedly getting paid regularly.

On or about November 4th, there was a work shutdown. The guys who owned their own dump trucks and their own equipment stopped working because they had not been paid by Copeland and Brian Carter. The TV news came out along with the National Guard just in case anything bad happened.

Braddy's guys from Atlanta and I ended up moving from those West Bank apartments to a house in Algiers. It had 6 small bedrooms – about 40-60 guys stayed in that one house. It had 2 ½ bathrooms. But around midnight on November 4th, Braddy came to the house and said that all those doing the removal of white

goods (refrigerators, stoves, washing machines and dryers) and debris had to move to the world trade center in New Orleans. He said the house would only be for Waste Management workers. There were men still in the shower who had to get out, pack up and move out. Mike Noble had put all the guys who worked for him (Express Staffing - a subcontractor for Waste Management) and Braddy's workers into that house in Algiers. But Noble decided he wanted his guys from Waste Management to stay there instead.

We moved into the world trade center on the 25th floor on November 12th. All the other guys and I moved across the bridge and stayed at the world trade center. I stayed for only one night. The next day, I moved out and stayed with one of the supervisors after I found out he was a Mason like me. We moved into the hotel Marvin Copeland (Copeland Construction out of Miami) had rented out on Elysian Fields. That supervisor worked under Brian Carter (Phoenix and Global) and Copeland (Copeland Construction). Braddy was a subcontractor under Phoenix and Global and Copeland Construction and Omni Pinnacle - all three were supposedly subcontractors for ECC.

There were supervisors who worked for both companies somehow. (I did paperwork –signing in, giving applications for people coming back into New Orleans.) Steve and Mike were also supervisors for both companies. James was the big cheese for Copeland – the superintendent. He owned JNE which was another subcontractor.

After the money thing went down around Nov 1st, I had decided that I didn't want to owe Braddy any more money for housing. I was still working for Braddy at that point even though I had started a new assignment working – keeping account of what group had what equipment and doing the time sheets for the different crews out of New Orleans as well as Atlanta.

On November 11th, Brian Carter paid his workers off. Marvin Copeland was supposed to pay the independent contractors and dump truck operators and then pay Braddy. Copeland and Carter paid everyone but Braddy which meant I didn't get paid.

After the November 12th move to the world trade center, I kept working through the 19th on Braddy's payroll, but I was handling the paperwork for those other contractors. The rest of Braddy's workers stayed at world trade center November 13th through November 19th but didn't go back to work because Brian Carter and Copeland had shut Braddy down. Braddy's workers didn't have anything to eat.

On November 19th, I came back to find Braddy's workers outside the world trade center, packed up. I saw management employees from ECC going into the building and told Braddy's workers that we should go and talk with them. Some 80-90 workers went up to ECC on the 30th floor. I even tried to get the news people there with us. When we got to the ECC offices, I told the man there that these men had no money to eat and so forth. He went into their petty cash and gave Braddy \$300 to get food for the workers. That morning around 10:00 am, Braddy took those guys some place to feed them. He then gave his uncle some money and had his uncle drive a school bus loaded with about 30 workers from New Orleans back to Atlanta the week before Thanksgiving. I heard when they got to Atlanta on that Sunday that morning their wives, children, girlfriends greeted them and asked where the money was for all the work they had done.

I had been able to eat because of different Masonic brothers who were working in town – they were looking out for me. They worked directly for Copeland. I wasn't going to leave New Orleans without my money. I switched over completely to work for Copeland who still had crews cleaning Elysian Fields and worked November 21, 22 and 23rd. We were off the 24th through the 27th for Thanksgiving.

On November 28th, James who had supervised for Copeland started up his own company called JNE. JNE put their crews on cleaning up Louisiana Ave and asked me (and a few others) to work for him. I was supposed to be getting \$18/hour. I began working for JNE on November 28th. I loaded equipment, did some flagging, and continued to do paperwork. I worked November 29th, 30th and on December 1st & 2nd. We then had to move out of the motel we were in because Copeland's money had run out. We also had to move all the equipment out of the rooms in the rain. I worked at least 16 hours that day. I worked Dec 3rd through the 24th for JNE. I couldn't go to Alabama for my mother's 60th birthday on December 15th because I was working. I caught the bus to Alabama on December 24th for Christmas. JNE paid me for the previous 4 weeks work right before I went to Alabama. I got about \$300 when I should have received approximately \$7000. While I was home for Christmas, I heard that Braddy had gotten his money. On December 26th, Braddy wired \$400 to me in Montgomery - but he still owed me approximately \$4,500. Braddy said he only owed me about \$1800. On December 27th I picked up my money from Western Union.

I got back to New Orleans on December 29th. I had moved back to that house in Algiers in Algiers. One of the supervisors's brought me my check from JNE - \$999 for the first two weeks instead of the \$3500 JNE owed me – for 98 hours/week work @ \$18/hour not including any overtime rate.

The money wasn't coming in like it was supposed to from JNE either, so I started working for Mike Noble from Express Staff – another subcontractor under Waste Management. Noble's company was based in Nashville, Tennessee. I have his number and others from Waste Management. I started by doing security and managing the house.

I worked up for Noble until September, 2006. I ran the house, took guys shopping, counseled those on drugs, took anyone hurt to the hospital in East Jefferson, coordinated labor for (3) other Waste Management contractors in three other parishes and drove daily through the towns of Houma, Slidell, Hammond, etc to drop the workers off and pick them up. I started around 3:30am every morning and got back to the Hendee house around 9:00 – 10:00 am. I then got back out on the same circuit at around 2:00/3pm to get all the guys picked up when they got off. I'd usually get back around 7 – 8:00pm at night. Monday through Saturday. Those hurt on Waste Management trucks, I took to the hospital to be seen. They knew me there at the hospital. I told them to send the bills to Express Staff.

A lot of the guys I took around every day were day laborers that I picked up off Lee Circle – some Mexicans. One of Noble's supervisors, Linda, kept trying to get me to pick up only Spanish-speaking workers because the contractors could push them to the extreme. I let them spend the night at the house sometimes.

I think Linda didn't like the way I made sure black workers got work in addition to Mexican workers. She was connected to someone in the US Embassy in Mexico. She was going over to get people here to work. When a lot of these guys' visas were up, some went home and some didn't. One day, one of the Mexican workers was working and a tire blew off a nearby truck and broke his shoulder. They said they would pay him a percentage of his check each week. Noble didn't have workmen's comp. Linda wanted that worker to sign papers that said she would handle his money. That man never came back and he probably wasn't ever paid.

I remember one day that Noble wanted to know who was writing checks – Linda was paying Waste Management and not paying workers. Local workers were supposed to be paid a little more than workers from Atlanta. Their checks weren't right either. A woman for Local 100 started trying to help the guys organize for little bit. Linda said I was trying to recruit guys for union. I said I was.

When Linda went out for surgery, I was covering everything. For three weeks, I did everything – getting back after 10:00pm at night. Noble even said he wanted me to run my own contract at some point in the future. I was on the phone with him every morning at 3am and at night at 10pm. When Linda came back, though, she started picking on me even though every thing had run smoothly while she was out.

We fell out with each other. I got a two week suspension from her. I stopped working for Noble around the 15th of September. I asked for the money he owes me. Mike Noble finally wired me money for the extra week he owed me – he still owes me for another week though. I should have been paid at least \$800/week for all I did. I was doing a lot of different jobs. But he said I was on salary – and I only could expect to get \$550 a week. At least he didn't take money out for rent. He paid me what he said he would accept that last week at the end.

After Noble, I started working for US Boats for Costal Catering (out of Houma). I was working as a cook between Houma and Morgan City. I was cooking for offshore workers from September 2007 through February 2007. I stopped because I got injured on the job one day. At first it was a swollen thumb. I still can't grip anything or open a car door. I'm in pain. I am scheduled for surgery on June 27th to repair it. They owe me compensation for my injury on the job. I have no health insurance.

Efforts to Gain Fair Compensation

I started to try to get my money back when I met one of the local union members in New Orleans. He put someone from the AFL-CIO in touch with me. She asked me to tell my story at workers rights rally on May 2, 2006 - which I did. She put me in touch with the Loyola Law Clinic to see if they would take my case. I finally spoke with them in July/August, 2006. I met them face to face in September. In September/October, 2006 the law clinic attorney left me a message saying that they had turned my case over to the Department of Labor (DOL).

When I hadn't heard anything for a very long period of time, I checked back with the law clinic in early January. I was told to call Debra Brown at the Department of Labor – she had been assigned my case and supposedly had some questions. I called her in February, 2007 and she asked if I had Braddy's or Copeland's numbers. I asked her if she could get that information from government computers more quickly than I could. I didn't have their numbers. I contacted the woman from the AFL-CIO and got her to send me whatever she had written down about what had happened to me. While we were talking on the phone, she went on the internet and got even more information on my previous employers.

In March/April, 2007, Debra Brown from the DOL called and asked if I had any more information for. That's when I gave her the information I had gotten from the AFL-CIO. (I used to have a lot of documentation, but lost it in the moves from house to apartment and so forth and also in the moves between contractors.) In that conversation, Debra Brown said that she would submit my claim. When I called

back a month later to find out what was happening, she said that when she found out something she would let me know.

I didn't hear anything back from the DOL until last Wednesday, June 20th when Debra Brown's supervisor, Barbara Hicks, called me and immediately fired question after question as if I were under interrogation and accused me of cutting her off when I would try to answer and said that it would help if I didn't jump around. She kept asking if I had failed to receive pay for only three days in October, 2005 when I first got to New Orleans and kept saying that it was easier to collect from the bigger employers each time I told her who I had actually worked for. She never asked me to tell her from start to finish what had happened to me in New Orleans. She ended the conversation just as abruptly as she had started it by saying she wanted me to get her information on my previous contractors even though she asked me for phone numbers I had already given to Debra Brown at the DOL months ago. The supervisor told me to call her when I had more information. She never said what the status of my claim was or what to expect when she hung up.

The Loyola Law Clinic sent my case to the Department of Labor in September/October of last year, but I do not know if I am any closer to any resolution in the form of back wages that I worked hard for and should have received. Instead, I have been treated as if I am the bad guy.

I went to New Orleans to help and to be part of history. I did the dirty, hard work that was needed. Yet, I was exploited by contractor after contractor who crammed us into filthy living spaces, provided next to nothing to eat, offered practically no safety precautions or equipment and paid workers late and so much less than even promised. If this is how this country allows employers to get away with treating hard working citizens while companies make a profit – then shame on us. I've worked hard all my life and I pay taxes. I'm a United States citizen. I've been working since I was 9 years old. I've never been to jail and I've never asked the government for nothing. If another catastrophe happens in this country, I hope you never let any one else treat workers and the people they are trying to help like they did in New Orleans.

Mr. DAVIS OF ILLINOIS [presiding]. Thank you very much, Mr. Steele.

Our next witness is Mr. Ted Smukler.

STATEMENT OF TED SMUKLER

Mr. SMUKLER. Thank you very much, Mr. Davis, Chairman Kucinich, Congressman Davis, for the opportunity to testify about labor law enforcement in New Orleans and the decline in national capacity and the strategic will of the U.S. Department of Labor. I almost feel like changing my testimony after hearing Mr. Steele. It just makes me so angry.

The statement is meant as an overview of issues raised in the Interfaith Worker Justice Report, "Working on Faith: A Faithful Response to Worker Abuse in New Orleans."

Congressman Kucinich already read what Interfaith Worker Justice is. We also have 60 affiliates across the country and 16 workers centers, religion labor affiliates.

IWJ has always worked to maintain a partnership with the DOL, whose mission we strongly support. In fact, Paul DeCamp, who is going to testify today, recently addressed a hearing on the DOL and was warmly received by 350 delegates at IWJ's national conference.

We are not in the business of attacking the DOL, so it was with great sadness that I witnessed open and flagrant abuse of workers' rights when I began visiting New Orleans and the Mississippi Gulf Coast after Katrina. Workers often received no pay at all.

All of us watched the ravages of Hurricane Katrina with horror, but could not have imagined the ongoing abandonment of the people of New Orleans after Katrina's waters receded. Those who were abandoned during Katrina are still largely on their own, as new hands and backs have been imported to New Orleans to do the heavy lifting.

IWJ conducted a survey of 218 people who had worked in New Orleans in the year following Katrina. Of workers, 47 percent reported not receiving all of the pay to which they were entitled; 55 percent received no overtime pay for hours above 40; 58 percent were exposed to dangerous substances at work, such as mold, contaminated water, and asbestos. But of greatest concern, all the workers we surveyed were completely unaware that the DOL could help.

IWJ has four major areas of concern today.

The first Chairman Kucinich already spoke about, about all of the Executive orders from the Bush administration that set up a lawless economy, a lawless rebuilding process, the suspension of OSHA, suspension of prevailing wage, the allowance of employers to not check documents, and the suspension of Affirmative Action.

Second, the DOL lacked the capacity and strategic direction to deal with this crisis. The number of completed wage and hour investigations in New Orleans dropped by 37 percent in the year following Katrina. It ought to have increased. This should be seen in the context of a national decline in DOL capacity since the 1970's.

IWJ interns met Lorenzo at a Honduran eatery in the summer of 2006. The tissue on the corner of Lorenzo's eyes was red and swollen from installing fiberglass insulation with no protective

gear. He was paid off in cash at the end of the first week, with no overtime paid for his week of 12-hour days.

There are thousands of Lorenzo's and Mr. Steele's, but the DOL is not going out to find them where they are, at laundromats, at day labor pickup sites, coffee shops, work sites, congregations. Non-profit advocates can find them. Where is the DOL?

Our third major concern is that DOL resources are heavily invested in responding to complaints rather than carrying out targeted investigations of regions, industries, and employers that are known to violate the FLSA. Low-wage workers are highly unlikely to file complaints.

The DOL, itself, is on record about the effectiveness of targeted investigations, but these proactive strategies take only 20 percent of wage and hour investigatory resources.

We recognize that most businesses comply with wage and hour and OSHA requirements, but there are entire industries and employers and regions that rely on low-wage labor and steal the wages of workers in order to jack up profit margins. They are bottom feeders. The DOL knows who they are, but their practices are not stopped. This lowers standards for all U.S. workers.

Fourth, the DOL fails to pursue all available penalties. Employers ordered to pay only back wages with no interest or other fines may be more encouraged than discouraged to practice wage theft, so DOL [sic] calls for this committee, if possible, to draft legislation that would increase wage and hour and OSHA investigators by at least a third; mandate that the DOL develop a public protocol, including unannounced visits targeting regions, industries, and employers with records of widespread abuses; provide funding for a partnership between the DOL and faith, labor, and community organizations in New Orleans and in six other cities with widespread wage theft; mandate that employers who violate wage and hour pay penalties and interest in addition to all back wages owed; and request a GAO investigation of DOL enforcement practices.

Our religious traditions hold that workers must be treated fairly and with dignity, and that wage theft is a sin against a just God. In Deuteronomy 24 verse 14 God's law demands that you shall not withhold the wages of the poor and needy laborers.

Thank you very much.

[The prepared statement of Mr. Smukler follows:]



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**Testimony of Ted Smukler
 Director of Public Policy
 Interfaith Worker Justice
 before the
 Domestic Policy Subcommittee
 House Committee on Oversight and Government Reform
 U.S. House of Representatives
 June 26, 2007**

Thank you for the opportunity to testify about the lack of labor law enforcement in New Orleans and the decline in national capacity and strategic will of the U.S. Department of Labor (DOL). This statement is meant as a general overview of issues raised in the Interfaith Worker Justice (IWJ) report "Working on Faith: A Faithful Response to Worker Abuse in New Orleans." My name is Ted Smukler, Public Policy Director at IWJ and author of the report.

Interfaith Worker Justice calls upon our religious values in order to educate, organize and mobilize the religious community in the U.S. on issues and campaigns that will improve wages, benefits and working conditions for workers, especially low-wage workers. IWJ was founded in Chicago in 1996. We currently have 60 religion-labor affiliate groups throughout the country and a network of 16 workers' centers.

IWJ has always worked to maintain a strong partnership with the U.S. Department of Labor, and supports the DOL's mission, through its Wage and Hour Division, Occupational Health and Safety Division, and the Office of Federal Contract Compliance Programs, to protect workers in the U.S. and enforce labor and employment laws. In the 1990s IWJ worked closely with the DOL in targeted enforcement efforts in the poultry industry. Our executive director and other IWJ leaders have maintained cordial working relationships with key DOL leaders. Among the positive results of collaboration, the Department published a back-wages website and reached out to affected workers, though accessibility to this site is limited. Paul DeCamp, the current Wage and Hour Administrator, addressed a hearing on the Department of Labor just last week which was attended by approximately 350 delegates at IWJ's National Conference.

One of the DOL's most visionary and powerful leaders was Frances Perkins, who in 1933 became the first woman in history appointed to a cabinet post—the post that Elaine Chao holds today. As devoted Congregationalists, Ms. Perkins' parents instilled in her the desire to "live for God and do something." Ms. Perkins later became an Episcopalian, and her faith helped her remain clear about her priorities. *"I came to Washington to work for God, FDR, and the millions of forgotten, plain common workingmen."* Frances Perkins helped bring about the first minimum wage—which was meant to be a living wage—and the Social Security act. She established the gold standard for a federal agency dedicated to improving the lives of workers, and the mission of the agency remains largely the same to this day.

So I wondered if Frances Perkins' spirit remains alive today in the agency she almost single-handedly invented. It was therefore with great sadness that I witnessed open and flagrant abuse of workers' rights when I began visiting New Orleans and the Mississippi Gulf Coast after Hurricane Katrina and listened to the stories of workers and worker rights advocates. Luz Molina, who runs a legal clinic for workers associated with Loyola University, said she had never seen such a state of "complete employer lawlessness." Workers often received no pay at all, and because of the layers of subcontractors, they did not even know who their boss was, making it impossible to file a complaint. I witnessed hundreds of day laborers, bidding to do a job at whatever wage would get them hired that day, even if it was below minimum wage.

All of us watched the ravages of Hurricane Katrina with horror, but we could not have imagined the ongoing abandonment of the people of New Orleans after Katrina's waters receded. Bill Quigley, who runs the Loyola Poverty Law Clinic and sits on IWJ's board, was trapped in a hospital in New Orleans where his wife worked as a nurse. As the waters rose to the third floor level, Bill was sending out text messages asking for someone to save trapped patients and health care workers. One week later he came to Houston to the IWJ board meeting at a hotel filled with hurricane refugees. His witness of a city where our government left the poor and African American residents to fend for themselves was a harbinger of what was to come, unfortunately. Those who were abandoned during Katrina are still on their own, as new hands and backs have been imported to New Orleans to do the heavy lifting.

A series of executive orders by the Bush administration in the wake of Katrina set the stage for a lawless, race-to-the-bottom labor market:

- OSHA enforcement was suspended in the Gulf Coast on September 5, 2005. Instead, OSHA issued public safety announcements in the media and passed out fliers in some workplaces. In the toxic soup left behind by the hurricane, employers were not fined for failure to provide safety training or issue protective gear.
- On Sept. 6, the Department of Homeland Security suspended requirements that employers check documents at the time of hiring. Contractors knew they could import an immigrant workforce, including undocumented people, without consequence.
- On Sept. 8, prevailing wage was suspended. While it was reinstated on November 8, all of the multimillion dollar contracts let in the two months of suspension remained exempt from Davis-Bacon requirements.
- On Sept. 9, affirmative action requirements were suspended. Simple regulations requiring federal contractors to submit a written affirmative action plan to the Office of Federal Contract Compliance Programs were waived.

After Katrina immigrants rushed to New Orleans with the promise of good, well-paid work. These workers were used and exploited, denied their legal wages, exposed to toxins without proper health and safety training and equipment, and lived in unspeakable squalor. Those without documents knew if they confronted their bosses or reported abuses to government agencies they could be deported. Meanwhile, the mainly African American displaced workforce was excluded from possibilities of work due to lack of housing, schools, health care and appropriate job training.

IWJ conducted a survey of 218 people who had worked in New Orleans in the year following Katrina, a cross-section of Latino, African American, white and other workers, the results of which are included in “Working on Faith: A Faithful Response to Worker Abuse in New Orleans.” Findings include:

- 47 percent of workers reported not receiving all the pay to which they were entitled.
- 55 percent said they received no overtime pay for hours worked beyond 40 per week.
- 58 percent said they were exposed to dangerous substances at work such as mold, contaminated water and asbestos.

These workers needed a champion—a Frances Perkins spirit—to police labor wrongdoings and assure them they had a friend and supporter in the Department of Labor. But workers we surveyed were completely unaware that the DOL could help. **Not one worker mentioned the DOL as either a source of information about workers’ rights or as an agency to which one could file complaints.**

These findings correspond to other published research cited in our study. Numerous individual interviews conducted by IWJ and cases followed by legal advocates such as Loyola University’s Worker Justice Project and the Southern Poverty Law Center developed a picture of New Orleans as a city in which contractors imported large groups of largely immigrant workers who lived in barracks, converted rail cars or tent cities provided by the contractor, some surrounded by moats. Employers were reported to have called Immigration & Customs Enforcement (ICE) agents on themselves so that their workforce would disappear before getting paid. (ICE agents greatly outnumbered DOL investigators in New Orleans after Katrina).

IWJ interns met Lorenzo at a Honduran eatery in the summer of 2006. The tissue on the corner of Lorenzo’s eyes was red and swollen, extending in towards his nose. Lorenzo had been hired to install fiberglass insulation in tight, hot and unventilated spaces, so he wore short sleeve shirts. He was given no protective goggles or gloves. At the end of the first day his eyes were stinging, watery and bloodshot, his nose full of irritating pink dust, and his skin painfully itchy. He was paid off in cash at the end of the week, with no overtime pay for his week of twelve-hour days. One month later, when our interns met him, he still looked horrible and had received no health care. Even if Lorenzo wanted to report this abuse, he had no idea who his employer had been.

There are thousands of Lorenzos. IWJ and other worker advocates, organizers and lawyers have met with them and documented their stories, by going to the places where the workers are: laundromats, day labor pick-up sites, coffee shops, work sites and congregations. DOL officials set up an information table for an hour or two at one of the tent cities one evening per week. This is not enough.

What became evident from countless examples on the ground is that the DOL waited in their offices for complaints that mainly would not come, as workers did not know who to go to, feared taking an issue to a government office, did not receive assistance in a language they could understand, and were often discouraged by DOL staff if they did manage to come to the office.

The decline of the DOL is national in scope. One clear failing is the lack of language capacity in regions with high percentages of immigrant workers. When DOL officials met with IWJ Board members in New Orleans in 2006, they were confident that they would solve the problem of a lack of Spanish-speaking investigators by importing staff from other regions on a rotating basis. The result of this would necessarily deplete the staff capacity in another part of the country. From reports on the ground, the New Orleans DOL office still lacks Spanish speakers, and has no capacity to provide service to large numbers of workers who speak Portuguese or Vietnamese.

IWJ looked at studies that measured the steady decline of DOL capacity since the 1970s, including research by the Brennan Center for Justice, Howard Wial of the Keystone Research Center, DOL's own public data, and other cited sources. These sources all show steep declines in DOL spending, numbers of investigators, numbers of compliance actions and numbers of workers to receive back wages since the 1970s continuing into the George W. Bush administration. In the Brennan Center study, which is based on FOIA requests from the DOL, from 1975-2004:

- Wage & Hour investigators dropped by 14 percent.
- Compliance actions (an indicator of businesses investigated) declined 36 percent.
- Workers due back wages fell 24 percent.

In the same time frame, there was a 55 percent increase in workers covered by the Fair Labor Standards Act and a 112 percent jump in covered businesses. OSHA has experienced a similar fate. DOL data shows a decline in OSHA spending of 25 percent from 1977-2006.

Even when a case is pursued against an employer, the limited penalties imposed against those caught in wage theft may do more to encourage than discourage the practice. Settlements are usually awarded for back wages only, with no interest or penalties. Employers can steal wages and overtime and at worst be made to pay back what they should have paid in the first place.

Why has spending on defending workers dropped so precipitously? The agency says it does "more with less", but is the DOL really using its resources strategically? DOL's investigations are primarily triggered by complaints, rather than through targeting hotbeds of wage theft. Wage and Hour Administrator Paul DeCamp, in response to questions by the Democratic minority in his Senate confirmation hearings last summer, stated "Wage and Hour must promptly process and investigate *complaints it receives* alleging violations of the law. *That activity accounts for most of Wage & Hour's enforcement work, and I would continue to emphasize that aspect of the agency's operations*" (emphasis added) A focus on responding primarily to complaints allows a passive, wait in the office approach. Low-wage workers are highly unlikely to file complaints. Those who do file are generally middle class workers or unionized workers.

It is IWJ's contention, shared generally by worker rights advocates, that targeted investigations using unannounced visits, audits and other aggressive tactics in specific regions and low-wage industries known to be centers of wage theft, such as poultry, construction, agriculture, landscaping, restaurants and garment assembly, is a much more effective way to send a message to bad employers that violating the Fair Labor Standards Act and OSHA must stop. DOL's data does not clearly break down the percentage of money and staff resources devoted to targeted

investigations versus investigations that were launched based on complaints. IWJ made inquiries with sympathetic high level staff in the DOL who also did not have access to good numbers on this subject. Undoubtedly, DOL will testify that they give a high priority to targeted investigations. But based on our analysis of numbers published on the DOL web page, targeted investigations are to receive only 23 percent of the 2008 DOL budget for Wage and Hour enforcement, down from approximately 30% in 1997 (the latter figure was provided by an inspector general audit of the department).

In fact, the ideological bias of the current administration slants against regulatory enforcement, particularly of any regulations that circumscribe business behavior. In recent DOL planning documents, there is a continuous emphasis on voluntary compliance and cooperative efforts with businesses, rather than enforcement of the law. IWJ recognizes that most businesses comply with Wage and Hour, OSHA and affirmative action requirements, and that in cases of violations of overtime and other requirements, businesses may be insufficiently educated and not malicious. But there are entire industries and particular employers that rely on low-wage labor and are willing to exploit and steal the legal wages of workers in order to jack up profit margins. There are bottom feeders, the DOL knows who they are, but their practices are not stopped. This depresses standards for all workers in the U.S.

IWJ calls for this committee to draft legislation to:

- Increase the number of Wage and Hour and OSHA investigators by one-third.
- Mandate that the DOL develop a **public** protocol , including unannounced visits, targeting regions, industries and employers with records of widespread abuses.
- Develop a partnership program between the DOL and faith, labor and community organizations in New Orleans and in six other pilot cities aimed at eliminating wage theft since low-wage workers are much more likely to turn to faith organizations than to government. Components include:
 - ✓ A public information campaign, in all appropriate languages, saying that the DOL enforces laws protecting all workers, regardless of worker documentation.
 - ✓ Penalties for employers who use threats of immigration enforcement to intimidate workers who complain about worker abuses, or to get out of paying wages.
- Mandate that employers who flagrantly violate wage and hour laws pay penalties and interests in addition to all back wages owed.
- Request a GAO investigation of the efficacy of complaint driven versus targeted investigations by Wage and Hour and OSHA.

Mr. KUCINICH [presiding]. I thank the gentleman.
Ms. Rosenbaum.

STATEMENT OF JENNIFER ROSENBAUM

Ms. ROSENBAUM. Thank you, Mr. Chairman and members of the committee.

I want to thank you for not forgetting about this issue almost 2 years after Hurricane Katrina. I can testify that Mr. Steele has not forgotten, Antonia has not forgotten, and that thousands of other workers who remain unpaid for their hard work rebuilding New Orleans and the Gulf Coast have not forgotten, nor have the advocates at this table, whose organizations have hired staff, have worked around the clock, have increased their language capacity, and have done the other work necessary to try to recover the wages, to recover liquidated damages, and to change the practices of the significant contractors in the region.

In our opinion, the Department of Labor has had an inadequate response to the disproportionate scope of the disaster in New Orleans. I think everyone here is familiar. It was well reported on the television and in the newspapers the epic wage theft that was going on. While low-wage workers and their families always suffer when they are not paid or underpaid, particularly in New Orleans the suffering was acute. Because of the destruction of large parts of the city, the regular safety net works that might be in place in other places when workers go unpaid did not exist.

As Mr. Steele has testified, workers were relying on their employers for housing and food, and when they went unpaid they faced retaliation and termination for complaining about not being paid in compliance with Federal law. They not only risked continued nonpayment; they risked eviction and hunger and being thrown out onto the streets.

Where was the Department of Labor Wage and Hour Division as all this was going on? As Mr. Smukler has testified, workers certainly didn't know. I mean, that has been our experience in communicating with over 1,000 workers in our advocacy, education, and litigation efforts after Hurricane Katrina.

We know some things that they didn't do. They didn't immediately after the hurricane begin distributing contract information and educational materials to workers where they could be located. Workers repeatedly told us that they knew that they were being paid illegally and they didn't know where to turn.

The Department of Labor failed to make staff available at a time when workers could complain. When people were working 80 to 100 hours a week, it was oftentimes impossible to call the Department of Labor during business hours. And the Department failed to have a plan to communicate with workers after hours, on the weekends. They also failed to have language access to communicate with those workers in the language that they speak.

They failed to accept and record adequate complaints. We have report after report of workers calling the Department and being cursorily dismissed without a more than 5-minute telephone investigation into the worker's complaint. As Mr. Steele has testified, workers, themselves, are not under the obligation to have complete pay records or complete contact information on their employers. As

the Supreme Court has said, when employers fail to meet their obligations to provide records of people's hours worked and wages owed, then the worker can reasonably testify to what has happened.

As we also know, the contracting schemes are complex, obviously requiring a more than 5-minute investigation into whether an employer, for instance, is covered by the Fair Labor Standards Act.

The subcommittee, therefore, really faces a challenge in accessing the information that will be presented by the Department of Labor, because many, perhaps the majority of complaints by workers were never even recorded.

The Department of Labor's continued inaccessibility to migrant workers repeatedly hindered investigations of the complaints that were made. For instance, they didn't communicate to workers during the investigations and at times during the settlement process, and even when settlement proceeds were received they did not communicate with the workers about how to receive those proceeds.

As Mr. Steele has testified, many other workers have told us they didn't know what was going on in the investigations, they felt that the Department of Labor was hostile, and in some cases workers felt like the Department of Labor was an agent of the employer and therefore did not continue to help the investigation.

We had a worker report that his investigation was initially dismissed for lack of records when he actually had records, because he understood the Department of Labor investigator to actually be an agent of the employer and, fearing retaliation, refused to turn over those records. It wasn't until we were able to intervene and explain the investigative context and get those records that the investigation was able to be reopened.

The Department of Labor also failed to prioritize, in our opinion, the cases that would have made the biggest difference on limited resources. They failed to bring cases on behalf of groups of workers—in fact, groups of subcontracted workers for the same general contractor—and they failed to investigate the general contractors that in many cases were jointly liable for the unpaid wages.

We have two Fair Labor Standards collective action cases that have been settled against general contractors and subcontractors together, and we believe that is an important step in terms of making a structural difference in the way workers are being treated in New Orleans and on the Gulf Coast.

Finally, as I said before, the Department of Labor has at times even failed to investigate and ensure that workers receive the checks that were settled on their behalf. We have been communicating with workers who almost a year after a settlement check was obtained by the Department of Labor have still been unable to physically possess that check and those unpaid wages. The Department of Labor has sent those checks to the wrong offices in States where they don't live, has forced them to communicate with Department of Labor staff who don't speak the same language as the workers speak, and has otherwise set up obstacles to actually receiving those unpaid wages, even when they have been recovered from the employer.

For all those reasons, we have included recommendations in our report, and we hope that the committee will consider how to inter-

vene in this matter further. It is important to recover unpaid wages for people that are still waiting to be paid for doing this work. It is important to change the nature of the employment relationships that continue to happen in New Orleans and on the Gulf Coast. And it is important to ensure that the lesson from migrant workers in New Orleans is not that Federal labor law doesn't apply to you. Right now that is the lesson, and that is a lesson that is being carried back across the country as migrant workers return to the States across the United States where they came from.

Thank you.

[The prepared statement of Ms. Rosenbaum follows:]

**Jennifer J. Rosenbaum
Attorney, Immigrant Justice Project
Southern Poverty Law Center
Domestic Policy Subcommittee
Oversight and Government Reform
Tuesday, June 26, 2007
2247 Rayburn HOB – 2:00 p.m.**

“Adequacy of Labor Law Enforcement in New Orleans”

Thank you for the opportunity to speak about the rampant wage theft and retaliation against reconstruction workers in New Orleans after Hurricane Katrina and about the inadequate response of the United States Department of Labor, Wage and Hour Division (“DOL-WHD”).

My name is Jennifer Rosenbaum. I am an attorney with the Immigrant Justice Project of the Southern Poverty Law Center. Founded in 1971, the Southern Poverty Law Center is a civil rights organization dedicated to advancing and protecting the rights of minorities, the poor, and victims of injustice in significant civil rights and social justice matters. Our Immigrant Justice Project represents low-income immigrant workers in labor and employment and civil rights litigation across the Southeast.

Like many other local and national nonprofit organizations, we quickly recognized the scope of the Gulf Coast crisis after Hurricane Katrina and tried to respond to that need. We established a New Orleans initiative, staffing it with a full-time attorney, myself, and a paralegal to investigate, litigate, and otherwise assist workers in resolving minimum wage, overtime wage and retaliation claims. Since then, we have filed three major lawsuits. Two were collective actions under the Fair Labor Standards Act in which we assisted over 500 workers in recovering hundreds of thousands dollars in minimum and overtime wages and liquidated damages.¹ In the third case, we represent H-2B guestworkers in minimum wage claims against their New Orleans employer.²

We have also referred workers to the DOL-WHD when we believed their complaints fit within the agency’s jurisdiction and priorities. At the same time, we met with the U.S. Department of Labor to advocate that substantial resources be allocated to the Gulf Coast region. We specifically advocated that the local New Orleans DOL-WHD office be provided additional resources and technical assistance, including language capacity, so that it could play a vital role in enforcing labor standards during the reconstruction. Unfortunately, these pleas were answered late or not at all.

¹ Xavier et al. v. Belfor USA Group, Inc., Civil Action No. 06-0491, U.S. Dist. Ct., E.D. La. and Navarrete-Cruz et al. v. LVI Environmental Services of New Orleans, Inc. et al., Civil Action No. 06-0489, U.S. Dist. Ct., E.D. La.

² Castellanos-Contreras et al. v. Decatur Hotels LLC et al., Civil Action No. 06-4340, U.S. Dist. Ct., E.D. La.

Almost two years after Hurricane Katrina, our office has communicated with close to 1000 reconstruction workers about their work in New Orleans and along the Gulf Coast since September 2005 and their struggles to obtain federally mandated wages for each hour worked. My comments are based on those conversations as well as our interactions with DOL-WHD personnel.

My remarks today will address the response of the U.S. Department of Labor, Wage and Hour Division to the labor standards crisis in New Orleans office after Hurricane Katrina. In my view, the DOL-WHD failed to provide a reasonable level of resources to the region, given the enormous scale of the disaster. Because of this failure, the DOL-WHD, through its New Orleans and Gulf Coast offices, had a limited ability to intervene and address the well-reported, epic wage theft that accompanied the reconstruction. The DOL-WHD thus allowed chains of subcontracted corporations to profit on the backs of the underpaid workers, particularly vulnerable migrant workers. In addition, the DOL-WHD failed to competently record and investigate many of the complaints that it did receive. In the resulting lawlessness, DOL-WHD utterly failed to protect migrant workers from minimum wage and overtime violations and from retaliation.

Widespread Exploitation of Migrant Reconstruction Workers Accompanied the Reconstruction of New Orleans.

The magnitude of work and the billions of dollars in reconstruction funding drew a new population of migrant workers to New Orleans immediately following Hurricane Katrina. Lured by promises of long hours and good wages, tens of thousands of men and women left their homes and families and went to New Orleans to work on the clean-up and reconstruction of the city. They left the construction sites of Houston, the orchards of Michigan, the sweet potato fields of Mississippi, and the day labor sites of Memphis and dozens of other cities. They arrived ready to work, expecting nothing more than a fair job and fair wages, including the basic protections federal law provides to all workers. Migrant workers came and worked alongside hurricane survivors who had recently returned from their temporary places of refuge to rebuild the city. Although the majority of these newly-arrived workers were Latino, the job opportunities drew African Americans, Native Americans, and immigrants from many countries.

The construction jobs for which thousands of workers migrated were located squarely within an industry known to have significant FLSA compliance problems including common mislabeling of employees as independent contractors. In New Orleans, the billions of dollars in contracting drew exploitative, fly-by-night contractors looking to get rich quick. The lawlessness of the city exacerbated the ordinary kinds of wage violations migrant workers experience, and the decimation of traditional worker support services led to the extreme abuses we are recounting today. In most cases, workers were directly employed by subcontractors, sometimes several layers away from the general contractor, and often were uninformed about how to complain to the general contractor when their wages went unpaid or underpaid. These major contractors thus lined their pockets with lucrative contracts while hiding behind a subcontracting system, the workers' fear of retaliation, and the general chaos of the city.

While workers raised a variety of complaints about health and safety conditions, workplace injuries, and unsafe housing conditions, reports of unpaid and underpaid wages were the most recurring complaints. This fact was widely reported in newspapers and on television as the country watched for news about the city they had seen destroyed.

While low wage workers and their families always struggle when exploitative employers underpay, pay late, or do not pay them at all, the suffering was particularly acute in post-Katrina New Orleans. Because of the destruction of large parts of the city's infrastructure, workers relied on employers for housing and food. Thus, termination from work also meant eviction and hunger. When they were not paid, workers were left with a difficult choice: continue to work for the employer who had failed to pay them in the hopes that pay would arrive, or forgo the unpaid wages and seek other work, accepting the same risk of nonpayment. Workers who spoke up and demanded to be paid in accordance with federal law faced termination, threats of deportation, threats of physical violence, and actual physical assault.

When the DOL-WHD fails to adequately enforce federal wage and hour law on behalf of migrant workers, all workers in the labor market suffer alongside them. Insofar as we allow exploitative employers to take advantage of an underground labor market-- i.e., workers to whom federal wage and hour laws do not apply in practice-- we undercut those protections for all other workers.

The U.S. Dept. of Labor, Wage and Hour Division Was Inaccessible to Migrant Reconstruction Workers in New Orleans Immediately After Hurricane Katrina.

Our experience referring and assisting workers through the DOL-WHD complaint process revealed numerous obstacles for workers who tried to recover their unpaid wages. These obstacles were the most acute at the most critical time-- immediately after the hurricane when low-skilled workers were cleaning up the city around the clock. While the DOL-WHD has continued to attempt to respond to the crisis, its response is too little too late-- a response disproportionate to the extreme level of exploitation that workers faced. While investigators from other offices visited for short trips of one to two weeks at a time, only one bilingual staff person remained full time in the local office, and the permanent staff was consistent with pre-hurricane levels.

DOL-WHD did not immediately begin distributing contact information and educational materials in ways designed to reach migrant workers. Workers repeatedly told us that while they knew their employers were acting illegally, they didn't know where to complain. Others specifically remarked that they were surprised that no government workers visited their worksites to monitor their treatment. Still, as one worker put it, "we didn't know what to do until we met you in the hotel lobby." The DOL-WHD has historically recognized that direct outreach to workers coupled with directed investigations are necessary to enforce government contract labor standards and the FLSA with respect to migrant and immigrant workers.

DOL-WHD should have begun this work immediately following Hurricane Katrina using pre-existing worker education materials. Immediately following the hurricane, locating migrant reconstruction workers in the hotels, worksites, and limited functioning commercial

spaces was straightforward. Our staff began making weekly trips to New Orleans to meet with reconstruction workers who reported that they were systematically underpaid and often not paid at all for their work cleaning out the toxic flood waters and tearing the hospitals, schools, and court buildings down to their skeletal frames for reconstruction. We met with workers in the hotels where they were living crammed in the bunk beds of ballrooms beneath the rooms full of evacuees, in labor camps on the outskirts of the city, and in City Park. We talked to workers in the streets, in clinics, at the few open stores, and in the public places where they gathered for meals. We met with them at sunrise before work started and late in the evenings when the work was finally completed. The stories that we heard over and over were variations on the stories that I and other panel members are recounting for you today. We never crossed paths with a DOL-WHD staff person, and workers never reported speaking with someone from the DOL-WHD or any other federal worker protection agency.

While the DOL-WHD eventually began conducting some community education sessions six months to a year after the hurricane, the effect was again too little too late. Without additional trained staff or strong community partnerships, the ability to reach transient, isolated migrant workers was minimal. Many workers were already fearful of complaining about wage violations because of the retaliation they had experienced and witnessed.

DOL-WHD failed to make staff available to speak with workers at times when workers could contact them. Because they were working 80 - 100 hours a week, contacting DOL-WHD during business hours would have been very difficult for most migrant workers. Reasonable access could easily have been achieved through a toll-free number that was answered after hours or through special weekend hours that were well publicized. For example, our nonprofit law office received so many calls from New Orleans workers to our regular worker hotline that we set up a second hotline, and our staff rotated on-call responsibilities to record complaints, initiate investigations, and make referrals to emergency social service providers. We received the majority of our calls between 6:00 p.m. and 9:00 p.m., including on the weekends, when workers were not working. Obviously, migrant workers who seek to complain about their employer are more likely to do so when they are not on the job and can speak freely.

DOL-WHD failed to communicate with workers in their native languages, depriving many workers of the ability to communicate with the agency at all. When limited English proficient (LEP) workers called into the agency at the point of first contact, they were routinely unable to speak with anyone, since the agency had not set up an adequate system to deal with LEP workers. The diverse migrant worker population includes workers who speak Spanish, Portuguese, Hindi, Vietnamese and other languages. Point of contact communications is essential. If a worker calls and cannot communicate with the person who answers the phone, it is likely he will not call again and will communicate to other workers that the office is not responsive. The DOL-WHD intake mechanism had limited ability to communicate in Spanish and no ability to communicate with workers in other languages. While our office's staff is bilingual in English and Spanish, we, too, were immediately inundated with calls from workers speaking languages other than English and Spanish. Unlike the DOL-WHD, our non-profit office immediately responded by setting up a system to address the needs of all LEP workers, including contracting with a telephonic interpretation service and increasing our use of volunteer and contract interpreters.

At least eight months after the hurricane, the New Orleans office still did not even have a voicemail message indicating that workers could leave a message in Spanish, although the phone regularly rings to a recorded message both during and after hours. The DOL-WHD had very limited capacity to serve workers in languages other than English and Spanish, even after those workers filed a complaint with the agency. To be effective, DOL-WHD must develop a communications strategy to seamlessly communicate with workers in whatever language they speak from the point of contact through investigation and resolution of the complaint. All employees who answer the phone must be trained on this system and must use it when appropriate. Because of its delay in implementing such a strategy, DOL-WHD should publicize the language assistance strategy in media targeting the language populations.

DOL-WHD failed to accept and record complaints. Even workers who did contact DOL-WHD and who were able to communicate with a staff person in their native language were often dismissed with only a shallow, cursory review. Often their complaints were not even recorded by the agency; the workers were simply sent away.

The Subcommittee, therefore, faces a challenge in assessing the adequacy of DOL-WHD records because many worker complaints-- probably the vast majority-- were never processed as complaints.

Workers report to us that even when they did manage to communicate with an investigator, their complaints were rejected and went unrecorded based on cursory telephone reviews. For example, one worker reported that he was turned away after a discussion lasting less than five minutes because he was told that his employer was not large enough to be covered by the Fair Labor Standards Act ("FLSA"). When our office discussed his complaint with him, we learned that in addition to the ten workers on his crew, his employer employed multiple crews in multiple states; thus, the employer would have clearly been large enough to be covered by the protections of the Fair Labor Standards Act.

Given the complexity of the contracting relationships, DOL-WHD must engage in a more than cursory review to determine FLSA coverage. Many workers obviously identify a first level supervisor as the employer when asked a question such as, "Who was your employer?" Most workers in New Orleans during the first six months following the hurricane, however, were working at the bottom of subcontracting chains, often ten to fifteen layers high, with government and private entities at the top. In virtually every case we investigated, the businesses at the top of this chain were large entities covered by the Fair Labor Standards Act and were "joint employers" under FLSA analysis.

Other workers have reported being turned away from DOL-WHD because they could not immediately provide complete contact information for the subcontractor directly employing them or because they were paid in cash and could not provide check stubs. Our investigations have revealed that through a more detailed investigation, the subcontractor and general contractor of workers can usually be identified through other means, including visits to worksites and conversations with other witnesses. Furthermore, the Supreme Court has held that workers can prove their unpaid FLSA wages through reasonable testimony when their employer has failed to

keep the employment records required by federal law.³ The DOL-WHD's cursory approach to investigations provided a powerful incentive to employers to pay in cash and evade review. When the DOL-WHD fails to even investigate such serious complaints, contractors are rewarded for setting up complex subcontracting systems to avoid responsibility for paying workers legal wages.

DOL-WHD, therefore, must improve its intake procedures. At a minimum, DOL-WHD should make a record of all contacts with workers whether or not the investigator considers that it rises to the level of a formal complaint. This would allow DOL-WHD to track the legal violations and the alleged violators. Even if the information is presently inadequate to act upon the complaint, that worker, a different complaining worker, or a directed investigation may reveal adequate information to pursue the complaint at a later point. At the time the complaint is recorded, DOL-WHD should inform each worker about the stages of and timeline of its investigative process and provide the worker with a telephone number for future contact with the agency regarding the complaint. The anti-retaliation provisions of the Fair Labor Standards Act should also be discussed at this time, and the agency should communicate with workers about steps to take if retaliation occurs, including documenting the retaliation and contacting DOL-WHD immediately. If workers submit complaints by mail, the DOL-WHD should contact each worker via telephone or letter to communicate this information.

Given the obstacles workers faced in identifying the agency, communicating with it, and ensuring their legitimate complaints were docketed, the Subcommittee should carefully consider any and all statistics provided by the DOL-WHD. Those statistics are likely to dramatically underreport the serious complaints workers attempted to lodge with the agency. The Subcommittee should also recognize, as DOL-WHD has recognized in the past that self reported complaints are an inadequate mechanism to assess whether migrant workers are being paid according to federal law.

After witnessing these obstacles for six months, our office and other worker advocates met with representatives of the U.S. Department of Labor's Wage and Hour Division in Washington D.C. on February 1, 2006, to demand a more serious response to the rampant violations of federal wage and hour law in New Orleans and along the Gulf Coast. By this point, our office had filed two lawsuits claiming major contractors and their subcontractors were violating the Fair Labor Standards Act.⁴ Prior to our meeting with the DOL-WHD, we asked for basic information about the agency's plan for the New Orleans office. Specifically, we asked for data regarding the number of wage claims that had been filed, the processing time for those claims, and DOL-WHD's outreach efforts to reconstruction workers. At the meeting, the DOL-WHD was unable to respond to any of our questions and seemed uninformed about the scope of the problem, which included rampant labor violations and retaliation against workers in the region.

³ Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946).

⁴ Xavier et al. v. Belfor USA Group, Inc., Civil Action No. 06-0491, U.S. Dist. Ct., E.D. La. and Navarrete-Cruz et al. v. LVI Environmental Services of New Orleans, Inc. et al., Civil Action No. 06-0489, U.S. Dist. Ct., E.D. La. We have also negotiated a number of pre-litigation settlements on behalf of underpaid reconstruction workers.

The U.S. Dept. of Labor, Wage and Hour Division's Investigations Were Inadequate.

Although the DOL-WHD has engaged in some systemic investigations and wage recovery, the number is disproportionately low compared to the billions of dollars in federal contracting and the level of worker exploitation. Our communications with workers confirmed DOL-WHD's continued inability to communicate with migrant workers, its unwillingness to pursue structural analysis of its complaints, and its blindness to the growing retaliation faced by workers who challenged employers to ask for wages. At the same time, our independent litigation has shown that recovery of unpaid minimum and overtime wages and liquidated damages from general contractors and their subcontractors who jointly employed migrant reconstruction workers is quite possible.

DOL-WHD's continued inaccessibility to migrant workers repeatedly hindered its investigations. Workers with complaints pending before DOL-WHD have regularly called us because they had never been contacted by the agency and were not informed about the investigation and resolution of their complaints. We spent hundreds of hours keeping in contact with these workers, trying to ascertain the status of their investigations for them and trying to support the DOL-WHD's work. Complaints were actually settled and dismissed, we found, through conversations with only one of a group of complaining workers.

In one case, investigation of a worker's complaint was discontinued for lack of records before he was even contacted, despite the fact that the worker actually possessed records to help prove his allegations. It was only after our staff intervened, communicated with the worker, obtained the records, and forwarded them to DOL-WHD that his file was re-opened and back wages were obtained on his behalf. Even in complaints where back wages were recovered, the agency made no attempt to verify the accuracy of the company's records before settlement was approved. Our cases have shown significant variation in the accuracy records of the employers, with employer's routinely under-reporting hours. A settlement based upon those employer records would dramatically under compensate workers.

In another instance, a DOL-WHD investigator called a worker without adequately explaining his role in investigating the complaint. The investigator's introduction was so inadequate that the worker believed the DOL-WHD investigator to be a representative of his former employer. Fearing retaliation, the worker declined to give the DOL-WHD investigator further information about his complaint, and the investigation was terminated. When my office clarified the information, the worker provided additional facts that assisted in a re-opening of the investigation and the recovery of damages.

DOL-WHD should communicate with each worker named in a complaint. This communication is vital to educate the worker regarding the DOL-WHD investigation process, to assist the investigator in developing the necessary facts in the investigation, and to ensure the worker communicates regarding any retaliation he faces for participation in the complaint process. For migrant workers, the agency should attempt to obtain alternative contact

information to permit the agency to maintain contact if that worker moves. Likewise, DOL-WHD should provide each complaining worker with the name and telephone number of the investigator assigned to his complaint so that he can advise the investigator of vital information, including new facts relevant to the investigation, the location of additional affected workers affected by a systemic pay practice, or a change in contact information for the migrant worker.

DOL-WHD has failed to prioritize the most important cases in New Orleans and along the Gulf Coast. DOL-WHD's failure to include all affected workers as well as its failure to pursue claims against all joint employers in the contracting chain, evidences a lack of commitment to having a systemic effect. Instead of prioritizing systemic problems on behalf of groups of workers employed by significant contractors, it has focused on easy complaints involving small groups of workers. Our experience shows that the nonpayment of minimum wages and overtime to New Orleans reconstruction workers almost always reflect systemic, illegal pay practices and that even when presented initially by one or a handful of workers, thorough investigation reveals that the unlawful practices were systemic and affected a larger group of workers. When the agency takes no action to seek wages for the other workers not initially named in the complaint, those workers remain unpaid and the wages the employer is obligated to pay are a small fraction of what he owes. By accepting minimal settlements for individuals or small groups of workers, the agency makes violating the wage and hour laws a cost of doing business for unscrupulous employers and does not correct systemic, illegal pay practices.

The DOL-WHD also has failed to investigate joint employers of workers, an obviously important step to intervening in rampant wage theft. The joint-employment doctrine under the FLSA recognizes that industry employers are often jointly liable with their subcontractors or staffing services when wages are not paid. These industry employers have the ability to ensure that workers are paid lawfully by employing them directly or monitoring their agents. For example, DOL-WHD settled unpaid overtime claims on behalf of two reconstruction workers for several hundred dollars each even though the workers reported that the problem was systemic. Their direct employer, ITT, Inc., of Charlotte, North Carolina, provided labor to many general contractors in New Orleans, but the investigation did not look to those contractors or the pay practices on their worksites. Similarly, a small group of workers reporting systemic unpaid overtime by one of the largest federal debris removal contractors, Phillips and Jordon, also received small individual settlements. No systemic investigation was pursued.

Our FLSA litigation stands in stark contrast to the DOL-WHD's work even though private litigants face higher hurdles in obtaining information through discovery and locating workers to opt-in to the FLSA collective action procedure. When a small group of workers initially contacted us regarding unpaid overtime by one subcontractor for work at Tulane University, investigation revealed widespread violations of the Fair Labor Standards Act in the reconstruction of gulf coast courts, banks, hotels, casinos, and commercial outlets. In settlement of the litigation Xavier et al. v. Belfor USA Group, Inc., Civil Action No. 06-0491, U.S. Dist. Ct., E.D. La., workers directly employed by five subcontractors were included in a settlement that recovered unpaid overtime wages and partial liquidated damages. After a year-long opt-in period, we expect over 500 workers to recover wages in excess of \$700,000. In settlement of the litigation Navarette-Cruz v. LVI Environmental Services, Inc., Civil Action No. 06-0489, U.S.

Dist. Ct., E.D. La., a group of 65 workers recovered unpaid minimum and overtime wages and liquidated damages of almost \$200,000 in a joint settlement with three layers of subcontractors for unpaid work rebuilding St. Bernard's Parish Schools. In addition to unpaid wages and penalties, workers in these cases also recovered a sense of dignity and fairness—that the federal worker protection laws apply to them.

Either of these cases could have been quickly settled for a modest recovery by the small group of economically desperate workers who first contacted us. On the other hand, under the jurisdiction of the DOL-WHD which has the authority to recover wages for all employees without the opt-in requirement, both cases would have had an even higher value.

The DOL-WHD New Orleans and Gulf Coast should immediately develop and implement criteria that ensure their work uncovers systemic pay violations, includes all affected workers, implicates all joint-employers, and seeks the highest penalties available.

DOL-WHD's Settlements on Behalf of Workers Are Inadequate. The DOL-WHD does not regularly seek liquidated damages when negotiating settlement of workers' claims. An employer who fails to pay workers minimum or overtime wages owes both back wages and an equal amount of liquidated damages. Liquidated damages are not some sort of "windfall" or punitive damage measure but are designed to compensate low-wage workers for the losses they incur because of their employer's late payment. Failure to seek these damages unfairly leaves workers bearing the economic brunt of their employers' illegal behavior. DOL-WHD should seek liquidated damages when settling complaints of unpaid minimum and overtime wages on the Gulf Coast.

DOL-WHD failed to provide adequate protections from retaliation to workers who made complaints with the agency. Workers in the Gulf Coast after Katrina have suffered chronic retaliation by employers. When workers have requested their unpaid wages or complained about conditions, they were threatened or worse. Our office has spoken with dozens of workers who suffered retaliation when they simply asked to be paid: some were physically assaulted; some were threatened with guns; some were threatened with deportation; some were fired from their jobs; and some were blacklisted from future employment. Contractors routinely told workers that if they were to participate in a complaint or lawsuit, those workers would never work for the company again.

In this climate of unchecked retaliation, DOL-WHD has a heightened responsibility to protect the identity of workers who do complain. Instead, DOL-WHD has not adopted special measures to protect workers in the context where retaliation was more prevalent and did not even follow its own guidelines for heightened confidentiality of complainants and witnesses. Specifically, DOL-WHD revealed both names and current addresses of workers to their former employers during investigations. DOL-WHD has also relied on supervisors or their friends to communicate with workers regarding the investigation and complaint process. These sloppy practices may be due to overburdened investigators, but the potential risk to workers of such a conflict of interest is obvious. Such acts unnecessarily expose workers to risk and undermine workers' confidence in the agency even when wages are recovered. The DOL-WHD should adopt and train investigators on guidelines to protect workers from retaliation when workers

make complaints with the agency including mandatory education of all complainants about the illegality of retaliation under the Fair Labor Standards Act and should prioritize complaints where such retaliation has occurred.

DOL-WHD failed to ensure that damages awards reached the unpaid workers. It goes without saying that a settlement process is not complete until each unpaid worker actually receives his check for unpaid wages. Yet DOL-WHD has repeatedly failed to supervise this phase of its work adequately. Some employers have been directed to mail settlement checks directly to former employees—again requiring the release of the workers’ address without his consent. In another egregious incident, a group of checks for about thirty workers was mailed to a DOL-WHD office hundreds of miles away from where many workers lived. The majority of workers were given no notice that checks had been obtained on their behalf and no explanation about how to obtain those checks. The office holding the checks had no language capacity to communicate with the workers whose checks were being held. Finally, the workers who did eventually go to the DOL-WHD office to retrieve their checks were required to sign release of claims documents in a language they do not read or speak. Over a year later, some of the migrant workers are still waiting to obtain their check for unpaid wages under this settlement.

Because migrant workers are likely to change locations during the period in which their complaint is under investigation-- sometimes more than a year-- contact at the time of settlement is crucial if the settlement check is to reach the worker. With adequate resources, the agency could contact workers at the time of settlement to communicate with them regarding their preference for settlement check distribution. The worker may be able to come to a DOL-WHD office in the region where he now lives, or he may have a new address to which the check should be mailed.

Substantial Changes in Policy and Practice Are Necessary to Recover Unpaid Wages and Protect Future Workers.

To recover unpaid wages for New Orleans and Gulf Coast reconstruction workers, to ensure that employers comply with wage and hour laws going forward, and to protect the future disaster recovery workforces, we encourage the Congress to take action on the recommendations described herein and summarized below.

- The Congress should mandate that the DOL-WHD increase the resources to the New Orleans and the Gulf Coast offices so that the offices can increase their capacity to adequately accept, investigate, and resolve complaints.
- The Congress should instruct the DOL-WHD to develop an outreach and enforcement plan that is triggered by emergency federal contracting and includes direct outreach to migrant workers, develops a plan for communicating with migrant workers outside traditional work hours, and responds quickly to language needs of new populations. This plan should be immediately piloted in the DOL-WHD New Orleans and Gulf Coast Offices.

- The Congress should require that the DOL-WHD record, track, and summarize all complaints presented to the agency by workers and present publicly available summaries of the data.
- The Congress should ensure that the DOL-WHD New Orleans and Gulf Coast staff receive training from investigators with expertise in investigations on behalf of migrant workers on how to conduct an effective investigation with those workers, including limited English proficient workers.
- The Congress should mandate that the DOL-WHD New Orleans and Gulf Coast offices to immediately develop and implement criteria that ensure their work uncovers systemic pay violations, includes all affected workers, implicates all joint-employers, and seeks the highest penalties available.
- The Congress should demand that the DOL-WHD establish and follow guidelines to protect workers from retaliation when workers make complaints with the agency including mandatory education of all complainants about the illegality of retaliation under the Fair Labor Standards Act. The DOL-WHD New Orleans and Gulf Coast offices should prioritize complaints where such retaliation has occurred.
- The Congress should require that DOL-WHD report on the percentage of settlement funds that are distributed within six months and one year from the settlement.

CONCLUSION

Many workers have still not been paid their full legal wage for work in the reconstruction of New Orleans after Katrina. The statute of limitations of many of these claims will soon run. The effect of the DOL-WHD's failure in New Orleans, however, has even greater implications. In addition to not being paid, many workers suffered serious retaliation when they tried to complain. Of those who did complain to the DOL-WHD, many received no meaningful assistance because of the significant obstacles described here today. The greater legacy, then, is the lesson many workers took away from their experience working in the Gulf Coast: federal wage and hour law do not apply to migrant workers. That lesson has been carried throughout the United States as these workers migrate to new jobs.

A national response is needed to strengthen the New Orleans and Gulf Coast Offices and to change the practices of employers in the region. DOL-WHD should take immediate actions to assist workers in recovering a substantial portion of the wages stolen from them since September 2005. We also urge the Subcommittee to ensure that future federal disaster responses with increased funding for federal contracting likewise include increased resources for the enforcement of federal wage and hour laws. These resources should not be directed to compliance assistance programs aimed at employers but should prioritize outreach to workers as well as prompt and serious directed and complaint-driven investigation. Finally, DOL-WHD must enforce the rights of all workers regardless of their national origin, language, or immigration status.

Thank you for the opportunity to present this testimony. I welcome your questions.

Mr. KUCINICH. Thank you very much.

I want to repeat that your extensive report that you filed with this committee will be included in the record of this hearing, and, as with Mr. Smukler and the others who are here as advocates of workers, I have to say that I am impressed at the depth of your report. I think staff would agree that it is a quite significant, detailed report, and I just wanted to acknowledge that.

Mr. Soni, thank you.

STATEMENT OF SAKET SONI AND JACOB HOROWITZ

Mr. SONI. Thank you, Mr. Chairman and members of the committee, for this opportunity to testify about the utter failure of the U.S. Government to ensure that Federal agencies, particularly the Department of Labor, play a role in ensuring a just reconstruction, a moral reconstruction of New Orleans after Hurricane Katrina.

My name is Saket Soni. This is Jacob Horowitz. I am the lead organizer at the New Orleans Workers Center for Racial Justice. The Center was founded in response to, on one hand, the systematic exclusion of African American workers after Hurricane Katrina, and on the other hand the systematic exploitation of immigrant workers after Hurricane Katrina.

The exclusion and exploitation continues today. Two years after Hurricane Katrina, African Americans continue to be locked out of the reconstruction, while immigrant workers continue to be locked in.

We represent hundreds of workers, residents, day laborers, and guest workers who are the heroes of the reconstruction. Over 700 workers testified in our report that documented the issues of work after Hurricane Katrina. Workers reported horrific conditions: homelessness, toxic workplaces, deportation on payday, police hiring workers at gunpoint, human trafficking. All of these were stories that were common knowledge after Hurricane Katrina.

The climate of abuse was created by public policy decisions that, Chairman Kucinich, you laid out in your remarks—the suspension of Davis-Bacon, the suspension of Affirmative Action—and, as these reports suggest, the creation of a contractor regime that dispensed with accountability.

Today, 2 years after Hurricane Katrina, workers continue to face abuse.

I would like to tell you the story of one group of guest workers. Our Center represents hundreds of guest workers. These are foreign temporary workers on H2-B visas who come from many countries, over 10 countries, to the Gulf Coast. They are brought in through companies that certify through the Department of Labor that they can find no U.S. worker willing or able to do the work.

One particular guest worker who called us late one night was a man named Fernando Rivera. Fernando is a young man from Mexico City, and he called with an urgent plea for help just before Christmas, 2006. Fernando's employer was a company named L.A. Labor, whose boss was a gentleman named Matt Redd. He and his coworkers had been recruited in Mexico by Matt Redd, a Louisiana resident. Workers had responded to flyers in hotels, word of mouth, and advertisements.

Matt Redd promised Fernando \$8 an hour for a hotel job or a restaurant job in New Orleans. He charged workers \$400 for air fare, and then proceeded to confiscate their passports, pack them into vans, and transport them by road to West Lake, LA, which is about 4 hours away from New Orleans. Matt Redd then sequestered the workers in apartments owned by his own real estate company, Redd Properties, and charged them rent. And then, instead of placing him in the hotel jobs that he promised, he leased the workers out to various businesses across the Lake Charles area. Fernando, himself, was leased to a local restaurant and to a ranch owner. Other workers found themselves leased to casinos, garbage collection companies, and car washes. Fernando also did construction work for which he was never paid.

Meanwhile, Matt Redd continued to be in illegal possession of their passports. Fernando had repeatedly asked Matt Redd for his passport and never received it, and had been threatened if he asked for it again.

So in January 2006, just after the New Year, with the Center's assistance, Fernando organized a meeting of the employees. For Fernando, this was particularly important because his mother had been diagnosed with liver cancer. He needed his passport to go back home. He needed the money to pay for a transplant, and so he was desperate for his passport.

The workers held a protest in front of Matt Redd's office, and, with the help of press and community allies, retrieved the passport. A month later they held a protest in front of the Department of Labor demanding that the DOL turn over the labor certification for LA Labor and that the Department of Labor decertify Matt Redd and hand over a list of all of the post-Katrina H2-B employers. To this day we have not received a response on any of those requests.

A couple of days after the protest outside the Department of Labor a special agent of the Fraud and Racketeering Division of the Department of Labor's Office of the Inspector General contacted us. He read the press accounts. After many, many instances of re-scheduling, the special agent finally met with and interviewed workers, a second group of workers who had been brought in by Matt Redd as welders, promised \$18 an hour, and come in and found that the jobs just didn't exist. They had been languishing for weeks and weeks in the apartments waiting for work that just never arrived.

The agent told the workers that they had a very strong case, that this could be visa fraud, but that it was their responsibility and not Matt Redd's to prove that they were skilled workers. In other words, Matt Redd would just say that the reason they weren't working was that they weren't skilled.

After many phone calls we gave evidence to the special agent. We asked recently if the agent had been investigating the case. He simply said that it was confidential. When we informed the agent that Matt Redd had the original documents proving the workers' skill level, the agent made no indication that he would be attempting to contact them for these documents.

So the special agent has not yet followed up with us. The Department of Labor has not furnished the labor certifications. And Fer-

nando is now back at home in Mexico City trying to raise money again for his mother's chemotherapy.

Thousands of guest workers like Fernando have come to the Gulf Coast. We will provide a set of recommendations, but, very quickly, workers, themselves, believe that it is very important that the Department of Labor take responsibility to aggressively educate H2-B workers on their rights, to make sure that employers who don't follow the law are decertified, and to make sure that the Department of Labor conduct random audits and investigations on H2-B employers, and, most importantly, that in the context of the high level of unemployment in post-Katrina Gulf Coast, any claim that you cannot find U.S. workers who are willing or able to do these jobs should really be scrutinized.

In the final analysis made by H2-B workers, the guest worker program, itself, is deeply flawed. The condition these guest workers are in are a window into what workers across the country will face if Congress expands the program. As long as workers are tied to one employer, as long as they come into this country with debt, and as long as there is no regulation or policing of employers or recruiters, employers will have extraordinary power over workers, and all workers will find themselves in situations like Fernando's.

Thank you.

[The prepared statement of Mr. Soni follows:]

**Oral Testimony of
Saket Soni
Lead Organizer,
New Orleans Workers' Center for Racial Justice
before the
Domestic Policy Subcommittee on Oversight and Government Reform
U.S. House of Representatives**

June 26, 2007

Thank you for the opportunity to testify about the utter failure of the US government to ensure that federal agencies, particularly the Department of Labor, play their rightful role in ensuring a just Reconstruction of New Orleans after Hurricane Katrina.

My name is Saket Soni. I am the Lead Organizer at the New Orleans Workers' Center for Racial Justice. The Center was founded in response to the systematic exclusion of African American workers and the systematic exploitation of immigrant workers after Hurricane Katrina.

We represent hundreds of workers – residents, day laborers, and guest workers – who are rebuilding the Gulf Coast. In August 2006, we co-authored the most exhaustive report to date on worker conditions in the post-Katrina landscape. Over 700 workers reported horrific conditions – abject homelessness, toxic workplaces, deportation on pay day, police hiring workers at gunpoint, human trafficking – and a climate of abuse created by public policy decisions such as the suspension of affirmative action and the Davis-Bacon Act, as well as the utter failure of governmental agencies.

Today, nearly two years after Hurricane Katrina, workers continue to face unprecedented levels of abuse.

Our Center represents hundreds of temporary workers on H2B visas – foreign guestworkers – from over ten countries, across many industries. In order to bring guestworkers into the US, companies must certify to the Department of Labor that they have found no US workers willing or able to do the work. In the aftermath of Katrina, hundreds if not thousands of guestworkers have arrived in the Gulf Coast.

One guestworker is a young man from Mexico City named Fernando Rivera, who contacted us with an urgent plea for help just before Christmas 2006. Fernando's employer was a company named LA Labor. He and his coworkers had been recruited in Mexico by an American man by the name of Matt Redd. Workers had responded to advertisements, word of mouth, and signs posted in hotels. Matt Redd promised Fernando \$8/hr for a hotel job in New Orleans. He charged them \$400 for airfare to the United States. Matt Redd then confiscated their passports, packed them into vans, and transported them across the border to the town of Westlake, Louisiana, some four hours away from New Orleans. He sequestered them in apartments owned by Redd Properties – his own real estate company – and charged them rent. Then, instead of placing them in the hotel jobs he had promised, he leased them to businesses in the Lake Charles area. Fernando was leased to a local restaurant and to a ranch owner. Others found themselves leased to casinos, garbage collection companies, and car washes. Fernando also did construction work, for which he was

never paid. Meanwhile Matt Redd was still in illegal possession of the workers' passports. Fernando had repeatedly asked for his passport back in several tense encounters, but Redd refused to return it.

In January 2006, with the Center's assistance, Fernando organized meetings for his coworkers. Not a single worker who attended these meetings was aware of the existence of the DOL or its role in the H2B process.

On February 12, despite threats of retaliation, workers submitted a petition to Matt Redd with 74 signatures, demanding the return of their passports. Two days later, Redd had not returned their passports.

For Fernando, each passing day without his passport was excruciating. His mother had been diagnosed with pancreatic cancer. A law student and a cab driver in Mexico City, Fernando had come to the United States to raise the money for a transplant. Now his mother had been hospitalized, and the transplant was imminent. Doctors had called urgently for Fernando to return home, because his mother desperately needed a blood transfusion and Fernando was the only one in the family with a matching blood type. But without any money, and without his passport, he couldn't go back.

So on Valentine's Day, workers protested in front of Matt Redd's office, joined by press and community allies. After a four-hour standoff with Redd's staff, the Calcasieu Parish sheriff's office seized the passports from Redd's office. Workers then retrieved their passports from the station.

On March 13, the Mexican workers held a protest in front of the DOL office in New Orleans, to demand an immediate investigation into the potential civil and criminal violations of their employers. Workers also filed a FOIA request for the labor certification documentation for LA Labor and a list of all post-Katrina H2B employers in Louisiana. To this day we have not received a response on those requests.

Three days later, a special agent from the Fraud and Racketeering Division of the DOL's Office of Inspector General contacted us. He had read the press accounts, and expressed an interest in investigating the workers' allegations. After negotiations, cancellations, and rescheduling, finally, the agent interviewed the workers in April. The workers that the special agent met with were all part of a second batch who were brought in several months after Fernando. They were highly skilled welders and pipefitters who were promised jobs at \$18 an hour; they arrived to find that the

jobs didn't exist. They had been languishing for months in Matt Redd's apartments without work, other than the few days of undocumented work Redd gave them.

The agent told the workers that they had a strong case; however, it was their responsibility to prove that they were indeed skilled workers – explaining that Redd is likely to say that they were not put to work because they lacked skill. After many phone calls to get the agent's mailing address, we sent evidence of the workers' level of skill. When we asked recently if the agent had been investigating the case; he only said that this was confidential. When we informed the agent that Matt Redd the labor recruiter in Mexico had original documents proving the workers' skill level, the special agent made no indication that he would be attempting to contact them for these documents.

The special agent has not followed up with NOWCRJ staff or with the workers since we mailed him the evidence he requested on May 23rd. The DOL has not furnished the labor certification for LA Labor. Fernando is now back in Mexico City with his mother as she undergoes chemotherapy, desperate to find another way to raise money for her recovery.

Thousands of guest workers like Fernando have been brought to the Gulf Coast in the aftermath of Katrina to find themselves trapped in a reality very different from the one they were promised. Workers have been recruited for fictitious jobs, or come to work jobs at a different wage rate than they were promised. Workers have had passports stolen by employers and threatened with deportation if they protest. Workers have been held captive by employers, or sold by one employer to another. These are not just stories of helpless workers and nefarious employers – they are stories about the utter lack of institutional intervention, recourse, or responsibility on the part of government agencies whose job it should be to regulate such programs.

What is needed? We offer the following recommendations:

First, the Department of Labor should aggressively educate H2B workers on their rights, working with US embassies in the workers' home countries to make sure workers are equipped to protect themselves in the United States.

Second, the DOL should make the employers' labor certification – the closest thing the workers often have to a contract – publicly available to workers and advocates. And DOL should respond in a timely fashion to FOIA requests.

Third, the DOL should conduct random visits to H2b workplaces and random audits of employers to ensure that workers are doing the work they were promised, at the wage rate they were promised, for the employer they were promised.

Four, the DOL should have the power to decertify employers who do not comply with the H2B programs legal standards and who manipulate workers so that these employers and contractors are not allowed to continue applying for H-2B workers in the future.

Five, the DOL should work closely with other agencies like the Department of Justice and FBI, as well as advocates, to investigate employers and contractors for potential criminal wrongdoing and human trafficking.

Finally, in the context of the high rates of unemployment in the post Katrina Gulf Coast, the DOL should scrutinize much more closely any employer's claim that no US worker could be found to do the work offered before granting any labor certifications for guestworkers.

In the final analysis made by the H2B workers in the Gulf Coast themselves, the guestworker program is fundamentally flawed. The conditions of guestworkers in the post-Katrina Gulf Coast are a window into what workers across the country will face if Congress massively expands the program as as part of immigration reform. As long as workers are tied to one employer, as long as there is no regulation or policing of the recruitment process, and as long as workers are chained to debt, employers will have an extraordinary amount of power and workers will continue to find themselves in situations like Fernando's.

Mr. KUCINICH. Mr. Horowitz, did you want to add anything to that?

Mr. HOROWITZ. I can take questions. The only thing I would add is that I have been there on the ground with Fernando and with the other hundreds of workers.

Mr. KUCINICH. OK. We will reserve your comments during the question period then.

Mr. HOROWITZ. Great.

Mr. KUCINICH. We are now at the period of asking questions.

One of the things, Mr. Soni, that you just said in your report was that you were contacted by someone from the Department of Labor's Office of Inspector General.

Mr. SONI. Yes, sir.

Mr. KUCINICH. And when was that first contact?

Mr. SONI. This was March 16th.

Mr. KUCINICH. What year?

Mr. SONI. This year. This was very briefly after the workers held a protest outside of the Department of Labor in New Orleans.

Mr. KUCINICH. And has the Inspector General's office had any contact with you since then?

Mr. SONI. We had several instances of contact with this particular agent, this special agent, but not outside of that with the office, in general.

Mr. KUCINICH. OK. I am just going to tell you that, while it is not usual for the Office of Inspector General to divulge the status of an investigation to anyone, including Congress, our committee staff will take note of your testimony, which raises serious questions about the performance of the Inspector General's Office, and we will contact the Inspector General for the Department of Labor to make a determination as to whether or not they are proceeding, and we will let you know, because we are very concerned about this. If there is an investigation ongoing, it is really not my business to inquire into what they are investigating, but it is my business that they investigate. So we will followup on that. I just wanted to mention that.

I have one other question.

Mr. SONI. The workers will be very gratified to hear that.

Mr. KUCINICH. And this is what we do. I just want to ask another question. In your testimony you said, "Matt Redd then confiscated their passports, packed them into vans, transported them across the border to the town of West Lake, LA, some 4 hours away from New Orleans." Did anyone ever contact the Justice Department to raise a question as to whether or not kidnapping and/or trafficking charges could be filed against this person, Mr. Horowitz?

Mr. HOROWITZ. Yes. In fact, after the initial protest that the workers held in front of Matt Redd's office where they were able to get their passports back, after that Fernando and another worker who experienced the same problems went and talked with an agent of the FBI about this instance. It was an officer named Renee Luna, who took some notes on the story but never followed up.

Mr. KUCINICH. I am just going to ask the staff of this committee to followup with an inquiry to the FBI about this, because, you

know, this testimony raises certain questions about the extent to which Federal law is violated with respect to either kidnapping and/or trafficking, so we will followup on that.

What is the next point?

Mr. SONI. I just wanted to add that the agent of the FBI who interviewed Fernando and other workers in our presence was personally sympathetic but very unaware of the realities of immigration and the realities of the H2-B visa.

Mr. KUCINICH. OK. Let me ask you something, to Mr. Soni and Mr. Horowitz. You talked about a protest in front of the Department of Labor. I may know the answer, but I have to ask you why.

Mr. SONI. Well, there were a couple of reasons. First of all, we felt that the workers deserved a direct interaction with the Department of Labor and the press. Workers had already spoken to the parish sheriff's office, to the FBI, had written to the Department of Labor, and that hadn't gotten them anywhere, so it was partly to dramatize the urgency with which these workers' issues had to be resolved.

Mr. KUCINICH. OK. I have used 5 minutes. What we are going to do is go back and forth here. I am going to ask this panel to stay and we are going to have at least another round and maybe a third round.

I want to yield to Mr. Davis from Illinois.

Mr. Davis, thank you very much for your presence here.

Mr. DAVIS OF ILLINOIS. Thank you, Mr. Chairman.

Mr. Steele, let me ask, did you try any local officials at all to try to get some help?

Mr. STEELE. Did I do what?

Mr. DAVIS OF ILLINOIS. Contact any local officials, like State representatives, the mayor's office, or city council members, or the Governor's office, or anybody on the ground in New Orleans to—

Mr. STEELE. Yes. Yes, I did, Congressman. One instance the week before Thanksgiving of 2005, about 40 guys from Atlanta had to go back home on a school bus and it took overnight for them to get home, and we was at the ECC office because there had been no pay. We hadn't had a paycheck since we had been in New Orleans from this guy. I tried calling the mayor and I left word with someone at the mayor's office, and I also tried calling the press. Nobody showed up to the ECC office in New Orleans to try to help us at all, and I was just trying, and kept trying. I was talking about it to everybody, and it seemed like the farther I'd bet with somebody, I got shut off. But then I got hooked up with Gomez, something of a labor guy, and then he hooked me up with some other people from the ACLIOU.

Mr. DAVIS OF ILLINOIS. So you really felt like you were in a no-man's land, I mean, just—

Mr. STEELE. Yes.

Mr. DAVIS OF ILLINOIS. There was nothing that you could put your finger on or—

Mr. STEELE. Couldn't put my finger on nothing. You know, it was nobody there to turn to. It was nobody there. If you called somebody, you always got a busy signal, or you had to put on a recording. You kept putting it on a recording and no one never called back. I had a phone. I had a phone and I gave them my number.

I kept a 504 number just up until 2 months ago, and never heard nothing from nobody within that whole year.

Mr. DAVIS OF ILLINOIS. Mr. Smukler, you indicate that 47 percent of the workers that you have come into contact with reported not receiving any pay at all?

Mr. SMUKLER. No. The 47 percent didn't receive all the pay they were entitled to.

Mr. DAVIS OF ILLINOIS. And, of course, nobody got overtime. I mean, were there any representations made that people should have received overtime?

Mr. SMUKLER. Well, I am not quite sure I understand the question. It is the law.

Mr. DAVIS OF ILLINOIS. You say that people did not receive overtime pay. Were they aware that perhaps they should have received any overtime pay?

Mr. SMUKLER. We tried to followup with people afterwards, but in the survey the question was put, "were you paid overtime for any hours past 40 a week," and I think it was 55 percent said no.

Mr. DAVIS OF ILLINOIS. Mr. Soni and Mr. Horowitz, the kind of work that the companies were suggesting that they could not find anybody locally to do in order for guest workers to get visas, what kind of work was that, engineers?

Mr. SONI. Well, in the greater New Orleans area in Louisiana and the Gulf Coast, in general, right now it covers just about any kind of work, from a maintenance clerk to front desk clerk to a housekeeper in a hotel, for \$6.09 an hour. We have guest workers working in little sandwich shops and gas stations, guest workers working in carnivals, guest workers working in a large number of unskilled areas.

We also have guest workers who are skilled pipefitters, welders, and skilled laborers, but in large part in Louisiana the guest workers are not particularly skilled.

Mr. DAVIS OF ILLINOIS. So there were just no people left in New Orleans who lived there or who were residents?

Mr. SONI. Well, in reality there are a large number of people in New Orleans who are unemployed and who would take these jobs. In fact, there is a hotel in New Orleans called the Astro Crown Plaza, which was home to hundreds of unemployed FEMA voucher-holding African American survivors of Hurricane Katrina. This hotel brought guest workers from Peru, the Dominican Republic, and Bolivia. In a major lawsuit that workers who we organized filed with the Southern Poverty Law Center and that we worked on with Jennifer Rosenbaum here, we, in the course of our conversations with the workers, found that there were a large number of African Americans living in the hotel unemployed immediately before the workers came, and that, nonetheless, the hotel owner filed a labor certification with the Department of Labor saying that he could not find any U.S. worker willing or able to do the job at that time.

Mr. DAVIS OF ILLINOIS. So they were deliberately bypassing these individuals in order to bring in guest workers who they could exploit?

Mr. SONI. Well, it is very hard for us and for me, personally, to tell a story of intention, but certainly the impact is that low-wage

African American workers are left out while guest workers are brought in. But the important thing also to note is that low-wage African American workers are left out of, say, \$8 an hour or \$10 an hour jobs. Those jobs are then turned into temporary hourly paid \$6 an hour jobs, and guest workers are brought in, and as guest workers they have fewer rights. They are tied to that employer, so what the employer gets out of it is a much more exploitable, vulnerable, temporary worker.

Mr. DAVIS OF ILLINOIS. Thank you very much.

Thank you, Mr. Chairman.

Mr. KUCINICH. Thank you.

I would like to just have one more round of questioning for this first panel.

Ms. ROSENBAUM, you in your testimony talk about your independent litigation has shown that recovery of unpaid minimum and overtime wages and liquidated damages from general contractors and their subcontractors who jointly employed migrant reconstruction workers is quite possible. Are you aware of any general contractors or subcontractors who told you they didn't get paid by the Government, therefore they couldn't pay you?

Ms. ROSENBAUM. In both of the cases that we have filed, the contractors were not Government contractors. But we did hear rumors from subcontractors at various places in the subcontracting chains that was their excuse. That is part of the reason why we think it is very important for any investigation of wage and hour violations to investigate all the possible joint employers, because it is clear in this context, just as it is in the farm labor context and the garment worker context regularly, that the significant contractors have the ability to control whether wages are paid. They are monitoring whether the work is being done correctly. They are monitoring whether people have the materials that they need. And they could certainly monitor to ensure that Federal minimum wage and overtime and Davis-Bacon wages—

Mr. KUCINICH. Have you taken the time to do a chart, you know, Contractor XYZ, Subcontractors ABCDEFGHI, Contractor paid subcontractors who did or didn't pay? You know, I think it would be helpful if you know this, because what we obviously need to do is to see the extent to which there might be a conspiracy not to pay, to look at the relationships between contractors and then to see if this issue that you raised about those who jointly employed migrant reconstruction workers, what their business practices were to begin with.

Ms. ROSENBAUM. I think the other really important issue is systemic mislabeling of employees as independent contractors in order to avoid overtime payments, to avoid Federal tax liability, and to avoid other kinds of—

Mr. KUCINICH. OK. Now you are talking about involving the IRS. This is getting to be an interesting hearing here, because this is a significant issue of people who are misclassified.

Mr. Davis, you know we have talked about this in terms of workers in this country who are misclassified so that they are not paid, so benefits aren't paid, taxes aren't paid.

Again, staff, this is an issue that may also require or will require that we contact the Internal Revenue Service with respect to these

specific contractors to see the extent to which they may actually be conspiring to defraud the Government or conspiring not to file their responsibilities to withhold taxes. This is very helpful testimony here.

Now, can you elaborate, Ms. Rosenbaum, on the case in which workers did not receive their checks, the Paul Davis National case? Can you tell this committee a little bit about that?

Ms. ROSENBAUM. Sure. This is a case that we originally identified about 25 workers who were recruited outside of New Orleans in Florida by a labor broker, were transported to the Gulf Coast, and left, worked a week to several weeks, and then were left without any payment at all and were just left at the worksite. The contractor left without paying them.

It was a case we originally brought to the Department of Labor believing that they had the particular investigatory capacity to locate all affected workers. This is something that the Federal Department of Labor has in a much different way than private attorneys have, where, under the Fair Labor Standards Act, opt-in procedures in order to recover systemic unpaid wages. Private attorneys and their clients have to locate individual workers and make them opt in, whereas the Department of Labor has the ability to recover unpaid wages for all affected workers.

So in this case we brought the case to the Department of Labor. They spoke with a handful, I would say—I don't have the investigative file—of the workers involved, but they certainly did not speak with the majority of the complainants. The majority of the complainants continued to call our office to ask such basic questions as, is there an investigation going on? We are not talking about confidential investigative data being released during an investigation; we are talking about people who have made complaints to the Department of Labor knowing whether their complaint is under investigation or is closed, knowing that it on average takes 6 months to complete an investigation or 3 months, having the contact name and telephone number of a professional at the Department of Labor who they can call and ask a question about how much longer the investigation is intended to take.

Some wages were recovered on behalf of those workers, although, once again, recovered without being in contact with the majority of the complainants. We think this is a particularly problematic way to run an investigation, given our experience of the faulty records of subcontractors on the Gulf Coast. In our wage cases, we have had to audit all records that we have received in order to ensure that the wages and hours recorded are actually the hours worked by immigrant workers, and in many cases the faulty records seriously under-report hours that people worked. And so if cases are being settled by the Department of Labor complaints based on faulty subcontractor records, they are being under-valued significantly, and workers are not being given a chance to even weigh in on whether the records accurately reflect that.

When the checks were obtained, many of them were sent to an office in a State where the majority of workers did not live and where no one in that office spoke the language that the majority of these workers speak in order to even communicate about getting

their check to them. And as far as we know, there are workers that remained unpaid an unable to receive these checks.
[The information referred to follows:]

IMMIGRANT
JUSTICE
PROJECT

Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
www.SPLCenter.org

phone 334 956 8200
fax 334 956 8421

May 1, 2006

U.S. Department of Labor
ATTN: Nury
Wage and Hour Division
4436 Veterans Blvd., Suite 17,
Metairie, LA 70006
Facsimile: (504) 887-0267

RE: Complaint Against ITT, Inc. for Failure to Pay the Minimum Wage and
Overtime Wages

Dear U.S. Dept. of Labor Wage and Hour Division:

I am writing this letter on behalf of [redacted] and [redacted], former employees of
the company "ITT, Inc." I am assisting them in filing their complaints against ITT. These
complaints are based on the company's failure to pay the minimum wage and overtime wages
due to its employees under the Fair Labor Standards Act.

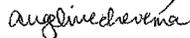
ITT, Inc. is a Charlotte-based company that has contracted employees for hurricane clean-up
work in New Orleans.

I work as a paralegal with the Immigrant Justice Project of the Southern Poverty Law Center-- a
non-profit organization that assists low-wage immigrant workers as part of its work. These
workers contacted our office with the following information and requested that we submit it as a
complaint to the Department of Labor. We ask you to investigate this matter and recover the
back wages that are due to them.

These workers speak Spanish as a primary language and have limited English proficiency.

Please contact our office if we can assist you any further in communicating with these
individuals or in the investigation of this complaint.

Sincerely,



Angeline Echeverria
Ph: 334-956-8200



**IMMIGRANT
JUSTICE
PROJECT**

Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
www.SPLCenter.org

phone 334 956 8400
fax 334 956 8481

June 28, 2006

U.S. Department of Labor
Wage and Hour Division
4436 Veterans Blvd., Suite 17,
Metairie, LA 70006
Facsimile: (504) 887-0267

RE: Complaint Against Paul Davis National for Failure to Pay Wages to New Orleans' Reconstruction Workers

Dear U.S. Dept. of Labor Wage and Hour Division:

I am writing this letter regarding the complaint that was submitted by our office on April 6, 2006 regarding the company Paul Davis National.

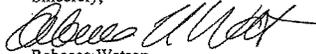
Since submitting that complaint, I have been in contact with two additional employees of Paul Davis National that wish to add their names to the complaint. As with the other employees, they were not paid the wages due to them under the Fair Labor Standards Act. They request that USDOL keep their names and identities confidential to the maximum extent possible under the law.

Their names and phone numbers are as follows:

[REDACTED]

These two individuals speak Portuguese as a primary language and have limited English proficiency. Please contact our office if we can assist you any further in communicating with these individuals or in the investigation of this complaint.

Sincerely,



Rebecca Watson
Paralegal, Immigrant Justice Project
Ph: 334-956-8200



MEMORANDUM

TO: DAVID MARIN, US DEPT. OF LABOR
FROM: REBECCA WATSON, SOUTHERN POVERTY LAW CENTER
SUBJECT: AMENDMENT TO PAUL DAVIS COMPLAINT
DATE: 7/28/2006

As we have discussed, I am including below revised information for the complaint against Paul Davis National. I appreciate the efforts you have made towards investigating and positively resolving this complaint. As always, please contact me if you have any questions.

The following individuals wish to have their names added to the complaint. They fall into two categories.

Not paid at all:

- [REDACTED] (worked about 5 days)
- [REDACTED] (worked about 2 weeks)
- [REDACTED] about 1 week)
- [REDACTED] (worked about 2 weeks)
- J [REDACTED] (worked for 6-8 days)
- N [REDACTED] (worked for 5-6 days)
- [REDACTED] (worked for 5-6 days)
- N [REDACTED] (worked from Sep. 25-Oct 7 or 8)

7/28
emailed to
David Marin

Paid partial amount 70 days after finishing work:

Note: Most of the following people worked about 1 week.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- J [REDACTED]
- S [REDACTED]
- S [REDACTED]
- J [REDACTED]
- [REDACTED]
- J [REDACTED]

I am waiting to hear back from the following individuals concerning the DOL complaint:

- [REDACTED]
- [REDACTED]
- [REDACTED]

CLIENTS

-worked with Paul Davis for 5 days, only paid for 3 days of work & would like to join complaint
 -worked for Paul Davis for 5 days, only paid \$300, still owed \$180
 -worked with Paul Davis the first week of Oct., worked 11 hrs/day for about 6 days & only pd \$320 by a guy named Raul
 -worked for Paul Davis for awhile, always missing money on paycheck, he will figure out total amount, wants to join DOL complaint
 -name should be [redacted] worked for Paul Davis about 5 days, only paid \$220 in the end
 -worked for Paul Davis for 6 days, 12hrs/day. Paid \$320, still owed money. Wants to join complaint.
 -I think is the same person as above " [redacted]" and full name is "A [redacted]"
 -not paid for 5 days-week at all, would like to join complaint
 - (I believe this "A [redacted]" is the same as above?
 - This is [redacted] He worked for Paul Davis for 6 days, 12-13 hrs/day. Paid \$300 only. Would like to join complaint.
 - (I believe is " [redacted]"- worked for 7 days, 10hrs/day. Paid for 30 hours of work only.
 -name is " [redacted]"- he worked 6 days with Paul Davis (4 days at 10hrs, 2 days at 12hrs), pd only \$300.
 -worked for Paul Davis for 6 days, only paid \$300.
 - Said he worked for 15 days (about 2 weeks). He was one of the very last to leave the work. He was not paid anything for his work. He would like to join the complaint.
 -worked about a week with Paul Davis, not paid for any of his work, would like to join complaint
 -worked about 2 weeks with Paul Davis, not paid for any of his work, would like to join complaint

NOT YET CLIENTS

- Worked for Paul Davis for 6-8 days, was not paid & wants to join DOL complaint
 - worked 5-6 days with Paul Davis, not paid for work, would like to join
 - not paid for work for 5-6 days, would like to join DOL complaint
 - worked at Paul Davis for 5-6 days from Sept. 25 to Oct. 7 or 8th. Has not been paid & would like to join DOL complaint.

DOES NOT WANT TO JOIN COMPLAINT

- (I believe is " [redacted]"- our client, does not wish to be part of the complaint

OTHER

- (on old list of PD workers) phone # [redacted] (someone answered maybe in English and hung up)

IMMIGRANT JUSTICE PROJECT

Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
www.SPLCenter.org

phone 334 956 8200
fax 334 956 8481

September 6, 2006

VIA FACSIMILE AND REGULAR MAIL

Barbara Hicks, Director
US Department of Labor
Wage and Hour Division
4436 Veterans Blvd., Suite 17
Metairie, LA 70006

RE: Complaint against Paul Davis

Dear Ms. Hicks,

I am writing to express our concerns with the investigation & resolution of the complaint against Paul Davis National for failure to pay the minimum wage and overtime wages. Of particular and immediate concern is the USDOL's proposed method of distributing settlement monies to this group of complainants.

We raise the following systemic problems with the New Orleans Office which are highlighted in the investigation and resolution of this complaint:

- Assignment of Non-Local USDOL Investigators;
- Failure to Competently Interview Each Complainant in the Language He Speaks;
- Failure to Communicate with Complainants Regarding the Process and Potential Settlement of Their Complaint;
- Failure to Develop an Effective Settlement Distribution Plan; and
- Failure to Communicate with Worker Advocates.

We often refer workers to the USDOL for investigation and remedy of their claims. We raise these issues as part of our ongoing dialogue with the office in the hopes that future investigations will run more smoothly.

A. Assignment of Non-Local USDOL Investigators

The New Orleans USDOL Wage & Hour Division Office's reliance on temporary, non-local investigators results in shallow investigations and limited communication with complainants. This inadequate approach results both in a decreased ability to investigate cases in a timely manner and places an unrealistic burden on these temporary investigators.



In the Paul Davis case, Mr. Marin of the Puerto Rico office was assigned as the only investigator to the case. His limited stay in New Orleans hindered his ability to directly investigate the company and also to meet in person with complainants and witnesses in the New Orleans area. While Mr. Marin's continued pursuit of a settlement after his return to Puerto Rico is commendable, he was limited by both physical distance and his regular workload.

The USDOL has an inadequate number of bilingual investigators nationwide and particularly in the Southeastern region. Pulling their resources to New Orleans complaints further frustrates the ability of limited English proficient (LEP) residents in their regular areas to pursue their complaints.

Additional bilingual investigators in the New Orleans office are necessary in order to address the large number of wage & hour complaints among LEP workers in the New Orleans area.

B. Failure to Competently Interview Each Complainant in the Language He Speaks

During the entire investigation and resolution phase, Mr. Marin has only talked with 5-6 of the almost 50 complainants. I know this because twenty of the complainants who are also clients of the Southern Poverty Law Center have regularly contacted me to inquire about the status of the complaint. They have reported that they have never spoken with Mr. Marin and have no information about the status of the complaint.

Particularly problematic is that one of Mr. Marin's contacts is a worker with significant personal ties to Raul Casilla, a recruiter and supervisor implicated in workers' nonpayment (Carla Souza). Given this relationship, Carla Souza should never have been relied upon to contact this group of workers and communicate to the USDOL investigator regarding their case.

Because the USDOL is responsible for investigating and resolving this case, the USDOL should be in contact with all complainants regarding their complaints, fact gathering, and procedural matters. It is inexcusable that claims are being resolved and settlement checks dispersed to workers who have never been in contact directly with the USDOL.

C. Failure to Communicate with Complainants Regarding the Process and Potential Settlement of Their Complaint

As established above, the investigator assigned to this case had limited communications with the complainants regarding the status of their complaint. In fact, the majority of the complainants had no contact with the US Department of Labor at any point throughout the course of the investigation.

It is particularly problematic that the complaint was settled with Paul Davis National without Mr. Marin's contacting the complainants to discuss the potential settlement with them. Additionally, Mr. Marin has not contacted the clients to apprise them of the settlement or to develop a suitable and effective distribution plan for the settlement money.

D. Failure to Develop an Effective Settlement Distribution Plan

The communication problems endemic to this investigation continue in the settlement distribution phase. We have major concerns with the proposed settlement distribution plan for this case, which includes sending each complainant's checks from Paul Davis National to the Ft. Lauderdale Area USDOL Office for pick-up.

This plan, devised without consulting individual complainants, raises several significant concerns.

Many of the complainants do not live in the state of Florida. It is unrealistic to expect them to retrieve their settlement checks from a Florida office. There appears to be no plan for distributing checks to out-of-state complainants.

The process seems inadequate even for the complainants residing in Florida. For example, Mr. Marin stated that he does not believe that the Ft. Lauderdale Area Office has any Portuguese-speaking staff. As stated in the original complaint, all of the complainants in this case speak Portuguese as a primary language and are not able to effectively communicate in a second language. There seems to be no plan for how the complainants will communicate with the Ft. Lauderdale Area Office when they attempt to pick up their check.

The USDOL should contact complainants or their representatives to ascertain how to best distribute these checks. We are unclear what addresses the USDOL is using in its distribution plan, but any and all addresses should be confirmed. Migrant workers regularly change addresses and regularly use the address of a family member or other representative for official mail. For example, upon request, our office will receive the mail of migrant workers. We regularly accept all correspondence on behalf of our clients. The USDOL should also be aware that because of fears of retaliation, many workers will guard their permanent address from Paul Davis. For all these reasons, the USDOL should always contact complainants on whose behalf it has achieved a settlement to discuss appropriate check distribution.

E. Failure to Communicate with Worker Advocates

While relying on us to communicate case status information to 20 of the complaints, the USDOL has nonetheless refused to give us concrete information during the course of the investigation. Even now, while requesting that we communicate the settlement to our clients, the USDOL has refused to tell us key information such as the settlement amount for each complainant and the number of hours of work for which each complainant will be compensated. We have been told that this information is confidential; however, as the legal representatives of our clients, any information that could be given to the clients can be given directly to our office.

Additionally, when asked about the complainants in the case that are not our clients, Mr. Marin said that he was planning to rely on [REDACTED] to inform the complainants regarding the settlement. It is unacceptable to rely on an individual worker, particularly one with potential conflicts of interest, to inform other complainants about their rights under a potential settlement. It is of vital importance that each complainant receives accurate information regarding their settlement amount, how that determination was reached and how they can access their settlement

money. This must be done on an individual basis and in their native language. Anything short of this will create confusion and will undoubtedly lead to some complainants' never receiving the settlement they are due.

For these reasons, we believe that the settlement distribution plan for this case is inadequate.

F. Conclusion

Based on what we have learned through the investigation of this case, we make the following recommendations.

The New Orleans USDOL Wage & Hour Division should:

- Interview every complainant directly in his native language as part of the complainant's investigation;
- Explain the process the USDOL will engage in on his behalf, including any settlement negotiations;
- Provide every complainant with the name and telephone number of the investigator in charge of his case;
- Ask each complainant about the address he wishes to use for receipt of correspondence from the USDOL or former employer;
- Discuss options for distribution of checks with the complainants, including direct pick up of the check from the USDOL office local to the client and/or using the address of a trusted advocate, and develop a settlement distribution plan based on this complainant feedback.

We are willing to share our expertise and assist in any way that can help the USDOL more effectively protect low-wage immigrant workers against violations of their legal rights. If we can be of further assistance in this or other investigations, please let us know.

Respectfully,



Rebecca Watson
Paralegal, Immigrant Justice Project

cc: David Marin, Investigator, USDOL

Rebecca Watson

From: Jennifer Rosenbaum
Sent: Thursday, September 07, 2006 3:52 PM
To: Hicks, Barbara J - ESA; Passantino, Alexander - ESA
Cc: Mary Bauer (Mbauer@splcenter.org); rwatson@splcenter.org
Subject: SERIOUS CONCERN

Barbara,

Today Juan Coria in the Fort Lauderdale Office told Rebecca Watson, paralegal in our office, that workers involved in the settlement with Paul Davis National will be asked to sign releases of claims written in Spanish. Explanation of these releases and any other information about the case will only be offered in English or Spanish.

This is completely inadequate for the majority of the workers involved in this settlement who speak and read ONLY Portuguese. We have continually flagged this issue through the complaint investigation process and sent a detailed letter yesterday explaining the problems with the proposed settlement in more detail. I am sending this email to emphasize that this matter is immediate and critical.

As a legal matter, the USDOL should never ask individuals to sign documents waiving legal claims in a language they do not speak and/or read. We regularly litigate against employers for this very issue. Furthermore, the USDOL should immediately develop and enact a plan to communicate with all workers in the settlement regarding (1) the process for participation; (2) the amount of each worker's individual settlement check and the way it was calculated; and (3) the current residence of the worker and preferred method of check distribution.

Please call me immediately to discuss this matter.

JJ

Jennifer J. Rosenbaum
Staff Attorney
Immigrant Justice Project
Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
(334) 956-8298
(334) 956-8481 (facsimile)
(615) 423-0152 (cell)

This e-mail communication may contain confidential and/or privileged information intended only for the addressee. If you have received this e-mail in error or if you are not the intended recipient, please advise by return e-mail or by calling (334)-956-8200 and then delete this e-mail and your reply immediately without reading or forwarding to others.

9/7/2006

J.P. MORGAN CHASE BANK, N.A.
 2601 FLORENCE LA 79061
 844.393.6343

ITT, INC.
 300 CLANTON ROAD
 CHARLOTTE, NC 28217

PAY TO THE ORDER OF [REDACTED]

One Hundred, Thirteen and 00/100

MEMO Final Payment

5277
 8/3/2006
 \$ 113.00 DOLLARS

699227088
 005277 065400137

[Signature]

5277

8/3/2006

113.00

ITT INC.

11.3 Hrs. Reg-time

Payroll Expense: Temporal Labor

113.00

J.P. MORGAN CHASE BA Final Payment

5276

ITT, INC.
300 CLANTON ROAD
CHARLOTTE, NC 28217

8/3/2006

\$ 410.00

Four Hundred Ten and 00/100

MEMO

Final payment

699227088

8/3/2006

40 Hs Reg Time
7.5 Hs Over time

Final payment

5276

320.00
90.00

ITT, INC.

Payroll Expenses: Temporal Labor
Payroll Expenses

8/3/2006

40 Hs Reg Time
7.5 Hs Over time

JF MORGAN CHASE BA Final payment

410.00

Employment Information Form

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



This report is authorized by Section 11 of the Fair Labor Standards Act. While you are not required to respond, submission of this information is necessary for the Division to schedule any compliance action. Your identity will be kept confidential to the maximum extent possible under existing law. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

OMB No. 1215-0001
Expires: 06-30-2007

1. Person Submitting Information

A. Name (Print first name, middle initial, and last name)

Mr. [Redacted]
Miss [Redacted]
Mrs. [Redacted]
Ms. [Redacted]

B. Date

5/1/06

C. Telephone number:

Home: [Redacted]
Work: [Redacted]

D. Address: (Number, Street, Apt. No.)

[Redacted]

(City, County, State, Zip Code)

[Redacted]

E. Check one of these boxes

Present employee of establishment

Former employee of establishment

Other

(Specify: relative, union, etc)

2. Establishment information

A. Name of establishment/Name of Contact and Title

ITT, Inc.

B. Telephone Number

704-676-0990

C. Address of establishment: (Number, Street)

300 Clanton Rd.

(City, County, State, Zip Code)

Charlotte, NC 28217

D. Estimate number of employees

more than 15

E. Does the firm have branches?

Yes No Don't know

If "Yes", name one or two locations: temporary office at hotel on Airline Dr, Metairie, LA 70003

F. Sector (Select One)

Public agency

Private for-profit

Private non-profit

Nature of establishment's business: (For example, school, farm, hospital, hotel, restaurant, shoe store, wholesale drugs, manufactures stoves, coal mine, construction, trucking, etc.)

G. If the establishment has a Federal Government or federally assisted contract, check the appropriate box(es).

Furnishes goods

Furnishes services

Performs construction

Don't Know

H. Does establishment ship goods to or receive goods from other States?

Yes (describe)

No

Don't know

3. Employment Information (Complete A, B, C, D, E, & F if present or former employee of establishment; otherwise complete F only), complete G only if a potential violation of the Family and Medical Leave Act)

A. Period employed (month, year)

From: September 1, 2005
To: November 1, 2005
(if still there, state present)

B. Date of birth if you were younger than 19, at any time while employed at this establishment

Month _____ Day _____ Year _____

C. Give your job title and describe briefly the kind of work you do (or did)

performed hurricane clean-up work

PLAINTIFF'S EXHIBIT A

(Continue on other side)

Form WH-3
Rev. Aug. 1998

D. Frequency of payment (check appropriate box)

Weekly Bi-Weekly Semi-Monthly Monthly Other

Method of payment \$ 9 per hour

(Rate) (Hour, week, month, etc.)

E. Enter in the boxes below the hours you usually work (or worked) each day and each week (less time off for meals)

M	T	W	T	F	S	S	Total
10	10	10	10	10	10	10	70

F. Check the appropriate box(es) and explain briefly in the space below the employment practices which you believe violate the Wage and Hour laws. (If you need more space use an additional sheet of paper and attach it to this form.)

Does not pay the minimum wage (explain below)

Excessive deduction or discharge because of wage garnishment (explain below)

Does not pay proper overtime (explain below)

Employs minors under minimum age for job, for excessive hours, or in illegal occupations (explain below)

Does not pay prevailing wage/fringe benefits for Federal Government or federally assisted contracts (explain below)

Violation of Family and Medical Leave Act (FMLA) (complete G below)

Approximate date government contract ends _____

Other (explain below)

Violation of Migrant and Seasonal Agricultural Worker Protection Act (explain below)

Explanation: wasn't paid for his last week of work with ITT, for a total of 70 hours (40 regular and 30 overtime hours)

G. Family and Medical Leave Act (FMLA) Eligibility

(i) Number of hours employee worked during 12 months prior to the start of FLMA leave _____

(ii) Employee works at a location where at least 50 or more employees are employed within 75 miles Yes No

(iii) Leave Reason (check one)

Birth of a child Adoption or foster care placement Employee's serious health condition

Care for a spouse, child or parent with a serious health condition

(Note: if you think it would be difficult for us to locate the establishment or where you live, give directions or attach map.)

Complaint Taken By: Angeline Echeverria, Immigrant Justice Project
408 Washington Ave.
Montgomery, AL 36104

Public Burden Statement

We estimate that it will take an average of 20 minutes to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Administrator, Wage and Hour Division, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210. DO NOT SEND THE COMPLETED FORM TO THIS OFFICE.

Employment Information Form

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



This report is authorized by Section 11 of the Fair Labor Standards Act. While you are not required to respond, submission of this information is necessary for the Division to schedule any compliance action. Your identity will be kept confidential to the maximum extent possible under existing law. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

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1. Person Submitting Information

A. Name (Print first name, middle initial, and last name)

Mr.

Miss

Mrs.

Ms.

B. Date

5/1/06

C. Telephone number:

Home:

Work:

D. Address: (Number, Street, Apt. No.)

(City, County, State, Zip Code)

E. Check one of these boxes

Present employee
of establishmentFormer employee
of establishment

Other

(Specify: relative, union, etc)

2. Establishment Information

A. Name of establishment/Name of Contact and Title

ITT, Inc

B. Telephone Number

704-676-0990

C. Address of establishment: (Number, Street)

300 Clanton Rd.

(City, County, State, Zip Code)

Charlotte, NC 28217

D. Estimate number of employees

more than 15

E. Does the firm have branches?

Yes

No

Don't know

If "Yes", name one or two locations:

temporary office at
hotel on Airline Dr., Metairie, LA 70003

F. Sector: (Select One)

Public agency

Private for-profit

Private non-profit

Nature of establishment's business: (For example; school, farm, hospital, hotel, restaurant, shoe store, wholesale drugs, manufactures stoves, coal mine, construction, trucking, etc.)

G. If the establishment has a Federal Government or federally assisted contract, check the appropriate box(es).

Furnishes goods

Furnishes services

Performs construction

Don't Know

H. Does establishment ship goods to or receive goods from other States?

Yes (describe)

No

Don't know

3. Employment Information (Complete A, B, C, D, E, & F if present or former employee of establishment; otherwise complete G only, complete G only if a potential violation of the Family and Medical Leave Act)

A. Period employed (month, year)

From:

November 1, 2005

To:

November 30, 2005
(if still there, state present)

B. Date of birth if you were younger than 18, at any time while employed at this establishment

Month

Day

Year

C. Give your job title and describe briefly the kind of work you do (or did)

performed hurricane clean-up work



(Continue on other side)

Form WH-3
Rev. Aug. 1998

D. Frequency of payment (check appropriate box)

Weekly Bi-Weekly Semi-Monthly Monthly Other

Method of payment \$ 9 (Rate) per hour (Hour, week, month, etc.)

E. Enter in the boxes below the hours you usually work (or worked) each day and each week (less time off for meals)

M	T	W	T	F	S	S	Total
							an average of 35-40 hours per week

F. Check the appropriate box(es) and explain briefly in the space below the employment practices which you believe violate the Wage and Hour laws. (If you need more space use an additional sheet of paper and attach it to this form.)

- Does not pay the minimum wage (explain below)
- Does not pay proper overtime (explain below)
- Does not pay prevailing wage/fringe benefits for Federal Government or federally assisted contracts (explain below)
Approximate date government contract ends _____
- Violation of Migrant and Seasonal Agricultural Worker Protection Act (explain below)
- Excessive deduction or discharge because of wage garnishment (explain below)
- Employs minors under minimum age for job, for excessive hours, or in illegal occupations (explain below)
- Violation of Family and Medical Leave Act (FMLA) (complete G below)
- Other (explain below)

Explanation: During the time that Ricardo worked for ITT in November, he didn't receive additional pay for over-time. He has pay stubs to prove this. He also was not paid at all for his last two days with ITT for a total of about 17 unpaid work hours.

G. Family and Medical Leave Act (FMLA) Eligibility

- (i) Number of hours employee worked during 12 months prior to the start of FMLA leave _____
- (ii) Employee works at a location where at least 50 or more employees are employed within 75 miles Yes No
- (iii) Leave Reason (check one)
- Birth of a child
 - Adoption or foster care placement
 - Employee's serious health condition
 - Care for a spouse, child or parent with a serious health condition

(Note: If you think it would be difficult for us to locate the establishment or where you live, give directions or attach map.)

Complaint Taken By: Angeline Echeverria, Immigrant Justice Project
400 Washington Ave
Montgomery, AL 36104

Public Burden Statement

We estimate that it will take an average of 20 minutes to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Administrator, Wage and Hour Division, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210. DO NOT SEND THE COMPLETED FORM TO THIS OFFICE.

ITT, INC.

4618

11/23/2005

69 HRS
BONUS
11.5 HRS DEL 21 NOV
BONUS

621.00
60.00
188.50
30.00

IPMorganClass

SEMANA DEL 14 AL 20 NOV Y 21 NOV

794.50



05/01/06 17:59 FAX

001

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*****
*** TX REPORT ***
*****

TRANSMISSION OK

TX/RX NO          1038
CONNECTION TEL    915048870267
SUBADDRESS
CONNECTION ID    USDOL
ST. TIME         05/01 17:57
USAGE T          02'03
PGS. SENT        6
RESULT           OK

```

IMMIGRANT JUSTICE PROJECT
SOUTHERN POVERTY LAW CENTER

FACSIMILE TRANSMITTAL SHEET	
TO: Nury	FROM: Angelina Echeverria
COMPANY: Department of Labor	DATE: 5/1/2006
FAX NUMBER: 504-887-0267	FAX NUMBER: 334-956-8481
PHONE NUMBER: 504-457-2332	PHONE NUMBER: 334-956-8200
RE: Complaint against IIT, Inc.	TOTAL NO. OF PAGES INCLUDING COVER: 6

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Nury,

Attached is a new complaint of some Spanish-speaking workers that have been in contact with me.

The original copies of these documents will follow by mail.

Thank you,

Angeline

left message 5/2 asking if they received fax



**IMMIGRANT
JUSTICE
PROJECT**

Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
www.splcenter.org
phone 334 956 8200
fax 334 956 8431

October 24, 2006

VIA CERTIFIED U.S. MAIL

Barbara Hicks, Director
US Department of Labor
Wage and Hour Division
F. Edward Hebert Building
600 South Maestri Place, Room 727
New Orleans, LA 70130

RE: Complaint against Paul Davis

Dear Ms. Hicks,

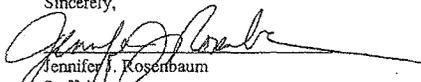
Enclosed please find twelve address change authorization forms hereby filed on behalf of complainants involved in your investigation of the company Paul Davis. I have also included a copy of our October 5, 2006 letter that included address change authorizations for an additional 5 Paul Davis complainants. These forms are filed on behalf of complainants who report to us that (1) they worked for Paul Davis and were not paid according to the FLSA; and (2) they have not yet received a check from the U.S. Department of Labor in compensation for this work.

As you know, this complaint was originally filed with the U.S.DOL wage and hour division on April 6, 2006. The information available to me is that the U.S. Department of Labor has reached a settlement in this case and has obtained overdue wages for these individuals that are heretofore not distributed and remain in the possession of the U.S.DOL. I have repeatedly written to you to report that complainants have not received their settlement checks, but I have received no response.

I am sure we agree that getting the long overdue wages to these individuals is a high priority. We are working to assist the Department in that regard. Please confirm in writing that the settlement checks obtained by USDOL on behalf of these individuals will be mailed to the addresses authorized herein. Please also communicate the timeframe for disbursement of these checks.

I await your response. Please contact me if you would like to discuss this matter further.

Sincerely,



Jennifer J. Rosenbaum
Staff Attorney

IMMIGRANT
JUSTICE
PROJECT

Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104

October 5, 2006 phone 334 956 8200
fax 334 956 8491

VIA FACSIMILE AND REGULAR MAIL

US Department of Labor
Wage and Hour Division
Attn: ADD Juan Coria
Ft. Lauderdale Area Office
299 East Broward Blvd., Room 408
Ft. Lauderdale, FL 33301-1976

RE: Complaint against Paul Davis National

Dear Mr. Coria,

Our office has recently been in contact with complainants in the complaint against Paul Davis National. These individuals contacted us and requested that we make specific address change requests of your office.

██████████ came to your office the week of Sep. 25, 2006, to claim his check from Paul Davis National. He was informed in Spanish that the checks were no longer available but that he should return in person with his mailing address. Mr. ██████████ was not able to return in person and requested that I contact your office with his mailing address. It is the following:

██████████
3104 NW 4th Terrace, Apt. 4
Pompano Beach, FL 33064-2919

In addition, there are four (4) additional complainants that have contacted our office because they do not live in Florida and thus not been able to collect their checks from Paul Davis National.

They have requested that all written correspondence, including claim settlement checks, be directed to the following addresses.

██████████
c/o Southern Poverty Law Center
Attn: Rebecca Watson
400 Washington Ave
Montgomery, AL 36104.



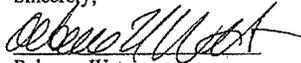
[REDACTED]
c/o Southern Poverty Law Center
Attn: Rebecca Watson
400 Washington Ave
Montgomery, AL 36104.

[REDACTED]
c/o Southern Poverty Law Center
Attn: Rebecca Watson
400 Washington Ave
Montgomery, AL 36104

[REDACTED]
c/o Southern Poverty Law Center
Attn: Rebecca Watson
400 Washington Ave
Montgomery, AL 36104

Because migrant workers regularly change addresses, live in locations where mail is unreliable, and risk retaliation from employers, our firm allows workers to receive mail at our physical address upon request. Please contact me if I can assist your investigation further.

Sincerely,



Rebecca Watson
Outreach Paralegal

Encl: Address Change Requests

cc: Barbara Hicks, Director
USDOL Wage & Hour Division
4436 Veterans Blvd., Suite 17
Metairie, LA 70006

IMMIGRANT
JUSTICE
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Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
www.SPLCenter.org

phone 334 956 8200
fax 334 956 8481

August 2, 2006

Inspector Troy Mouton
US Department of Labor
Wage and Hour Division
5353 Essen Lane, Suite 275
Baton Rouge, LA 70809
Via fax and US Mail

Dear Mr. Mouton,

In response to your request, SPLC has conferred with complainants [REDACTED] and [REDACTED] regarding the appropriate physical address to which USDOL correspondence and any settlement checks should be sent.

[REDACTED] hereby reports to the USDOL that the home address on the complaint is no longer valid. The current reliable address for all written correspondence to complainants is the following:

[REDACTED]
c/o Southern Poverty Law Center
Attn: Angeline Echeverria
400 Washington Ave
Montgomery, AL 36104.

[REDACTED]
c/o Southern Poverty Law Center
Attn: Angeline Echeverria
400 Washington Ave
Montgomery, AL 36104.

Because migrant workers regularly change addresses, live in locations where mail is unreliable, and risk retaliation from employers, our firm allows workers to receive mail at our physical address upon request. Please contact me if I can assist your investigation further.

Respectfully,

angelinecheverria
Angeline Echeverria



IMMIGRANT
JUSTICE
PROJECT

Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
www.SPLCenter.org

phone 334 956 8200
fax 334 956 8481

August 3, 2006

Inspector Troy Mouton
US Department of Labor
Wage and Hour Division
5353 Essen Lane, Suite 275
Baton Rouge, LA 70809
Via fax and US Mail

Dear Mr. Mouton,

I am writing to express our concerns with the investigation of [REDACTED] and [REDACTED] complaints against ITT, Inc. for failure to pay the minimum wage and overtime wages and the problematic investigative policies they reveal (see attached exhibits A and B). On behalf of these complainants, I request that you continue investigating their complaint regarding failure to pay overtime wages. I further request that your office alter your investigative policies as described herein.

We raise the following systemic problems which appear to affect not only this complaint, but all others investigated by the New Orleans Office:

- Failure to Competently Interview Each Complainant in Spanish;
- Failure to Communicate with Complainants Regarding the Process and Potential Settlement of Their Complaint;
- Inappropriate Revelation of Private Contact Information to a Former Employer;
- Failure to Accurately Gather Facts and Documents about the Complaint and its Scope.

A. Failure to Competently Interview Each Complainant in Spanish

While investigators who do not speak Spanish can obviously work with others to complete a competent investigation, in this case the inability to communicate directly appears to have limited and hampered the investigation. Although an investigator did speak with [REDACTED] on two occasions, no investigator ever contacted [REDACTED], even though he is named on the complaint. This is particularly inexcusable when your determination on the overtime claim is based on the complainants' "failure to provide documentation."



How can such a determination be made when you never spoke with [REDACTED] [REDACTED]? After recently speaking with [REDACTED], he provided me with the attached pay stub representing a week in which he was not paid overtime. (Ex. C).

B. Failure to Communicate with Complainants Regarding the Process and Potential Settlement of Their Complaint

My recent conversations with [REDACTED] reveal that although he was contacted twice by a Spanish-speaking USDOL inspector, he didn't understand that the inspector worked for USDOL and in fact believed her to be an investigator for ITT, Inc. Due to his fear of retaliation, [REDACTED] didn't share his documents with USDOL and apart from those two brief conversations, no effort was made to obtain these documents from him. After I explained the USDOL process to him and the importance of his documents to proving his complaint, he faxed the attached pay stub to me showing that he was not paid overtime. (Ex. D)

C. Inappropriate Revelation of Private Contact Information to a Former Employer;

On July 12th, you contacted my office to ask if I could assist you by contacting [REDACTED] regarding his current address. From this conversation, I understood that you were planning on disclosing [REDACTED]' address to the company for distribution of settlement funds, without having verified the address with him. In a conversation on July 14th, I asked you about this practice and you told me that as a matter of course, the USDOL discloses complainants' addresses without contacting the complainants first. We find this practice both ineffective and alarming. First, because migrant workers by nature change residences regularly, a complainant's address may have changed during the pending investigation of his complaint. Furthermore, because many live where mail service is unreliable, a complainant may choose to use a different address to receive a check or other correspondence. Finally, retaliation is a valid and pressing concern among low-wage immigrant workers, and workers may prefer not to divulge their current address to a former employer about whom they have complained. Many advocates, including our law firm, regularly receive mail for workers with concerns about retaliation. For all of these reasons, as well as to communicate with complainants about the status of their claim, USDOL should communicate directly with workers about which address should be used for disbursement of settlement funds. In failing to recognize these concerns, USDOL damages its credibility among workers and its ability to effectively enforce wage and hour protections under the law.

D. Failure to Accurately Gather Facts and Documents about the Complaint and its Scope

In this case, these problems with the investigation have led to an inaccurate determination on this complaint. You advised me on July 19th that USDOL found no basis for the overtime violation portion of the complaint. The reason you gave me was that neither of the complainants provided any documentation that you found merited investigation into this claim. Instead, you decided that a previous compliance investigation was sufficient grounds to dismiss this portion of their complaint as invalid.

Based on my recent conversations with the complainants, I am now able to provide the attached pay stubs for both [REDACTED] and [REDACTED] showing their non-payment of overtime. They have also confirmed that other workers faced the same systemic non-payment of overtime.

Possibly due to your inability to communicate directly with complainants, when I informed you on the 14th that they prefer for correspondence and settlement checks to be mailed to our office, you gave me the phone number of the company payroll representative and asked me to contact him directly. This is an inappropriate request, as this is a USDOL investigation and settlement should be negotiated through your office. Had we been in a position to negotiate directly with ITT, Inc., we would have done that from the beginning, instead of helping the complainants file with USDOL.

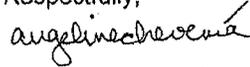
In addition to our request that the USDOL continue with the investigation of this particular complaint given the attached documents, we urge the USDOL to adopt the following practices in its investigations:

- Interview every complainant directly in his native language;
- Explain the process the USDOL will engage in on his behalf, including any Settlement Negotiations;
- Provide every complainant with the name and telephone number of the investigator in charge of his case;
- Ask each complainant about the address he wishes to use for receipt of correspondence from the USDOL or former employer;
- Provide and explain options for distribution of checks that do not include releasing a worker's address to his employer, including direct pick up of the check from the USDOL and/or using the address of a trusted advocate;
- Investigate whether each complaint is unique to complainants or stems from a systemic problem.

We often refer workers to the USDOL for investigation and remedy of their claims. We raise these issues as part of our ongoing dialogue with the office in the hopes that future investigations will run more smoothly. We have had contact with other people who worked for ITT, Inc. and weren't paid overtime and would be happy to help you locate other workers to complement your investigation.

We are willing to share our expertise and assist in any way that can help the USDOL more effectively protect low-wage immigrant workers against violations of their legal rights. If we can be of further assistance in this or other investigations, please let us know.

Respectfully,

A handwritten signature in cursive script that reads "angelineecheverria".

Angeline Echeverria

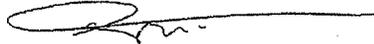
cc: Barbara Hicks

US ITT Group L.L.C.
3640 General Degaulle Dr.
New Orleans
July 31, 2006

US LABOR DEPARTMENT
Wage and Hour Division
5353 Essen Lane Room 275
Baton Rouge, LA 70809
At: Mr. Troy Mouton

Attached Checks for Mr. [REDACTED] and Mr. [REDACTED] any question do not
hesitate call me back, my Cell Phone 704 652 8966.

Tank you.



Jorge A. Garzon

Manager

IMMIGRANT
JUSTICE
PROJECT

Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
www.SPLCenter.org

phone 334 926 8222
fax 334 926 8484

March 8, 2007

Patricia Lewis
US Department of Labor
Wage and Hour Division
525 South Griffin Street, Room 800
Dallas, TX 75202
Via fax and US Mail

RE: Paul Davis National/Paul Davis Restoration Complaint

Dear Ms. Lewis,

I am writing to follow-up regarding the status of several complainants in the Paul Davis National complaint. I have left two phone messages at your office, but have not successfully reached you to discuss this matter.

On Oct. 5 and Oct. 24, 2006, our office forwarded packets of change-of-address forms for complainants that had contacted us to request this service. Nine of the complainants listed their address of record as 400 Washington Avenue, Montgomery, AL. This is our office address. To date, we have received WH-60 forms for only five (5) of these nine complainants.

We have not yet received WH-60 forms for the following complainants:

- [REDACTED]
- [REDACTED]
- [REDACTED]

We request that you either (1) accept the attached change-of-address forms as sufficient proof of where to send the check or (2) send us the WH-60 forms for these individuals.

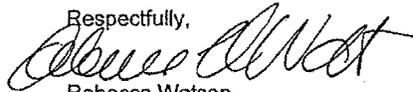


In addition, two other complainants have contacted our office to tell us that they have not yet received their settlement check from the Paul Davis investigation. Their names are:

- [REDACTED]
- [REDACTED]

We request that you contact our office to update us on the status of these two individuals' settlement checks.

Respectfully,



Rebecca Watson
(334) 956-8200

cc: Barbara Hicks, US DOL Wage & Hour Division (New Orleans, LA)

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Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
www.SPLCenter.org

phone 334 956 8200
fax 334 956 8481

April 6, 2006

U.S. Department of Labor
Wage and Hour Division
4436 Veterans Blvd., Suite 17,
Metairie, LA 70006
Facsimile: (504) 887-0267

RE: Complaint Against Paul Davis National for Failure to Pay Wages to New Orleans' Reconstruction Workers

Dear U.S. Dept. of Labor Wage and Hour Division:

Please accept this complaint for nonpayment of wages to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division ("USDOL") on behalf of the workers listed herein ("Complainants"). As former employees, Complainants make this complaint on behalf of themselves and the other similarly situated former employees of a company doing business as "Paul Davis National."¹ They request that USDOL keep their names and identities confidential to the maximum extent possible under the law.

[REDACTED]

Complainants and many of the other former employees of Paul Davis National are limited English proficient individuals and request Portuguese interpretation for all interviews and written documents. USDOL may contact them directly for interviews via the telephone numbers listed above. Please note that many Complainants are working during regular business hours and may need to be contacted in the evenings or on weekends to arrange interviews.

¹ "Paul Davis National" is identified as their employer by the names on employee badges. Further investigation by the USDOL is needed to determine the formal business name as well as any other joint employers.

² Photocopy of Paul Davis ID badge attached as exhibit A.

³ Photocopy of Paul Davis ID badge attached as exhibit B.



Mail may be sent to each Complainant at the following address:

Immigrant Justice Project
Southern Poverty Law Center
400 Washington St.
Montgomery, Alabama 36104
Attn: Jennifer Rosenbaum

Complainants are part of a group of approximately sixty workers employed by Paul Davis National in the reconstruction of New Orleans in the aftermath of hurricanes Katrina and Rita. Complainants worked from one to three weeks in late September and early October 2005. All were recruited for the job in and around Pompano Beach, Florida and transported to New Orleans by Paul Davis.

Complainants were brought to an area near the river in New Orleans where they worked and were housed in a gated complex and not permitted to leave during their period of employment. Because of the security at the site and the uniforms, weapons, and files in the buildings they were restoring, Complainants believe this was a military facility, probably operated by the U.S. Navy.

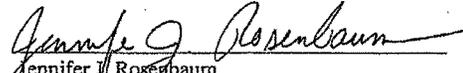
Complainants generally worked seven days a week, eleven hours a day, performing post hurricane and flood clean-up and basic demolition on the buildings. One of the supervisors was a Latino man named Raul.

After approximately two to three weeks of the contract, Complainants and the rest of the crew were fired with no explanation. While some former employees who remained in New Orleans were ultimately paid after waiting several months, Complainants and others were never paid for the work they had performed.

The failure to pay the Complainants and other workers is an obvious violation of federal law. The failure to pay workers at for more than seventy hours of work a week is obviously a failure to pay at least the federal minimum wage of \$5.15 an hour as well as failure to pay overtime. Further factual investigation of the working arrangements and the contracting scheme by the USDOL is needed to determine the governing federal standards which might include the McNamara-O'Hara Service Contract Act and/or the Fair Labor Standards Act.

Please contact me if you have further questions regarding this complaint and advise me when final action is taken as to this matter.

Sincerely,


Jennifer J. Rosenbaum
Staff Attorney

Mr. KUCINICH. Thank you very much.

I would just have one final question to ask of Mr. Steele before we end this panel after Mr. Davis.

What is the status of your case now? Have you been paid?

Mr. STEELE. No, sir, I haven't. Like I said, I talked with the law clinic for over a year, and I finally got in touch with them back in February to see what was happening. The girl, Vanessa, told me that I needed to call the DOL in New Orleans instead of the DOL calling me, so when I called the DOL to find out what was up she asked me a whole bunch of questions. What were the people who I was working for? Did I have any information? I told her blankly that she has a Government computer, she can track these folks down more quickly than I can, and then she said I need to do this. So I went out and I got help finding out where these people were at and I called her back and gave her the information. Then, when she filed my claim, like I said, I haven't heard anything from these folks until, like, last week. Then her supervisor called me, started interrogating me on the phone like I was the bad guy.

Mr. KUCINICH. How much are you owed?

Mr. STEELE. It is somewhere in the neighborhood of about 30,000.

Mr. KUCINICH. Thank you, sir.

Mr. Davis.

Mr. DAVIS OF ILLINOIS. Just one question, Mr. Chairman, and it calls for sort of an opinion or a speculation.

When we began the hearing we talked about the fact that some of the labor laws were, in fact, suspended. I guess the idea of suspending them would have been that it was going to, in some way, facilitate the rebuilding or make it easier or speed up the process of rebuilding New Orleans.

Would any of you care to speculate as to whether or not this has in any way facilitated, made it easier, or speeded up the rebuilding of New Orleans?

Mr. STEELE. Well, I will do this. All right. You want to know about the process that was going on?

Mr. DAVIS OF ILLINOIS. Yes. Did it make it easier? Did it speed it up? Did it make it faster?

Mr. STEELE. No, it didn't. The only thing that made it speedy and faster was when, after this hurricane happened, we went in and we started down in the Elysian Field area—that is down by the 9th Ward. It was up in the 9th Ward area around the French Quarter. They wanted to get that cleaned up, but you still had other areas in New Orleans that are still in shambles, like Gentilly. I forget the parish on our side, going out by Lake Charles, all up in that area is still houses off of Schiff road, there are neighborhoods that are still blocked in. No one has gone in there to do any cleanup at all. You know, that is neighborhoods that are still in shambles.

Ms. ROSENBAUM. I would like to say I think it sped up the entry of bad faith, fly by-night subcontractors who got a sense of what was likely to happen and accurately predicted the non-enforcement of labor law and the ability to extract money that should have been going to the people who were working these jobs out of the system, and it detracted from the rebuilding because many workers like

Mr. Steele, after 3 and 4 months, the skilled workers who were there because they wanted to support New Orleans and the Gulf Coast, ultimately had to leave because they couldn't risk the continued nonpayment.

Mr. SONI. I just wanted to add that the pattern of what happened was that, by suspending the Davis-Bacon Act, it allowed subcontractors to hire the cheapest worker. By lifting sanctions on employers, allowing them to employ undocumented immigrants, it incentivized the mistreatment of undocumented immigrants. The suspension of Affirmative Action basically shut a large number of people out of returning home. These would have been the first people to come back home to areas like Central City and Gentilly, and if they had come back then they would have repopulated those areas.

So as a result of these very contradictory public policies, what you had was a reconstruction that lacked any kind of coherent whole or clarity, with the result that now New Orleans is a patchwork of neighborhoods with a home here that has been rebuilt, a Burger King there that is a little homestead Burger King established in the middle of nowhere, and no real coherence in terms of residents who are able to come back.

Mr. DAVIS OF ILLINOIS. Yes.

Mr. SMUKLER. I would like to add that it could have been so different, because, you know, it was a complete tragedy, but it offered a possibility for a high road strategy for rebuilding New Orleans based on, you know, Government supporting industries that paid living wages and paid health benefits and encouraging people who were made refugees to come back, you know. Instead, as all of my colleagues have said, it has created a situation where it encouraged the worst possible low road practices.

Mr. DAVIS OF ILLINOIS. Thank you all so very much.

Thank you, Mr. Chairman.

Mr. KUCINICH. Thank you, Mr. Davis.

Before dismissing the first panel here, I would like to introduce the ranking member of this committee, who is our partner in so many of these hearings, the Honorable Darrell Issa of California.

Do you have a statement to make or anything to say?

Mr. ISSA. Mr. Chairman, I will put my statement in for the record.

I would only ask that additional material from George Mason be placed in the record.

Mr. KUCINICH. So ordered, without objection.

Mr. ISSA. Thank you.

[The prepared statement of Hon. Darrell E. Issa and the information referred to follow:]

07/27/07 Submitted for the Record by:
Cong. Daniel Issa

MERCATUS CENTER
GEORGE MASON UNIVERSITY

**REBUILDING NEW ORLEANS AFTER HURRICANE KATRINA:
WHAT'S WORKING**

Emily Chamlee-Wright, Ph.D.
Affiliated Senior Scholar, Mercatus Center at George Mason University
Professor of Economics, Beloit College
608-363-2256
chamlee@beloit.edu

Mario Villarreal, Ph.D.
Affiliated Senior Scholar, Mercatus Center at George Mason University

Daniel M. Rothschild
Associate Director, Global Prosperity Initiative
Mercatus Center at George Mason University

Testimony Presented to the
US House of Representatives
Committee on Oversight and Government Reform
Subcommittee on Domestic Policy

June 26, 2007

Mister Chairman, Ranking Member Issa, and members of the subcommittee:

Thank you for the opportunity to testify before the subcommittee on labor law enforcement and regulation in New Orleans after Hurricane Katrina. We are grateful for the chance to share our research with you and hope that it will prove helpful. We should note that we are presenting the results of our research and that this statement does not constitute an official position of George Mason University.

In December 2005, the Mercatus Center at George Mason University began a five-year study in Louisiana and Mississippi to learn more about how communities respond to and rebuild after disasters. Through intensive fieldwork and qualitative and quantitative analysis, we hope to understand better the comparative strengths and weaknesses of the private sector, the public sector, and civil society in promoting community rebound after disasters. This is an ongoing study for us that we plan to continue through 2010.

In order to learn first-hand what is working and where communities are seeing successes, we have focused our attention on the rebuilding strategies of ordinary citizens, their families, and communities in Louisiana and Mississippi. To date we have conducted almost 200 in-depth interviews in Orleans and St. Bernard Parishes, Louisiana and Harrison and Hancock Counties, Mississippi.

In January 2007, the Mercatus Center issued a policy report entitled "Disastrous Uncertainty: How Government Disaster Policy Undermines Community Rebound." The report is attached to our testimony. We would like to take this opportunity to share the findings presented in that report as well as additional research we have conducted in the months following.

In the aftermath of Hurricane Katrina, when the waters had receded and families began to take stock of their homes and make decisions about whether and how they would rebuild, governments on all levels began proposing their own plans for rebuilding. On September

16, President Bush addressed the nation from Jackson Square in New Orleans and promised, “[T]he federal government will undertake a close partnership with the states of Louisiana and Mississippi, the city of New Orleans and other Gulf Coast cities so they can rebuild in a sensible, well planned way. Federal funds will cover the great majority of the costs of repairing public infrastructure in the disaster zone, from roads and bridges to schools and water systems.”

Today, some 22 months after the hurricane, communities along the coast are in various states of rebuilding. Some are largely rebuilt, while many others appear to have made little progress. Despite the promise of \$110 billion in federal funds, the recovery remains slow, and in some communities it appears stalled altogether. Government programs at all levels are a mess.

The situation cannot be corrected, however, by expanding resources to these programs. The problem is not a scarcity of government funding. The problem is that governments at all levels are creating persistent uncertainty and confusion. By failing to send clear messages about what rules will govern the rebuilding process; by failing to clearly articulate what services and resources will be provided; and by failing to deliver on the promises that have been made, governments at all levels have made it difficult, sometimes impossible, for residents and business owners to make informed and intelligent decisions about whether and how to rebuild. The uncertainty created by government programs—programs intended to help Gulf Coast residents rebuild—is having significant deleterious effects on the rebuilding process.

This policy-generated uncertainty works counter to the positive signals sent by civil and commercial society, which are critical to sustainable rebuilding. Individuals and families do not rebuild in isolation, but rather, as members of communities—neighborhoods, businesses associations, religious groups and social organizations. Individuals making decisions about rebuilding do so within a larger context, guided by the signals sent by other citizens. These include the positive signals that come from the reopening of grocery stores, auto mechanics, and day care providers (to name just some critical businesses); the creation of new jobs; the reopening of schools; the resumption of church services and social organizations; calls for neighborhood meetings; and the return of other households.

The conflicting signals sent by governments to individuals, families, communities, businesses, and non-profit groups attempting to rebuild create what we call “signal noise.” We define this as the persistent distortion of signals that does not self-correct, making the underlying signals – the signals that are critical to guiding sustainable recovery – more difficult for people on the ground to read and interpret.

The positive signals created by fruitful civil and commercial interactions are often drowned out by signal noise generated by public policy. And to the extent that public policy generates signal noise by sending conflicting messages, failing to deliver promised goods and services, failing to clearly delineate the “rules of the game,” and interfering in organic rebuilding, the rebuilding process is slowed, uncertainty compounds upon itself, and Katrina’s victims continue in a state of limbo. To take but one example, the best

work of neighborhood associations in rebuilding a sense of community is undermined by unclear or arbitrary rules about how and when local governments will demolish damaged homes or take property that officials deem blighted.

Signal noise is not the natural confusion in the immediate aftermath of a disaster, nor is it a natural and unavoidable phenomenon. Rather, it is often the unintended consequence of poorly conceived policy interventions. Signals generated by civil and commercial interactions, which possess built-in incentives that amplify the right signals and minimize the wrong ones, tend to sort out and reduce confusion faced by individuals. Government policy does not possess self-correcting properties. Instead, signal noise generated through public policy tends to be stubbornly persistent.

The Louisiana Road Home program, to take but one example, spent months seemingly unable to process the promised checks of up to \$150,000 to help Louisianans rebuild. Indeed, the program had cut fewer than 400 checks as of January this year, and it was March before the program ramped up to the point where it was processing more applications than were coming in. Today the program is suffering from a \$6.5 billion shortfall, and award letters from the program have been amended to include a caveat that the payouts are subject to cancellation if the program runs out of funds. The key problem here is not the lack of money, but the confusion and signal noise generated thereby.

The processes by which cities and states are creating new urban and regional plans are also fraught with problems that create uncertainty and slow recovery. New Orleans went

through four planning processes before last week finally approving the Unified New Orleans Plan. But the plan has many serious flaws. Most significantly, it is estimated that the plan will cost \$14 billion to implement, and there is no indication where the majority of this money will come from. The plan is still vague, contradictory, and more of a wish list than a true plan. These two problems make the plan a major source of signal noise, which slows the recovery more than it enhances it. The Bureau of Governmental Research, a non-partisan New Orleans-based public policy research group, argues, “[The plan] does not provide the information needed for decision making. It does not tell the public with specificity where its policies would apply. And its policies are sometimes so vague that knowing where they would apply still would not provide enough direction.” Our colleagues Sanford Ikeda and Peter Gordon identify in a forthcoming policy paper many of the problems that are inherent in politically-driven urban planning.

To sum up, there is a great deal of signal noise to which policy makers are subjecting returning residents. In our interviews, this frustration is palpable. And the recovery process is being hampered by it.

But in spite of the signal noise being generated by government at all levels, many communities are showing strong and positive signs of rebounding. The Broadmoor Improvement Association has created partnerships with universities and businesses and has shown enormous progress: about two-thirds of the neighborhood’s homes have been or are being rebuilt. Critically, the community is working not just to rebuild but to make a better, more vibrant neighborhood.

In New Orleans East, the Vietnamese-American community centered around the Mary Queen of Vietnam Catholic Church rebounded with enormous speed, with the church serving as a rallying point for the community. The newly-formed Mary Queen of Vietnam Community Development Corporation is spearheading economic development efforts in the neighborhood, including the revitalization of two shopping centers. Plans are in the works for a community aquaculture facility, a museum devoted to preserving the history of Vietnamese-Americans, and a senior citizens' housing and activity complex across the street from the church.

Even in the hard-hit Lower Ninth Ward, groups like the Lower Ninth Ward Neighborhood Empowerment Network Association are working to stimulate community response. They are buoyed by the slow but significant redevelopment of businesses along the St. Claude Avenue corridor and the creation of the Lower Ninth Ward Health Clinic, the only health care facility in the area. The association's leaders, working with block captains, are holding regular meetings and tracking down pre-Katrina residents who have not returned, keeping them informed about developments in the community and keeping tabs on their intention to return. They are also critically following and responding to the signal noise generated by continued discussions by policy makers about whether their community should be "allowed" to rebuild.

All of this is to make a simple point: it is bottom-up, grassroots rebuilding efforts that are repopulating New Orleans, reopening businesses, and helping the city to not simply

rebuild, but to reconstruct itself. It is the work of myriad volunteers, contractors, religious groups, small business owners, non-profit groups, and community leaders who are showing the real leadership in the rebuilding process. These people are the heroes, and their work seldom receives recognition or praise. These are the people leading the recovery process, and elected officials should focus on supporting their work, rather than trying to manage a top-down recovery.

In our research, we have identified four key strategies by which people are employing social capital to produce positive signals that are guiding community recovery. We will not go into great detail here, as these strategies are treated more extensively in our attached policy report and elsewhere in our academic papers. Suffice it to say that these strategies create the types of positive signals that are crucial to community recovery and that policy makers must take great care not to drown out.

The first of these strategies is mutual assistance, by which residents exchange labor, shelter, child care services, tools, and expertise. Mutual assistance sends the signal that “we’re all in this together” and that the community is rebounding as a whole. The second strategy is charitable assistance, with which we are all familiar. Charitable assistance provides signals that third parties wish to invest in communities. The third strategy is commercial cooperation, by which businesses create the jobs and provide the material needs that are vital to any form of sustainable community. And the fourth and final strategy, which we call the “build it and they will come” strategy, occurs when private citizens, business owners, and community leaders create or redevelop a key community

resource that helps to tip the scales for other residents and business owners on the fence about returning.

What our research suggests is that what people need and want most of all are quick, clear, and credible commitments from governments at all levels about what will be provided and when. Or to put it another way, the thing most responsible for the slow pace of the recovery is the confusion brought on by the signal noise emanating from the public sector. The best thing that policy makers can do to help communities respond is to respect private property, enforce the rule of law, and ensure that reasonable and appropriate commitments already made will be fulfilled. Residents need the information that will enable them to make decisions for themselves. But to be useful, this information must be clear and credible. And credibility requires follow-through, oversight, and making only those commitments which are realistic and achievable. Commitments from governments at all levels that are later reneged upon only serve to hamper the recovery.

What will most effectively discourage communities from rebuilding is if policy makers continue to create new regulations, new plans, and new programs. It is much more important to fulfill promises already made and to allow communities and the market to respond accordingly. But it is vital that these are realistic and possible promises that focus on creating and enforcing an environment in which grassroots-led, sustainable rebuilding can occur. Policy makers can contribute to the progress by making sure that commitments that they make are credible, true, and will be realized. To the extent that governments provide bad or misleading information, or tell people what they want to hear

instead of the truth, the recovery process will only be slowed or made less resistant to future shocks and challenges. And when policy makers make promises based on the world as they wish it exists rather than the world as it does exist, they should know they are only hurting the people they are trying to help.

We have seen in New Orleans and elsewhere in Louisiana and Mississippi how organic, community-led rebuilding is leading the recovery after Hurricane Katrina's massive devastation. And we have also seen how top-down recovery is sending mixed messages, diluting the positive signals that come from civil society and the private sector, and slowing down a recovery process that, in order to address the massive task at hand, must be flexible and adaptable.

Simply put, we will never rebuild communities – in the true sense of the word – with programs and regulations created and run out of Washington that are slow to adapt, subject to political wrangling, and do not possess the impressive information and talent of the people struggling to rebuild their communities after Hurricane Katrina.

We are seeing what works, and policy makers must bear in mind the importance of community ties and social capital in the recovery process. Governments can create Potemkin villages. But they cannot create communities.

Policy makers must be aware of the importance of stable and well-enforced rules for rebuilding the Gulf Coast. Arbitrarily and frequently changing the rules going forward, or

failing to fulfill previous commitments, will only serve to hamper the rebuilding process. Policy makers should avoid policies that artificially distort market- and community-led rebuilding and redevelopment, as these policies tend to create massive signal noise which drowns out organic signals and stifles the ability of communities to rebuild themselves.

We thank Chairman Kucinich, Ranking Member Issa, and the members of this subcommittee for inviting our testimony and we look forward to answering any questions you may have.

Appendix

Disastrous Uncertainty:

How Government Disaster Policy Undermines Community Rebound

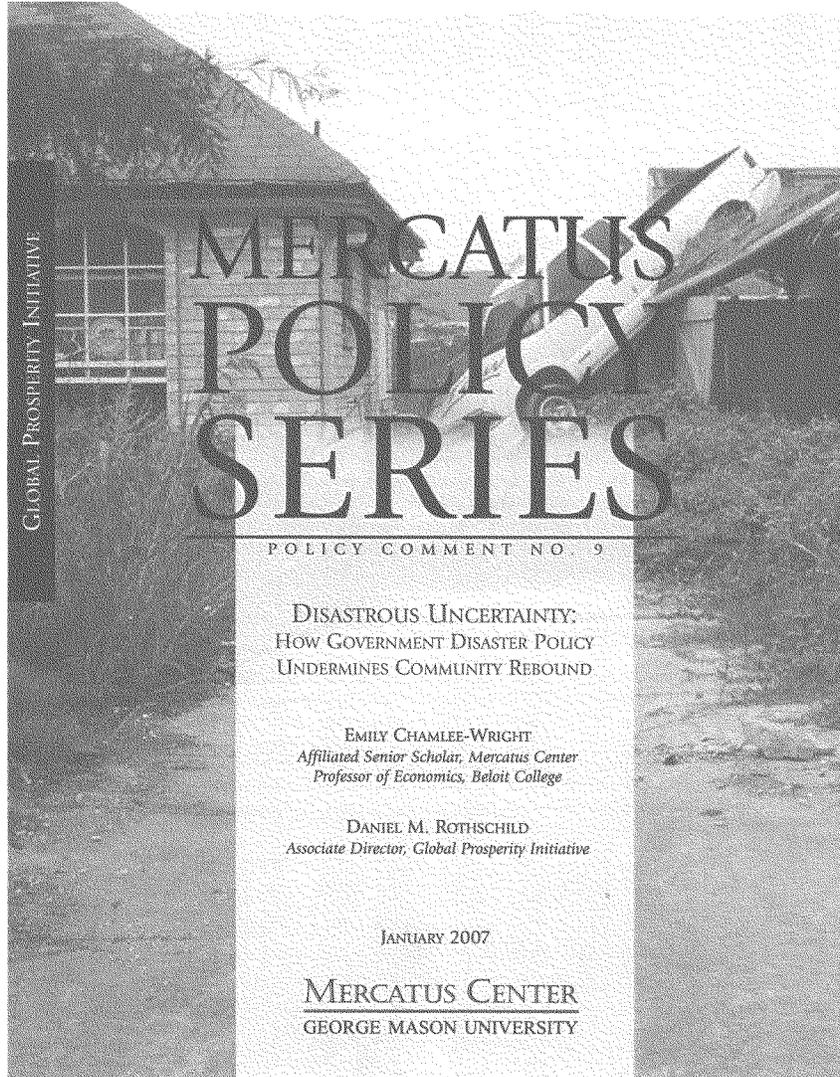
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Emily Chamlee-Wright

Daniel M. Rothschild

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DISASTROUS UNCERTAINTY:
HOW GOVERNMENT DISASTER POLICY
UNDERMINES COMMUNITY REBOUND

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JANUARY 2007

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Cover photo: Daniel Rothschild—St. Bernard Parish, July 16, 2006.

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**DISASTROUS UNCERTAINTY:
HOW GOVERNMENT DISASTER POLICY UNDERMINES COMMUNITY REBOUND**

EMILY CHAMLEE-WRIGHT AND DANIEL M. ROTHSCHILD

EXECUTIVE SUMMARY

In the aftermath of large-scale disasters, policy makers frequently respond by developing and directing top-down recovery plans and launching a variety of expensive and complicated programs to rebuild cities and compensate victims. This was certainly the case after Hurricane Katrina.

However, these plans tend to ignore the innate abilities of individuals, communities, and businesses to use a variety of resources and sources of information to guide their decisions about whether and how to rebuild. These decisions are not made in isolation, but rather depend substantially on the signals sent by similarly situated people.

Recovery efforts guided by the signals that emerge from action on the ground produce faster, more robust, and more sustainable redevelopment than efforts stemming from a politically-produced and centrally-executed recovery plan. Moreover, large-scale redevelopment programs can overwhelm and obfuscate the signals created locally, stalling and distorting the organic recovery that is crucial to long-term sustainable development.

Public policy can foster an environment which encourages sustainable, organic recovery by:

1. Providing quick, clear, and credible commitments about what goods and services governments will provide and when,
2. Creating in advance alternative regulatory regimes specific for post-disaster environments, and
3. Avoiding policies that distort local economies and hamper civil society rebuilding.

Because policy mistakes can have serious retarding effects on post-disaster rebuilding efforts, policy makers must understand the systemic reasons why government help so often goes awry, why private citizens with a stake in the outcome are best situated to lead their own recovery, and how to craft policy responses in a way that keeps “signal noise” to a minimum.

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DISASTROUS UNCERTAINTY:
HOW GOVERNMENT DISASTER POLICY UNDERMINES COMMUNITY REBOUND

INTRODUCTION

On August 29, 2005, the nation watched as Hurricane Katrina pummeled the Gulf Coast, inflicting over \$100 billion of property damage across broad swaths of Louisiana, Mississippi, Texas, and Alabama¹—ultimately claiming over 1,600 lives.² The fury of nature seemed to cause the institutions on which our society is based—those of government, commerce, and civil society—to crumble. First responders appeared overwhelmed as accounts of widespread looting, vandalism, theft, assault, and murder headlined newspapers and as the images of our fellow citizens literally swimming for their lives appeared on television and computer screens. The slow and seemingly inept responses of government at all levels both in preparation for and recovery from the storm infuriated Americans.

On September 15, President Bush addressed the nation from Jackson Square in the New Orleans French Quarter, pledging the federal government to sponsor and manage a rebuilding program of historic proportions:

[T]he federal government will undertake a close partnership with the states of Louisiana and Mississippi, the city of New Orleans and other Gulf Coast cities so they can rebuild in a sensible, well planned way. Federal funds will cover the great majority of the costs of repairing public infrastructure in the disaster zone, from roads and bridges to schools and water systems.

Our goal is to get the work done quickly. And taxpayers expect this work to be done honestly and wisely. . . .³

Sixteen months after Katrina made landfall, communities along the Gulf Coast are in various states of repair. Some areas are almost rebuilt, while in others little progress has been made. Some communities have proven remarkably resilient, while others have been unable to “get the ball rolling” on recovery. Given the commitment of \$110 billion by the federal government⁴ (including \$7.5 billion through the Louisiana Road Home

¹ John McMillan, “Nation Just Doesn’t Understand Scale of Katrina, Official Says,” *The Baton Rouge Advocate*, November 10, 2006.

² Marcus Franklin, “Columbia Geophysicist Wants ‘Full’ Katrina Death Toll,” *Associated Press*, October 28, 2006.

³ “President Discusses Hurricane Relief in Address to Nation,” White House Press Release, September 15, 2005, <http://www.whitehouse.gov/news/releases/2005/09/20050915-8.html>.

⁴ “Fact Sheet: A New Mississippi: Rebuilding in the Wake of Hurricane Katrina,” White House Press Release, August 28, 2006, <http://www.whitehouse.gov/news/releases/2006/08/20060828-2.html>.

Program),⁵ payments of over \$23 billion⁶ from the subsidized National Flood Insurance Program, and the subsidies offered under the Gulf Opportunity Zone and other tax credits, Gulf Coast residents affected by the storm, and Americans more broadly, are right to ask why the pace of recovery has been so slow.

Policy makers too remain concerned about the slow pace of recovery, and Americans of all political stripes believe that governments at all levels are not doing enough to help. A year after the storm, only 32 percent of Americans believed that federal agencies are doing “all that could be expected” of them.⁷ Two-thirds of Americans believed that the federal government’s response has been “not so good” or “poor.”⁸

However, the problem may not be that governments are not doing enough. In fact, the rebuilding effort is likely to be more rapid and sustainable if civil society, rather than government, takes the lead. But in order for civil society to fulfill its potential, governments must assume a relatively minor role in the redevelopment process so as not

to distort the signals generated by the discovery unfolding within civil society.

In the wake of Katrina, residents and business owners across the Gulf Coast are looking for signals—cues as to where they should devote their time and resources—regarding whether and when their communities and customer bases are going to return and in what form. A community is, after all, not just a political district or a tract of homes: it is a social system that connects individuals and their families to one another through formal and informal neighborhood groups and the services and social spaces created by schools, businesses, religious groups, and non-profit organizations. The futures of the victims of Katrina are tied to the decisions of others—their neighbors, their customers, their employees, and the commercial and non-commercial organizations serving their communities. In such a context, the signals coming out of civil and commercial society—signals about who is coming back and when and what services will be provided—play a critical role in the recovery process.⁹

⁵ Leslie Eaton, “Slow Home Grants Stall Progress in New Orleans,” *New York Times*, November 11, 2006.

⁶ Donald B. Marron (Acting Director, Congressional Budget Office), Letter to Senator Judd Gregg, May 31, 2006, <http://www.cbo.gov/ftpdocs/72xx/doc7233/05-31-NFIPLetterGregg.pdf>.

⁷ CBS News/New York Times poll conducted August 17–21, 2006. Fifty-nine percent of respondents believed that the federal government should be doing more, and nine percent were unsure. <http://www.pollingreport.com/disasters.htm>.

⁸ ABC News poll conducted August 10–20, 2006. Four percent rate the response as “excellent,” and twenty-five percent rate it as “good.” <http://www.pollingreport.com/disasters.htm>.

⁹ For more detail on this, see Emily Chamlee-Wright, “After the Storm: Social Capital Regrouping in the Wake of Hurricane Katrina” (working paper, Mercatus Center at George Mason University, Arlington, VA, 2006).

"Well, there's a lot of uncertainties, you know? . . . [W]e don't know whether [the] levee system's going to hold, number 1. Number 2, a lot of people are still finding insurance issues that just haven't been corrected. And number 3—even people who've got the insurance and you want to come back home, you don't know how many people ever come back in the neighborhood. Who wants to live in the neighborhood with nobody there? So, there's just so many uncertainties right now, you know? Who knows?"

—Law Enforcement Officer, New Orleans

And yet, in the post-Katrina environment, many of the signals upon which people depend to make informed and responsible decisions have become difficult to read or have become so distorted that seemingly clear signals are sending the wrong message. We call this distortion "signal noise": the persistent distortion of signals that does not self-correct, making the underlying signal more difficult for people on the ground to read and interpret.¹⁰

To take but one example, New Orleans is currently in its second (some say third) discrete rebuilding planning process in less than a year. As each new planning process and the commensurate rebuilding plan appear, residents change their decisions about how and whether to rebuild.

When a previously-announced plan is scrapped in favor of a new plan with different rules for rebuilding, time is lost, progress made under the now-obsolete plan is rendered useless, and residents are left wondering whether the next plan will be "the one"—or just another aberration. These multiple and varied signals that the city has sent to its residents have left people making decisions about rebuilding without any consistent knowledge of what and when policy makers will allow them to rebuild. This in turn slows the rebuilding process and delays the recovery of key commercial and civil society organizations and institutions. When governments fail to establish the rules of the game for rebuilding, or worse yet change the rules in mid-course, it becomes diffi-

¹⁰ The concept of signal noise comes from the natural sciences. "Signal to noise ratio" in radio communications refers to the amount by which static and interference dilutes the signal of, for instance, a commercial radio station. As the noise surrounding a signal becomes stronger, radio listeners find it harder to follow the music. Other social scientists have used the concept of signal noise and discussed the effects of signal noise, most notably Robert E. Lucas, "Expectations and the Neutrality of Money," *Journal of Economic Theory* 4(2), 1972, pp. 103-24.

cult for victims to make vital decisions and get on with their lives.

To be clear, signal noise is not merely the confusion created by a major disaster; such confusion tends to subside relatively quickly after families reunite, supplies come in, and response shifts from emergency response to rebuilding. Nor is signal noise “natural.” Signal noise is not an inevitable result of disaster. Instead, it is often the unintended consequence of poorly conceived policy interventions. Whereas the signals generated by civil and commercial interactions, which possess built-in incentives that amplify the right signals and minimize the wrong ones, tend to sort out and reduce the confusion faced by individuals, government policy does not possess self-correcting properties. Indeed, signal noise generated through public policy tends to be stubbornly persistent.

In particular, federal, state, and local governments introduce signal noise through disaster relief efforts, management of flood protection and insurance systems, and redevelopment planning initiatives. We find that the distortions created by disaster policy often drown out the more nuanced, precise, and self-correcting signals generated by residents and businesspeople with a personal stake in how, when, and where rebuilding happens. Though it is possible for government to

foster an environment in which clear signals might emerge, current practices often undermine the efforts of private citizens trying to affect a swift and sustainable recovery.

The structure of this policy comment is as follows. In Section A, we describe specific strategies by which some Gulf Coast communities are successfully rebuilding. In Section B, we examine how civil and commercial society are generating signals necessary for a robust recovery. Section C discusses some of the ways in which government programs and policies undermine these community-based strategies by generating signal noise. Additionally, we examine the systemic reasons that make government-led recovery prone to such distortion. In the final two sections, we conclude by explaining the policy ramifications of this research and offering suggestions for how policy makers can reduce signal noise in dealing with future disasters.

Because public policy mistakes can have serious and broad retarding effects on rebuilding efforts after a disaster, it is important that policy makers understand the systemic reasons why government help so often goes awry, why private citizens are usually the best leaders of their own recovery, and the importance of crafting public policy in such a way that signal noise is kept to a minimum.¹¹

¹¹ The observations made in this policy comment are based on fieldwork conducted in the Gulf Coast region in February, March, April, June, and October 2006, including more than 100 in-depth interviews with people engaged in the rebuilding process.

A. COMMUNITY REBUILDING STRATEGIES

The problem of signal noise looms so large in rebuilding after Hurricane Katrina precisely because of the importance of the blocked signals. Were the signals sent by commercial and civil society unimportant to the rebuilding effort, public policy and the accompanying signal noise would have little negative effect on the recovery. However, communities in the Gulf Coast are relying upon the signals generated by their neighbors, friends, non-profit organizations, and commercial partners to make decisions about rebuilding. The reopening of schools and grocery stores, the resumption of church services, and calls for neighborhood association meetings are all seen by returning residents as signs of community rebirth. In the absence of policy-generated noise, these signals would be more easily read and thus speed the recovery process.

Communities that have demonstrated success in their redevelopment efforts have obviously had to deploy human, financial, and physical capital. Complementing these resources is another essential form of capital—social capital. Social capital resources are those resources embedded within networks of friends, neighbors, faith communities, clubs, krewes, businesses, and so on.

Redeveloping and deploying the complex mix of resources that make up social capital has proven vital to successful recovery. In particular, communities rebuilding after Hurricane Katrina are employing a variety of different social capital-based strategies, each of which serves an important signaling function.¹²

The most prevalent of these strategies is *mutual assistance*, by which storm survivors support one another by exchanging labor, expertise, shelter, child care services, and tools and equipment. Mutual assistance serves as a source of material support, but more importantly, it sends signals that members of a community are committed to recovery and helps restore the fabric of communities torn asunder by disaster. Such assistance signals residents who are considering returning to the area that other people will share the burdens and the risks of returning with them. It signals the community's return. Governments could ostensibly provide some of the material support that mutual assistance provides, but such aid would drown out the signals that residents desperately need and that help reestablish community in the true, rich sense of the word.

A second strategy is *charitable action*. Unlike mutual assistance, which relies on reciprocity, charitable action consists of one-way offers of

¹² These strategies are discussed and explored in much greater depth in Emily Chamlee-Wright, "After the Storm: Social Capital Regrouping in the Wake of Hurricane Katrina" (working paper, Mercatus Center at George Mason University, Arlington, VA, 2006).

SOCIAL CAPITAL AT WORK: TWO STORIES

Frank¹⁵ owns a hardware store that took eight feet of water during Hurricane Katrina although his house suffered only minimal damage. His manager was not so fortunate. The two of them have employed a mutual support strategy, using the social capital that comes from their working relationship, to get their store back online.

Frank: My house survived pretty decently. . . . Meanwhile, we've been housing five other people that are living with us now, 'coz their houses didn't. But you know, my manager [and] another couple have been living with us with two small kids So they've been living with us basically for the last eight months, which is unique at first. But we'd do it all over again if we had to.

Interviewer: Were you able to pay [your manager during this time]?

Frank: No . . . we haven't paid him a cent other than stuff that jobs we maybe did on the side to help pay cash so to speak, get money so to speak to survive.

For eight months Frank provided his manager a familiar (albeit a bit crowded), clean, proximate, and safe home, a particularly precious resource in the post-Katrina environment. On the other side of the coin, the opportunity for Frank to rely upon an experienced right-hand man, despite the inability to pay his usual salary, was surely just as valuable to Frank in his efforts to re-open his store.

Katrina devastated Marie's Mississippi home. But she and her neighbors banded together to work on one another's homes netting vital material benefits—and they reweave the social fabric in their communities by relaxing together as well.

Marie: And we worked together like, you know, at night. . . . I had a swimming pool above ground. My pool did not go down, and I felt like God left it there for a reason, because the whole neighborhood used it as a Jacuzzi. We would take the pump and . . . it turned and cleaned the pool. So here there's no gas, and we're running the pool. We were like, "Don't tell anybody we're using the gas for that pool." But I mean, you'd look out and then you'd say, "Oh hey," you know? [Marie smiles.] And to this day, there's still a bar of soap sitting on the side of our pool. And I think I'm going to leave it there. I really do.

¹⁵ This is a pseudonym to protect the interviewee described here. All quotations are verbatim.

direct assistance from individuals and private philanthropies largely outside the affected areas. Because charitable action is decentralized and hence nimble, nuanced, and able to respond effectively to individual and small group needs, it helps provide signals of how interested third parties wish to “invest” their financial, labor, or physical resources in helping others rebuild.

A third strategy is *commercial cooperation*, whereby commercial activity positively impacts a community's ability to rebound. Like mutual assistance, commercial cooperation provides material support and signals that businesses—and hence goods, services, and jobs—are returning to a community. Commercial cooperation is vital in an area that has suffered widespread physical devastation and thus needs cleaning and rebuilding materials for physical recovery. Like mutual assistance, a spirit of enlightened self-interest drives commercial cooperation and provides a crucial element of recovery. As the manager of a large national home improvement supply store stated, “This is not really about sales. . . . We need our community, you know.” Commercial relationships that are taken for granted in a normal setting, such as access to grocery stores, banks, barbers, and hospitals, send crucial signals about sustainability when they return to communities after disaster. Government provision of the goods and services they provide delays the reemergence of the signals they send, which in turn delays recovery.

Finally, a strategy we call “*build it and they will come*” occurs when private citizens, business own-

ers, and community leaders create or redevelop a key community resource that might serve as the tipping point for residents and other businesses and organizations to return. For instance, in New Orleans East, the resumption of church services at the Mary Queen of Vietnam Catholic Church soon after the storm stimulated a rapid return of the Vietnamese community. In St. Bernard Parish, the opening of a unified school drew thousands of students and their families back to the community. By casting an entrepreneurial gaze at the resources available for redevelopment, community leaders and ordinary citizens seek to solve one crucial piece of the redevelopment puzzle, making it possible for many more to return and sending a strong signal that the community is on the rebound. Noise emanating from government policies can muffle these signals—or squelch them altogether—by failing to provide and enforce the rules of the game for rebuilding or creating rules that forbid or delay such re-openings either through regulation, economic distortion, or disrespect for private property rights and contracts. Similarly, rigid adherence to regulatory structures ill-suited to the post-disaster context creates noise that affects these signals.

Through these and other patterns by which social capital is deployed, individuals in post-disaster contexts are able to use signals generated within markets and civil society to make intelligent decisions about how, where, and when to rebuild their communities and their lives. It is for this reason that policy makers must craft both pre- and post-disaster policy in a manner that allows

for these signals to emerge and not unintentionally create signal noise that drowns them out or distorts them to the point that they can no longer effectively guide people in their efforts to make informed and responsible decisions. The robustness of signals emanating from markets and civil society depends crucially upon the social rules we tend to take for granted—rules of private property, the rule of law, contract enforcement, and basic rights of self-determination. As crucial as these rules are for day-to-day interaction, they are all the more important to ensure in the wake of disaster.

Providing this assurance is a critical way government at all levels can reduce signal noise. It is not enough to quickly and credibly institute bad policies that undermine community rebuilding. Beyond this, policy makers must consider the ways in which their efforts to help disaster victims often unintentionally distort the signals people need to effect a successful recovery effort.

In the next section, we discuss some of the ways in which, and the reasons why, government-led recovery efforts tend to drown out the otherwise clear signals that individuals, families, and communities generate through their commercial and civil interactions.

B. HOW SIGNAL NOISE AFFECTS DISASTER RECOVERY

Clearly there are things that governments can do to foster an environment in which meaningful signals emerge. By enforcing property rights and contracts or restraining inflation, for example, governments help to clarify and enforce “the rules of the game” for our daily interactions with one another. When good rules such as these are clear and well-enforced, the signals that emerge in markets and other social interactions tend to be robust and allow the interactions between members of society to be more fruitful and peaceful. Citizens of liberal democracies tend to take these “rules of the game” for granted, but they are vital to our daily interactions and overall well-being.

While governments can help establish the context in which this signaling and discovery takes place, governments themselves are generally not good at learning what people want, how to address these wants, and the terms by which people work together to coordinate their often competing interests. For instance, the government is not good at discovering what restaurants people like to frequent, what types of jobs employers will require next year, or if homeowners prefer

Formica or granite countertops in their kitchens. Because of this, people operating within liberal democracies make these decisions in the marketplace and use prices as a means for discovering the best use of resources. This “discovery process”—determining what goods and services are needed and how best to provide them—spreads good ideas among individuals and their communities and is vital to overall social coordination.¹⁴

The rebuilding process after a natural disaster is a discovery process writ large. People whose homes have been damaged or destroyed need to find supplies and contractors to help them with repairs. Businesses in turn are searching for employees and materials. Non-profit and charitable groups seek opportunities to coordinate the assets of donors and volunteers with the needs of disaster victims. On a deeper level, families and businesses are trying to determine how and whether they should rebuild—or whether they should start anew elsewhere. Similar discovery occurs every day in every community in the country, but after a disaster, the process becomes more prominent as questions elevate from the quotidian (“Where should I get my car’s oil changed?”) to the more profound (“How do I rebuild my home?”). It is, however, fundamentally the same process that coordinates our daily lives.

Because the political process is not a good instrument for gathering this “on the ground” knowledge, its outcomes can negatively impact decision-making by people recovering from disaster. Public policy changes affect the signals that victims and people on the ground read and interpret, which in turn affects their ability to make good decisions.

Two key areas where public policies can create signal noise after a disaster are: (a) through the planning and regulatory processes and (b) through provision of goods and services that could otherwise be provided through the market. We now consider each of these in turn, examining specifically their implications on the rebuilding process in New Orleans and along the Gulf Coast.

B.1 NOISE IN THE RULES OF THE GAME: PLANNING AND REGULATION

Planning

After a natural disaster, residents need assurance that policy makers will respect their property rights and rights of self-determination and quickly explain what changes to the institutional “rules of the game,” if any, residents will encounter as they put their lives, homes, and businesses back together. To the extent that a natural disaster presents an opportunity to get rid of the mistakes of the past and try new ideas, that opportunity

¹⁴ For more on the role of markets and entrepreneurship in the discovery process, see Israel M. Kirzner and Frederic Sautet, *The Nature and Role of Entrepreneurship in Markets: Implications for Policy*, Mercatus Policy Series, Policy Primer No. 4 (Arlington, VA: Mercatus Center at George Mason University, 2006).

must be based on the decisions of individuals in the affected communities.

Because of government's inability to discover information effectively, especially after a crisis, broad government re-planning after a disaster can drown out the signals generated through the real discoverers of knowledge—residents, their neighbors, civic organizations, and businesses operating within the market context. Attempts by governments to rebuild (or even re-engineer) communities after a disaster slow the recovery process and frustrate the people they are trying to assist by making it more difficult for residents and business owners to make informed and responsible decisions.

The political process is by its nature slow-moving. It takes months or years for relief funds to trickle down into the hands of those in need, and the policy making and execution process is arduous and complicated, as exemplified by FEMA's failure to quickly revise flood insurance rate maps (FIRMs), which has left people unsure whether they should rebuild homes as before, elevate them three feet, elevate them nine feet, or abandon rebuilding altogether. Information about flood risk and the implications these risks have for public policy and insurability are crucial to rebuilding efforts. Without clear information on flood risk, residents and business owners cannot assess the costs of rebuilding, and recovery will slow or halt altogether.

"FEMA, they still haven't come up with the maps that show certain areas. So you are going to place money on false hope. New Orleans is going to wind up flooding again."

*—Volunteer leader,
Ninth Ward, New Orleans.*

New Orleans provides an excellent example of how government planning can stall rebuilding and the discovery process it entails. In October 2005, Mayor Nagin created the Bring New Orleans Back Commission (BNOB) to create a plan for rebuilding the city. Though BNOB's Urban Planning Committee assured New Orleans residents that they would have representatives on the Committee, the driving paradigm was clear: redevelopment of the city could not rest in the hands of private citizens. Instead, the Crescent City Recovery Corporation (CCRC) would orchestrate it through a comprehensive plan. CCRC would have "the powers to receive and expend redevelopment funds, to implement the redevelopment plan, to buy and sell property including use, as a last resort, of the power of eminent domain."¹⁵

¹⁵ See <http://www.bringneworleansback.org> for more details about this planning process.

The wisdom of putting government “in charge” of the redevelopment effort and the assumption that it would take billions of federal dollars to do it were never questioned. The task before the BNOB was simply to figure out what and how to plan and what powers state and local policy makers must grant to the CCRC.¹⁶

The recommendations that came out of the process included reducing the city’s “footprint” and transforming some neighborhoods into green space and industrial centers.¹⁷ In its \$18 billion plan, the Commission carved the city into thirteen planning districts. A committee would create a redevelopment plan for each district and determine the future viability of neighborhoods within the district. It was not clear that the planners even knew how to define a neighborhood, much less plan one, and residents frequently found the committee’s definition of their neighborhood at odds with their own.

In order to be considered a “viable neighborhood,” the planning committee had to demonstrate that fifty percent of the residents in a neighborhood had returned or were committed to returning. Neighborhoods that failed to meet the threshold of viability were candidates for forced

buyouts. During the four month planning period, the Commission recommended a moratorium on rebuilding permits in neighborhoods that had at least two feet of flooding—approximately 80 percent of the city. Though the public outcry led Nagin to reject the building moratorium, the underlying paradigm of centralized redevelopment planning was not and still has not been rejected. In fact, in May 2006, Nagin announced that the basic blueprint that the BNOB devised would set the agenda for his second term.

Despite the best intentions of the BNOB Commission and elected officials, the shifting rules of the game created signal noise that proved deafening to the average New Orleanian. In New Orleans East, for instance, some communities were well into rebuilding when Nagin suggested that the city might not provide any municipal services, only to rescind that suggestion later. Nagin’s remarks were extremely serious to the homeowner rebuilding her greatest investment or to the business owner deciding whether to remain in New Orleans or relocate. The only way to truly discover whether a neighborhood is a viable candidate for rebound is to make the rules of the game as clear as possible and let people try to rebuild. If they are unwilling to do so, at least

¹⁶ In order to ensure that the CCRC had the authority it required to carry out the redevelopment planning effort, the BNOB recommended “tak[ing] away from the City Council the ability to reverse decisions by the city Planning Commission and let appeals be handled by the court. Both moves would need voters to amend the city charter.” Staff Reports, *New Orleans Times-Picayune*, January 12, 2006.

¹⁷ Martha Carr, “Rebuilding Should Begin on High Ground, Group Says,” *New Orleans Times-Picayune*, November 19, 2005.

with flood maps in hand, property rights assured, and ideally a credible commitment to whatever level of flood protection will (or will not) be provided, property owners have the option of selling to those who are willing to try. Absent those stable rules of the game, any viability study will fail—and it will waste precious time in the process.

After the failure of the BNOB Committee, the Greater New Orleans Foundation (GNOF) launched a rebuilding planning process that makes greater use of local knowledge and empowers communities more than the previous planning process did. It remains to be seen whether this process will work. But the costs of the first failed process have been massive: nine wasted months, millions of wasted dollars, and unquantifiable but significant distortions to the local market as citizens navigate not just the damages of the storm, but also the vagaries of the political process.

Questions about the strength of the levees being rebuilt—and the failure of the government to give

a clear, consistent answer on this question—have further stymied rebuilding. Elected officials and bureaucrats have made contradictory and frequently uninformed statements about how, where, and when the U.S. Army Corps of Engineers would rebuild the levees, leaving residents in limbo when making decisions about rebuilding. The unknown future of the Mississippi River Gulf Outlet (MRGO or “Mister Go”) similarly exacerbates this uncertainty. Without knowledge about whether their homes and businesses will receive Category 2 or Category 5 levee protection, residents have been unable to make informed choices. The government’s previous failure to build levees that performed to their advertised standards has exacerbated this uncertainty. In short, government action has created and is continuing to create a noisy decision-making environment, leaving many businesspeople and residents in a state of indecision and slowing the pace of post-disaster recovery.

The signal noise that the rebuilding planning efforts generate is a key reason that rebuilding in

“I want to know that the levees are strong enough to withstand the next category five or three or four—whatever comes through—and I want to feel confident. I’m annoyed, but you’re hearing all these different stories. The Corps, they say one thing, and then other people say, ‘Oh, that’s not true’—you know it is all confusing. You’re really nervous because you don’t know who to believe and who is telling the truth. . . . I’d like to hear from the engineers. I don’t want to hear from politicians.”

—Elementary school principal, Mid-City, New Orleans.

New Orleans has been so sluggish, especially compared with neighboring parishes and Mississippi counties that did not institute a forced political planning process. Rather, these communities generally allowed markets to re-emerge and permitted knowledge about the rebuilding process to flow from individual decisions.

Regulation

Government disaster relief is by its very nature bureaucratic and regulated. The sheer amount of money and number of people involved make it virtually impossible for policy makers to design it any other way; the alternative would be massive and widespread fraud and even fewer resources flowing to those who need them most. This regimented structure can stifle or, at the very least, frustrate local leadership driving community redevelopment, generating signal noise that hampers a community's ability to recover quickly.

The case of schools is particularly illustrative. Schools are a key resource for a community and their reopening—a “build it and they will come” strategy (see Section B)—sends a vital signal about the future of a community. Parents are unlikely to see their communities as viable places to rebuild in the absence of schools. Unfortunately, when social entrepreneurs and school administrators try to reopen schools after a disaster, they often face high bureaucratic hurdles, which retard the speed of recovery as parents await clear signals about the future of education.

Doris Voitier, superintendent of the St. Bernard

Parish Unified School District, pledged to reopen a school just eleven weeks after the storm. Initially, Voitier assumed that FEMA's newly created task force on education would lend support to her effort to redevelop the school district, but she soon learned that FEMA's role was not so much to lend support as it was to regulate the decisions coming out of her office, generating noise and uncertainty for Voitier and St. Bernard Parish parents. FEMA officials came to enforce requirements on historic preservation, environmental protection, and section 404 and 406 hazard mitigation. But none had any advice for how to reopen her schools.

Voitier reports, for example, that she has had to become an expert on the Stafford Act, the primary act detailing federal response to natural disasters, as it defines the narrow field within which she can act. Or as one Mississippi hospital administrator put it after describing the differences between Category B, Category E, and Category H restoration and mitigation, “that's why administrators keep our jobs is because we are supposed to try and figure out the regulations [sic].”

Voitier's efforts to operate within the guidelines of the Stafford Act were not enough to keep her in FEMA's good graces. After registering many more students than she initially anticipated, Voitier ordered two additional trailers to use for classroom space. The trailers that were eventually delivered were deemed unsuitable for student use because two doors in each trailer were too close together to meet local fire code. While she went

through several layers of bureaucracy to have the door openings widened, she received permission from a FEMA official to put washers and dryers in one of the unused trailers so that the teachers living in the school's parking lot would have a place to wash their clothes. Soon after, FEMA rotated that representative out of the area. The new representative subsequently placed Voitier under investigation for "misuse of federal property."

The signal noise caused by bureaucratic rules that Voitier encountered—an effect of the wavering rules of the game—slowed her ability to expand the school's capacity to meet the needs of all returning children, which generated further signal noise to parents deciding whether to return to St. Bernard Parish, who needed to know whether they could enroll their children in school. In this way, the signal noise generated in the regulatory environment fed upon itself, multiplying exponentially and slowing recovery.

Similar to the bureaucratic rigidities embedded within federal relief agencies, state and local regulations can also have a stifling effect on civil society's ability to respond in the months following a crisis. After the storm, many parents faced the daunting task of navigating the system of relief services and beginning the demolition process while caring for young children. The temperatures

were high, stress levels were higher, and the lines were long. But professional childcare was in short supply. Some daycare providers did what they could to open their doors to disaster victims in the weeks and months that followed, but state regulators fined them for failure to comply with child-teacher ratios and other requirements.

The parents sent a clear signal—a demand for much needed, safe, and affordable childcare. Childcare professionals easily and correctly read their signal. But the regulatory environment, which was not crafted for a post-disaster context, caused signal noise that prevented childcare professionals from meeting this need.

Most regulations in a society are adopted in times of relative calm. Even under the calmest circumstances, it is often difficult to assess the benefits and costs of a regulation.¹⁶ But in the aftermath of a disaster, however, the calculus of regulation changes dramatically, and assessments conducted during calmer times may be completely inappropriate guides for establishing sound regulatory policy. Rigid adherence to a regulatory code that applies under normal operating conditions can strangle the organic, grassroots recovery efforts that local leadership, voluntary organizations, and businesses undertake. For instance, a limit on the number of children that one childcare worker can

¹⁶ For more on regulation, see Susan Dudley, *Primer on Regulation*, Mercatus Policy Series, Policy Resource No. 1 (Arlington, VA: Mercatus Center at George Mason University, 2005), http://www.mercatus.org/Publications/pubID.2331,cfilter.0/pub_detail.asp.

supervise may be sensible under normal conditions, but after a disaster, the demand for safe and affordable childcare can change dramatically. It may make sense, then, to change or temporarily suspend some regulations in order to speed recovery and a return to more normal conditions.

B.2 NOISE THROUGH THE "FEMA ECONOMY"

Throughout most of American history, local governments and private charitable associations provided care for victims of disaster.¹⁹ Indeed, it was not until 1950 that Congress passed its first law dealing with federal disaster response, and response remained very limited (and mostly focused on responding to a nuclear war) until Congress created the Federal Disaster Assistance Administration in 1974 and then FEMA in 1979. The past thirty years have seen the federal government take an increasingly active role in providing emergency relief supplies to victims of disasters. Simultaneously, the amount of assistance—and critically, the length for which it is provided—has likewise increased.

In the wake of disaster, the government has a key role to play in re-establishing and enforcing the rules of the game that minimize signal noise and allow a robust response to the disaster by civil and commercial society. By ensuring private property rights and enforcing contracts, for example, the process by which property owners discover the

new value of their homes and businesses can unfold swiftly. To this end, it is important for governments to provide police protection and courts that help to enforce these rules of the game. But when the government gets in the business of providing the goods and services ordinarily provided through markets—such as trailers and direct sources of income through extended unemployment compensation to storm victims—well-intentioned policy interventions can create significant signal noise and thereby slow recovery. In this lies a paradox: government policies designed to help by providing recovery assistance may actually harm the intended beneficiaries.

The government's provision of goods and services long after immediate needs have passed creates what one New Orleanian referred to as a "FEMA economy," the expansive and distortionary effects of federal disaster relief on the local economy, including the labor and housing markets.

For example, many businesses trying to reopen have found it difficult to attract employees. In part, this is due to the fact that many people simply haven't returned to the affected region. But the repeated extension of unemployment benefits has exacerbated this problem: despite the availability of jobs and the need for employees, the federal government continues to pay people not to work. Further, the premium wage that government relief agencies pay

¹⁹ Rutherford H. Platt, *Disasters and Democracy: The Politics of Extreme Natural Events* (Washington, DC: Island Press, 1999).

low-skilled workers crowds out private employers from the labor market, stunting the speed of recovery. Service-based companies find the labor shortages particularly daunting as they attempt to bring operations back on line. As one business owner noted, "You're competing with FEMA; you're competing with everybody. The contractors that are doing debris pick up and stuff, they are paying big bucks. They are paying \$12 [to \$15] an hour to stand behind a truck with a little ["stop"] sign."

According to a study released in February 2006, two thirds of firms in the affected region had trouble recruiting workers, and media accounts affirm the recruitment woes of employers.²⁰ And yet in March 2006, Congress extended unemployment benefits for another 13 weeks beyond the 26 weeks of unemployment benefits authorized by the Stafford Act.

The FEMA economy also exacerbates the lack of affordable housing. FEMA workers allotted \$1,200 per month for housing effectively crowd out many low-income residents who receive \$550-\$650 in FEMA rental assistance. Rents in many affected areas of New Orleans have almost

doubled since before the storm.²¹ This is due largely to the decrease in the supply of housing—50.8 percent of rental housing in Orleans Parish suffered severe flood damage or total destruction²²—but the thousands of federal and state relief employees in the city have exacerbated the problem and kept low-income New Orleanians out of their hometown.

To some extent, these consequences may be unavoidable. To the extent that swift debris removal and other key public services are deemed top priorities, wage premiums will certainly facilitate the process. But the longer FEMA workers stay, and the more relief work is treated as a public works project rather than the short-term provision of an essential service, the longer these distortions will persist. As one Mississippi resident observed,

There's no reason for a business to open up that provides any kind of food service if right down the street you get food [for free] It was necessary for [government] help to be scaled down so our businesses could come back in, start giving us a tax base, start giving these people an incentive to get a job, to work, to get back to normal. That was essential.

²⁰ Ellen Wulforst, "US Hurricane-Area Firms Face Labor Shortage," *Reuters*, April 5, 2006; "Survey of Compensation Practices in Area Affected by Hurricanes Dennis, Katrina, Rita, and Wilma," *Salary.com*, February 28, 2006; Brett Anderson, "Feast or Famine? Katrina takes a big bite out of business, but New Orleans restaurants are fighting back," *New Orleans Times-Picayune*, June 11, 2006.

²¹ Jeffrey Meitrock, "Rising Rent," *New Orleans Times-Picayune*, October 15, 2006.

²² Authors' calculations based on data from U.S. Department of Housing and Urban Development, *Current Housing Unit Damage Estimates: Hurricanes Katrina, Rita, and Wilma*, February 12, 2006, as revised April 7, 2006, p. 23, http://www.huduser.org/publications/dstech/GulfCoast_HsngDmgEst.html

"We couldn't hire social workers because [FEMA] was using them all. We couldn't hire people, or our people would go to work for FEMA. But it's these ridiculous prices that weren't the going rate on the local level. But why they didn't come to us and say, 'Okay, you've been here for 40 years, you know all these people'? But, no, they didn't."

—State government official, Harrison County, Mississippi.

The sooner federal agencies scale back their operations, the sooner local markets and civil society will step in. And the sooner this occurs, the more effectively a sustainable rebuilding process can begin. The longer policy makers extend unemployment benefits, the more difficulty communities will have attracting residents back to work in local businesses—and the longer the recovery process will take.

Large government rebuilding packages also create signal noise because of the length of time it takes to distribute funds and the haphazard manner in which distribution occurs. In its first four months, the Louisiana Road Home Program has awarded fewer than 1,400 grants, and officials are struggling with a backlog of about 79,000

applications.²³ And as of November 11, only 22 awardees have actually received cash.²⁴ Mississippi's rebuilding program, fully funded by Congress in December 2005, had issued only 41 checks as of the end of August 2006 to a pool of over 17,000 applicants; that is, less than 0.25% of claimants have received relief.²⁵ One Mississippi official explains, "Of course it's been eight months since Congress approved this money, but we haven't developed the systems and plans . . . to actually administer the program."²⁶

Large aid packages invite corruption and incompetent management by public officials, which makes it more difficult still for civil society and market institutions to read accurate signals.²⁷ The inconsistent implementation of such programs

²³ Bruce Nolan, "Blanco Tries to Light Fire Under Road Home Plan," *New Orleans Times-Picayune*, November 7, 2006.

²⁴ Leslie Eaton, "Slow Home Grants Stall Progress in New Orleans," *New York Times*, November 11, 2006.

²⁵ John Ydstie, "Federal Money Trickles to Katrina Homeowners," *National Public Radio Morning Edition*, August 30, 2006.

²⁶ *Ibid.* Scott Hamilton was the state official speaking.

²⁷ Peter Leeson and Russell Sobel, "Weathering Corruption," (working paper, Mercatus Center at George Mason University, Arlington, VA, 2006).

only adds more noise to a situation already steeped in uncertainty. For many residents, the initial announcement of large scale assistance signaled to them that they should hold off on their rebuilding plans until they received payment, continuing their state of limbo.

Once the immediate crisis point of a disaster has passed and charities, markets, and governments have ensured that basic human needs such as food and shelter are met, government provision of goods normally provided privately creates distortions that inhibit recovery.

In contrast to governments, markets are highly effective mechanisms for coordinating the provision of goods and services; market signals share information about what people need, want, know, have, like, and value. Through these signals people learn how to efficiently produce a variety of goods and services that others need or want. It is for this reason that markets provide the vast majority of goods and services that people want or need. Additionally, the rapid ability of markets to address changing circumstances helps make communities resilient, a key feature of recovery with which signal noise interferes. From daily needs, like food and childcare services, to large purchases, like cars or houses, market signals effectively share information and enable us to fill a variety of needs without any government plan. Markets are a vital part of daily life, and in the aftermath of a storm, their re-emergence is critical to community redevelopment. Indeed, no meaningful recovery can occur without them.

The signals emerging from commercial society provide two key indications to people engaged in the rebuilding effort: they demonstrate what goods and services will be available to returning residents, and more importantly, they serve as a barometer of the long-run prospects of the community. People may trust these signals more than the signals emanating from the political sphere because commercial signals emerge from actual reopenings and commercial transactions rather than from hints or promises from elected officials that may be reneged upon or take months or years to materialize. Concrete, material steps instill confidence, while vague suggestions and about-faces destroy it.

One Mississippi resident spoke of the importance the reopening of national retail stores and fast food restaurants had for community morale:

It was Wal-Mart under a tent. We were all thrilled. Oh, we can go buy pop, or we can get, you know, our essentials. So we were really happy about that. That was a forward motion. And then Sonic opened. We had the busiest Sonic in . . . the whole United States. It made more money in a shorter period of time than any Sonic did for a year in the United States. Amazing. It was like fine dining. Ooh, this is wonderful, you know, 'coz there was nothing else then. There was [sic] no stores. There was nothing that was even halfway resembling normal. I guess when businesses open up and they start being fully operational, it reminds us what normalcy used to be like. . . . Like Rite Aid [opened]

and it was a one hundred percent Rite Aid. . . I didn't go in to buy anything. I just went to walk around and be normal.

Normality is a crucial concept—without the sense that the community is returning to normal, meaning that the basic conveniences of life are provided for in customary ways, rebuilding becomes a much more costly and risky proposition. One retail manager further explains this concept:

If you don't do something to help this community and give them a place to buy groceries and give them a place to buy the necessities of life to rebuild their lives . . . it probably would not be worth your while to [rebuild]. . . Granted, you know, our customer base probably was cut more than in half. But it probably would be decreasing today had our store and other businesses not decided, you know, just take a stance and come home, you know, and build this thing, and get it back up and running as fast as they can. . . You have to take a stance, because you have a vested interest in the community. You have a home.

The recovery of commercial and the recovery of civil institutions go hand-in-hand; employers are

lost without employees, and customers are in need of commercial services. Without stores, factories, services—and the jobs and products that they provide—no community can truly recover.

Because of the centrality of markets to meaningful recovery and functioning communities, it is vital that after a disaster, policy makers respect and enforce private property rights and the contracts that were in place before the disaster. If, in response to the disaster, governments deem it necessary to change building codes, elevation guidelines, or other regulations that impact how, where, and when rebuilding can take place, such changes must be made in ways that do not violate the basic freedoms of private property and the rule of law. Further, to the extent that they are necessary, such changes must be made clearly, quickly, and credibly.²⁸ Consistency and credibility of rebuilding codes are crucial. Start-and-stop decisions create signal noise, so it is vital that policy makers avoid changing the rules midstream. Finally, well-meaning government policies that attempt to substitute for the market economy and civil society create signal noise that confuses returning residents and business owners, thereby reducing the speed and increasing the cost of the recovery effort.

²⁸In the context of post-Katrina New Orleans, the lack of either local leaders or the U.S. Army Corps of Engineers to state clearly and credibly how, when, and where levees will be rebuilt has been a major roadblock to rebuilding. This has been further compounded by the failure of the Corps of Engineers before the hurricane to provide accurate estimates of the quality of the levees and FEMA's reliance on incorrect information from the Corps in crafting flood insurance rate maps (FIRMs) that failed to appropriately assess the risk of flooding in many parts of Orleans and St. Bernard Parishes. Because of the history of incompetence and a general distrust of FEMA and the Corps of Engineers, a radical rethinking of flood protection programs may be in order over the coming years.

C. POLICY IMPLICATIONS

C.1 PROVIDE QUICK, CLEAR, AND CREDIBLE COMMITMENTS ABOUT WHAT THE GOVERNMENT WILL PROVIDE AND WHEN.

The best thing that policy makers can do to help communities respond to disaster is to ensure that policy makers respect property rights and the rule of law to allow individuals, communities, and civil society organizations to manage the rebuilding themselves. To the extent that the government deems it necessary to adjust rules pertinent to the rebuilding process, such rules must first respect the basic freedoms that private property and the rule of law provide. Further, such rule changes must be made quickly, clearly, and credibly. Government can support the rules of the game necessary for individuals and communities to recover by acting as an umpire—providing police for protection and courts of law for dispute settlement and, most importantly, not changing the rules in the middle of the game.

To be sure, some rules of the game, such as “should the government provide levee protection?” will be

fraught with controversy. The questions of whether the levees ought to be rebuilt, what level of protection ought to be provided if they are, and whether property owners ought to pay the full costs of insuring their homes and businesses deserve serious deliberation that we cannot render here. However, as long as government manages these systems, its failure to decide clearly and expeditiously what it will do and to carry through on its commitments will perpetuate the limbo in which so many storm victims find themselves.

With the rules of the game in place and property rights assured, the recovery process can begin in earnest as residents and business owners judge how and when to rebuild. If policy makers draw out the decision making process about key rules and policies, the signals generated by civil and commercial society are likely to become noisy and hence less clear and useful to those engaged in the rebuilding process. Rebuilding must be organic, stemming from the grassroots, in order to be sustainable, and only dispersed decision makers reading the signals generated by those around them can manage this process.

“They should have a decision from Congress as to what level of protection they’re going to authorize. . . . What do people have to do if they’re going to rebuild? You know, to what elevations and to what . . . because if there’s no flood protection, the levees aren’t going to be rebuilt, and you can’t get affordable insurance on your house, they’re not going to come back.”

—School administrator, St. Bernard Parish, Louisiana.

C.2 CREATE IN ADVANCE AN ALTERNATIVE REGULATORY REGIME SPECIFIC FOR POST-DISASTER ENVIRONMENTS, AND DEVOLVE POWER OVER THE REBUILDING EFFORT.

One way to facilitate the production and execution of clear rules of the game is to have disaster-appropriate rules and regulations written before the onset of crisis with a clear trigger for execution. Such “regulatory preparedness” would reduce the uncertainty that stems from the slow-moving political process and would establish alternative regulations for the post-disaster context when, for instance, child-to-adult ratios in day care centers, normal debris disposal procedures, and pollution control gasoline formulations may not be appropriate.²⁹ Ideally, these rules would include a clause for automatic execution after, for instance, a presidential or gubernatorial declaration of a major disaster. In many cases, bureaucrats in the Gulf Coast have had to bend or break the rules in order to make progress in recovery efforts. An alternative regulatory structure recognizing the different costs-benefit calculations in the post-disaster context would reduce non-compliance and help ease some of the bottlenecks that slow recovery. Most importantly, it would make it easier to provide the quick and clear signals that communities need to recover and reduce the signal noise associated with changing regulations on the fly or selective and unstable enforcement on the ground.

An automatic trigger for such a regime reduces the ability of special interests to attempt to alter the process or change individual rules. Implementing the alternative set of regulations automatically and as a complete package speeds enactment of the alternative regulatory regime and ensures that people know before a disaster what to expect in its aftermath. An automatic trigger would also be in line with existing policies; a presidential disaster declaration already triggers dozens of automatic responses under the Stafford Act and other legislation.

Local ownership of the rebuilding process is critical. Federal response should not erect roadblocks to competent local leadership, but should instead support and inform effective decision making on the ground. To the maximum extent possible, recovery efforts should be managed as locally as is feasible—as close to those with the needs and relevant knowledge as possible.

Congress should shift the primary responsibility of relief agencies from one of regulatory oversight to one of support and advice. The provisions articulated in the Stafford Act, and the narrowness with which FEMA representatives frequently interpret these provisions, unnecessarily tie the hands of local leadership. While policy makers may deem it necessary to enforce some general guidelines for safety and accountability, local

²⁹ For more on gasoline regulations and the federal government’s successful response, see Alastair Walling, “The Katrina Success Story You Didn’t Hear,” *Regulation*, Spring 2006.

leadership also needs the flexibility and discretion to make marginal choices about how relief funds are spent.

C.3 AVOID POLICIES THAT DISTORT LOCAL ECONOMIES AND HAMPER CIVIL SOCIETY REBUILDING.

After a disaster, elected officials should not respond by attempting to make whole the victims of the storm through targeted and bureaucratic initiatives. The sentiment is noble, but the action is impossible. Because they lack the ability to discover knowledge of what people need, when they need it, and how it is best delivered, governments simply cannot provide the goods and services that are vital for rebuilding. When governments do try to intervene to provide these goods, they end up creating signal noise that slows the recovery process. Additionally, they introduce an element of uncertainty that makes it more difficult for individuals, families, and communities to rebuild.

Social capital and the signals provided by civil and commercial society, supported by property rights, freedom of contract, and the rule of law, are crucial to rapid and sustainable recovery efforts, so policy makers must evaluate policy interventions to ensure that they do as little harm as possible to organic response efforts. For this reason, providing any relief that policy makers deem necessary through quick and unrestrictive

means is vital. The more restrictions and tests placed on relief, the slower it will arrive and the more signal noise and economic distortion it will cause. In this vein, one-time cash payments are preferable to means-tested continual assistance.

Further, housing vouchers are preferable to FEMA trailers. Recipients could use voucher funds to rent an apartment, renovate a damaged property, serve as a down payment on a new home, or purchase a small modular home that they can later expand such as a “Katrina Cottage.”³⁰ Such a policy would be vastly more efficient and humane than temporarily providing everyone with a FEMA trailer and would inspire a wide range of market responses to meet the housing needs of disaster victims. To further minimize bureaucracy, policy makers should not means-test vouchers. It should distribute them using simple and straightforward criteria—the fewer criteria the better.

Policy makers must recognize that it is not just atomistic individuals, but entire organic social structures, that recover after a disaster. Markets and civil society institutions are vital aspects of a functioning society, and policies must allow their expedient and thorough recovery. Communities are not sustainable without the recovery of retailers, factories, service providers, and the jobs that these businesses create. Policy makers should avoid the temptation to implement targeted pro-

³⁰ For more on Katrina Cottages, see Witold Rybczynski, *Slate*, March 31, 2006, <http://www.slate.com/id/2138981/>

grams designed to spur such redevelopment. By far the best course of action is simply to establish quickly rules of the game that will allow social structures to rebuild internally.

It is vital that elected officials avoid signaling any policy changes that have not been deliberately considered, particularly for their unintended negative consequences. If they bear even a hint of government sanction, cavalier proposals that suggest that policy makers may not honor individual property rights will create unnecessary and catastrophic uncertainty, not just among those most directly affected, but also among neighboring communities and potential investors. Just as an ill-considered comment from the Chairman of the Federal Reserve Bank can have massive effects on the stock market, a poorly considered utterance from a mayor or governor can cause people to radically rethink their plans in the wake of a disaster.

Finally, planning authorities must stay out of the business of picking winners and losers in the post-disaster economy and instead restrict their involvement in economic redevelopment to that of the neutral umpire. To the extent that local, state, and federal authorities are engaged in redevelopment planning (an engagement that should be minimal, clear, and credible), their plans should aim to produce as little signal distortion as

possible by offering, for example, general tax credits for all business, rather than targeting particular industries or businesses that existed before the disaster.

CONCLUSION

After a disaster, it is natural for people to clamor for quick action. Because elected officials respond to political pressure, they tend to do what is easiest: promise large sums of money to help fix the problem and develop radical new plans for affected areas. But while these policies may appeal to voters and to elected officials who want to “do something,” they are not ultimately conducive to helping communities rebuild. Well-intentioned policies that appear at first glance to be helpful to those in need may have unseen costs that can have significant negative effects on recovery.

Individuals rebuild around one another. For this reason, it is vital that policy interventions free individuals to deploy their social capital as an asset in rebuilding.¹¹ Indeed, social capital functions best in a market setting backed by the rule of law and respect for property rights, as it allows civil society actors (including individuals, non-profits, churches and religious groups, community associations, and businesses) to generate the signals needed for recovery—signals that respond quickly to new information and oppor-

¹¹ Emily Chamlee-Wright, “After the Storm: Social Capital Regrouping in the Wake of Hurricane Katrina,” (working paper, Mercatus Center at George Mason University, Arlington, VA, 2006).

tunities and that result in superior outcomes to top-down plans. Because of the importance of social capital in reconstruction efforts, governments must resist calls to impose order on the decentralized process of community, economic, and philanthropic discovery. Signal noise created when governments consistently shift the rules of the game impacts the ability of communities to utilize their social capital, which affects the sustainability of rebuilding.

After a disaster, public outcry places tremendous pressure on governments to act, but if policy mak-

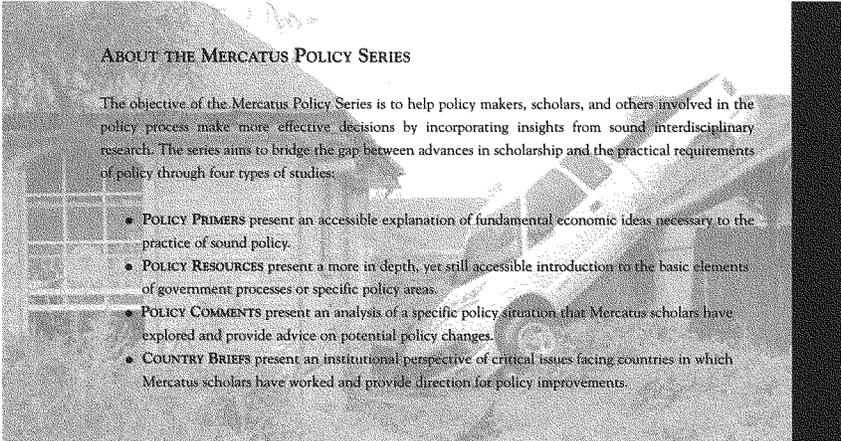
ers authorize large expenditures and new programs without consideration of negative unintended consequences of their decisions, the effects may cause serious harm. After immediate human needs are met, governments must stand back and allow the rebuilding process to unfold organically. Communities are highly resilient in the face of disaster, and social capital is a vital asset to recovery. Success depends on the ability of individuals, families, and communities to read the appropriate signals about how to respond to best fit their particular needs. Cities are built organically. They must rebuild that way as well.

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Mr. ISSA. I thank the witnesses. I apologize. I just returned from overseas, but I appreciate your testimony. Clearly, this committee has a lot more to learn from mistakes made at Federal, State, and local level before, during, and after this tragedy, and your part in helping us understand some of the continued mistakes in the immediate aftermath will be helpful, God willing, before the next disaster which inevitably will hit somewhere in the country. I thank you for your testimony.

Mr. KUCINICH. I thank Mr. Issa.

Again, on behalf of the subcommittee, we are all very grateful for the time that you have taken to be here and to share with us your stories, and for the forbearance that you have demonstrated in having to live these conditions and the suffering that you have had to go through that you have now communicated to us, and for your advocacy of the cause for those whose voices you are representing here today. So thanks to all of you.

This ends the first panel, and we will now go to the next panel, the gentleman from the Department of Labor.

I want to welcome the representatives from the Department of Labor who are here. We have information for all three.

First, I would like to introduce Paul DeCamp.

Mr. DeCamp, welcome.

Mr. DeCamp is the Administrator of the Wage and Hour Division of the Employment Standards Administration under the U.S. Department of Labor, a position which he has held since August 2006. Prior to his appointment by President Bush, Mr. DeCamp served as a senior policy advisor to the Assistant Secretary of Labor for Employment Standards, and before working in the public sector he practiced law with the law firm of Gibson, Dunn, and Crutcher.

Under Mr. DeCamp, the Wage and Hour Division is responsible for enforcing many of our Nation's most important labor laws, including the minimum wage, overtime pay, the Family and Medical Leave Act, and the Davis-Bacon Act, which governs the prevailing wage.

He is also here with Dr. William Carlson. Dr. Carlson is the Administrator of the Office of Foreign Labor Certification in the Employment and Training Administration under the U.S. Department of Labor. This particular administration is responsible for administering foreign labor certification programs, including temporary certification such as H2-A and H2-B programs and permanent certification such as H1-B, H1-C, and D-1 programs.

Finally, Mr. Alexander Passantino is the Deputy Administrator of the Wage and Hour Division of the Employment Standards Administration under the U.S. Department of Labor. Before holding his current position, he was an associate in the law firm of Hunton and Williams dealing with labor and employment issues.

I understand that Mr. Passantino and Dr. Carlson are here to assist Mr. DeCamp in answering the subcommittee's questions.

It is the policy of the Committee on Oversight and Government Reform to swear in all witnesses before they testify, and I would ask that all of you who are going to be involved in this process will rise and raise your right hands.

[Witnesses sworn.]

Mr. KUCINICH. Let the record reflect that all of the witnesses answered in the affirmative. Thank you.

As with panel one, I ask that each witness give an oral summary of his testimony—in this case Mr. DeCamp—and keep in mind that the summary can be under 5 minutes in duration. Your entire statement will be included in the record.

May we begin? Thank you.

I want to indicate for the purpose of the record that our subcommittee is pleased to be joined by another one of our distinguished Members, the gentlelady from California, the Honorable Diane Watson. Thank you.

You may proceed, sir.

STATEMENT OF PAUL DECAMP, ADMINISTRATOR, WAGE AND HOUR DIVISION, EMPLOYMENT STANDARDS ADMINISTRATION, DEPARTMENT OF LABOR, ACCOMPANIED BY WILLIAM L. CARLSON, PH.D., ADMINISTRATOR, OFFICE OF FOREIGN LABOR CERTIFICATION, EMPLOYMENT AND TRAINING ADMINISTRATION, U.S. DEPARTMENT OF LABOR; AND ALEXANDER J. PASSANTINO, DEPUTY ADMINISTRATOR, WAGE AND HOUR DIVISION, EMPLOYMENT STANDARDS ADMINISTRATION, U.S. DEPARTMENT OF LABOR

Mr. DECAMP. Thank you.

Chairman Kucinich, Ranking Member Issa, and distinguished members of the subcommittee, thank you for the opportunity to appear before you today to discuss the efforts of the Department of Labor's Wage and Hour Division in New Orleans and throughout the Gulf Coast following the devastation of Hurricanes Katrina and Rita. The dedicated men and women of the Wage and Hour Division have done and continue to do a remarkable job under these extraordinary circumstances. I am honored to have the chance to highlight their efforts, to discuss the challenges that we have faced, and to address some of the agency's strategies for overcoming those challenges.

For starters, it is important to understand what the Wage and Hour Division is and how it carries out its mission. We enforce many of the Nation's most important and broadly applicable employment laws. Under normal circumstances, most of our enforcement activity, around 80 percent, involves investigating complaints that we receive from workers alleging a violation of one or more of our laws. We also recognize that certain types of violations are less likely to generate complaints, so with our remaining enforcement resources we conduct directed investigations. These cases, initiated in the absence of a complaint, target particular industries or employers where we believe there is a substantial likelihood of non-compliance.

The agency's enforcement history shows us that low-wage industries tend to have significant compliance issues. In businesses such as garment, retail, restaurants, construction, health care, janitorial services, and others, we see patterns of violations involving failure to pay for all hours worked, failure to pay minimum wage, failure to keep records, and a host of other problems.

Experience also teaches us that low-wage workers are less likely than other workers to complain about violations, and this is true

for many reasons. These workers are less likely to know their rights. They are often afraid to complain of violations for fear of losing their jobs. Many of these workers also have limited English language proficiency. And in many of these businesses, as well as in agriculture, we see substantial numbers of undocumented workers. These workers, in particular, are extremely reluctant to file a complaint with any Federal agency for fear of being arrested and deported.

Following Hurricanes Katrina and Rita, a large number of workers, including undocumented workers, moved to the Gulf Coast to pursue jobs in construction and debris removal, as well as serve in positions with hotels and casinos. At the same time, given the amount of Federal Government contract work to be done to clean up and to rebuild the region, many new, inexperienced, under-capitalized businesses sprang up as subcontractors and moved to the Gulf Coast. Thus, the work force in New Orleans and the Gulf Coast, more broadly, saw a major influx of workers who are less likely to complain when their wage rights are violated.

To make matters worse, many of the employers in the region, particularly on large Government contracts, were unfamiliar with the Federal wage and hour laws, and there were certainly employers in the region who had no intention of complying with the law.

The very nature of the work performed also presented enforcement challenges. The geographic scope of the work was very broad and varied, and workers clearing debris in one neighborhood on a given day might be working in a different neighborhood or a different city entirely the next day. Many of these workers also do not know their employer's name, beyond perhaps a first name, and many of them have no idea that they are working on a Federal contract.

Under these circumstances, as set out in more detail in my written testimony, it has been much more difficult than usual for the agency to conduct its enforcement activities. We have taken a number of steps to overcome these challenges.

First, we have asked for significantly more resources. The pending budget request for 2008 seeks an increase of \$16.7 million and 136 employees over the 2006 and 2007 funding levels.

Second, with local staff bolstered by 33 investigators and 5 managers from across the country, we have conducted a large number of directed investigations in the Gulf Coast. So far we have opened more than 430 hurricane-related cases, and we have recovered millions of dollars in back wages for workers in the region.

Third, we have engaged in extensive public outreach to inform workers of their rights under the laws we enforce, as well as how to contact us for further information or to make a complaint. We have a toll-free hotline where workers can receive assistance in Spanish, Portuguese, and close to 150 other languages.

Fourth, we have worked closely with several major contracting agencies, as well as the contractor community, to make sure that contractors understand their obligations and that the necessary wage rates are incorporated into these contracts.

Fifth, we have partnered with many community and advocacy groups, including Hispanic Apostolate, the Mississippi Immigrants Rights Alliance, and the Workplace Justice Clinic at Loyola Law

School in New Orleans, to receive information about potential violations and to get the message out that workers can and should feel comfortable coming to the Wage and Hour Division with their issues.

Our enforcement strategies in the Gulf Coast continue to evolve as we gain information and experience regarding the latest compliance challenges, as well as what works best in response. We do not have all the answers, but we are always open to new ideas and assistance from anyone who shares our commitment to protecting our Nation's workers.

Thank you.

[The prepared statement of Mr. DeCamp follows:]

**STATEMENT OF
PAUL DECAMP
ADMINISTRATOR OF THE WAGE AND HOUR DIVISION
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON DOMESTIC POLICY
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES**

June 26, 2007

Chairman Kucinich, Ranking Member Issa, and distinguished members of the Subcommittee:

Thank you for the opportunity to appear before you today to discuss the efforts of the Department of Labor's Wage and Hour Division (WHD) in New Orleans, Alabama, and Mississippi following the devastation of Hurricanes Katrina and Rita. WHD has a strong record of enforcement on behalf of workers in the Gulf Coast due to its expanded efforts in the region following the hurricanes. The men and women of WHD, in the Gulf Coast and throughout the country, have done a remarkable job, even under these extraordinary circumstances, to protect and to secure the wages of the individuals who have been involved in cleaning up and rebuilding the area. I am honored to have the opportunity to highlight their efforts to the Subcommittee, to discuss the challenges that they have faced and continue to face, and to outline WHD's plans to assist the citizens of the Gulf Coast region with a continued presence in the region.

**Challenges Confronting Labor Standards Enforcement
In The Gulf Coast Region**

Before addressing the specifics of WHD's response to the hurricanes, I believe it is helpful to explain some of the challenges we faced in the Gulf Coast region. Understanding these challenges goes a long way toward understanding why WHD took particular actions and made particular decisions.

The first and most basic challenge facing WHD in the Gulf Coast was not unlike the challenges facing any other employer with employees in New Orleans or Mississippi after the hurricanes: the hurricanes had a profound destructive and displacing effect on the Gulf Coast area. For example, Hurricane Katrina damaged WHD's offices in New Orleans, Louisiana, and Biloxi, Mississippi, forcing WHD to close both offices. WHD's staff members were personally affected: their homes were damaged, their families displaced, and their lives disrupted.

WHD's initial concern following Hurricane Katrina was ensuring the safety and well-being of its employees. Managers, investigators, technicians, and assistants were relocated to WHD offices around the country, including Baton Rouge, Dallas, Houston, Jacksonville, and Grand Rapids. While WHD attempted to secure temporary office space in New Orleans and coastal Mississippi from which its employees could operate, the work normally handled by the New Orleans and Biloxi offices was absorbed by other WHD offices.

Finally, in October 2005, WHD moved into a trailer in Gulfport, Mississippi, and in November 2005, WHD moved into a former shoe store in a shopping mall in New Orleans. It would be more than a year before we could move into permanent space.

Our returning staff faced challenges that were, in some ways, quite similar to those faced by their colleagues around the country. For the most part, however, these challenges were new to the Gulf Coast region. In all cases, these challenges were unprecedented in size and scope.

One of the most significant challenges has been the sudden demographic shift in the area. WHD has observed that many of the newly-arriving workers involved in clean-up and reconstruction activities in the Gulf Coast region are Hispanic. Media reports and advocacy groups echoed the existence of this trend. The changing labor demographics in the region created three significant areas of concern for WHD's compliance efforts: (1) a large segment of the workforce was reluctant to complain about their working conditions to any federal authority for fear of deportation; (2) workers often were hesitant to gather in large numbers at outreach events for fear of an immigration raid; and (3) the local WHD offices were ill-equipped to handle the sudden influx in Spanish-speaking workers, with two Spanish-speaking investigators between them. Before the hurricanes, the normal workload in Louisiana and Mississippi did not require that we have investigators with significant Spanish-language capability. We had that language capacity in other parts of the country where there traditionally were larger numbers of Spanish-speaking workers, such as Texas, California, and New York, but not in the Gulf Coast.

Another challenge facing the Gulf Coast offices has been the misclassification of employees as independent contractors. This has been an area of concern for a number of WHD offices around the country, but never in the magnitude experienced in the Gulf Coast. Contractors in the Gulf Coast often have been uncertain of their obligations to individual workers. In addition, the independent contractor issue is related to another concern frequently encountered by WHD in the Gulf Coast region: the applicability of the statutes enforced by WHD to particular situations, which we refer to in shorthand as "coverage." WHD enforces some of our Nation's most important and broadly-applicable laws, including the Fair Labor Standards Act (FLSA), the Davis-Bacon Act (DBA), and the McNamara-O'Hara Service Contract Act (SCA). Every law that WHD enforces is, at its core, about protecting workers. These laws apply to approximately 135 million employees in this country. They provide wage protections for employees regardless of their immigration status, and WHD enforces these laws without regard to whether a worker is documented or undocumented. WHD does not, however, enforce these laws against employers to whom these laws do not apply.

Workers—frequently day laborers—often lacked basic information such as the name of their employer. For many of these workers, the statutes that WHD enforces simply did not apply. For example, the minimum wage and overtime protections of the FLSA are subject to coverage rules that generally exclude employees of small businesses with an annual dollar volume of sales made or business done of less than \$500,000. In its January 2006 National Day Labor Study, the UCLA Center for the Study of Urban Poverty noted that homeowners and renters not subject to the FLSA constituted the largest category of employers of day labor at 49 percent. Thus, for a variety of reasons—including lack of coverage and inability of workers to identify their employer—in the Gulf Coast region, WHD often finds it difficult to link the workers to an employer that we could hold responsible for compliance with the applicable

statutes. Moreover, when WHD can establish such a link, the complexities of identifying employment relationships between workers and the companies for which they work, and of determining the existence of joint liability so as to reach an employer financially able to pay back wages often resulted in lengthier investigations and slower-than-typical back wage restitution.

An additional challenge facing WHD in the Gulf Coast region is accessibility to workers and worksites. Much of the clean-up work in the area was undertaken by small crews that traveled frequently, often to other states. The same has been true for many reconstruction projects. The constant movement of crews from location to location and the absence of fixed work sites stymied WHD's ability to locate and to interview workers and their employers.

The changing demographics of the region, the casual or non-existent contracting and employment arrangements, and the inaccessibility of the workforce contributed to an environment that demanded new approaches to compliance. These challenges were further compounded by significant logistical issues. And yet, the final challenge facing WHD's Gulf Coast offices has had perhaps the most significant effect.

The final challenge is unlike anything WHD has experienced previously. The infusion of federal assistance into the region and the need for an immediate response to the environmental conditions in the area resulted in multiple layers of subcontracting and blurred lines of employer accountability. In WHD's prior experience with government contracts, an SCA investigation typically involved one or two tiers of subcontractors. In the Gulf Coast region, however, we frequently encountered situations where the prime contractor had dozens, if not hundreds, of lower-tier subcontractors. In one case, WHD has identified over 120 subcontractors to a prime contractor on a U.S. Army Corps of Engineers debris removal contract in New Orleans. In another example, a prime contractor had 72 first-tier subcontractors working in one parish and 183 in another, for a total of 255 first-tiered subcontractors. Some of these upper-tiered subcontractors had little or no experience in government contracting, and many failed to include the required wage determination and contract stipulations into contracts with their lower-tiered subcontractors, thereby hindering WHD's ability to pursue back wage claims.

In responding to these challenges, WHD has taken strategies that have worked in other locations and has reworked them, altered them, improved them, and, when appropriate, abandoned them. We have been identifying and implementing creative strategies for dealing with all of the issues we are facing in the Gulf Coast region. There is no "playbook" identifying the proper response for the agency in these circumstances. We have tried things that have worked; we have tried things that have been unsuccessful. But we have kept an open ear and an open mind, and we have tried to learn from our experiences to determine how we could best protect workers' wages, especially among the most vulnerable labor force population.

WHD's Logistical Response

The linchpins of WHD's response in the Gulf Coast region have been teamwork and communication. WHD has relied on the assistance of district offices from each of its five regions, whether in the form of providing experienced, bilingual investigators, serving as an investigative office for cases in which the employer was located outside of the Gulf Coast region, or otherwise providing logistical support for the local offices. In order to ensure that the

assistance has been provided at the appropriate times and the appropriate places, intra-agency communication is placed at a premium.

In the immediate aftermath of Hurricanes Katrina and Rita, WHD focused on advising the public of federal wage and hour laws and assisting workers who had not received their last paycheck. WHD mobilized its call center to respond to affected individuals. Staff in Houston and Dallas provided outreach to employees and employers at community-sponsored job fairs where many of the evacuees had been relocated. And WHD's national office staff developed guidance on last paychecks, overtime, volunteering, and other FLSA matters for distribution to hurricane evacuees, and posted the information on its website.

By early November 2005, we were able to reopen our New Orleans and Biloxi offices at temporary locations. The new offices brought WHD staff closer to those engaged in cleaning up and reconstructing the region. With the opening of the two offices, WHD sent five additional bilingual investigators to support the agency's compliance assistance and enforcement activities.

As the most immediate compliance issues regarding missed paychecks began to subside, WHD began to focus on the potential exploitation of the remediation and reconstruction workforce in the region. The agency formed a Gulf Coast Task Force, comprised of representatives from the agency's local, regional, and national offices. The Task Force established three key priorities:

- enforcement, including both directed investigations of federally-funded contractors and investigations of worker allegations of non-compliance;
- outreach, with a particular emphasis on Spanish-speaking workers and the contractors who employ them; and
- working with other entities, including advocacy organizations.

Weekly conference calls ensured, and continue to ensure, coordination and consistency in WHD's response.

WHD also began shifting additional investigator resources to the region. Rather than hire new investigators, we decided that inundating the offices with inexperienced investigators would serve to decrease the efficiency of those offices in the short term. Instead, WHD began sending, on a rotational basis, experienced, bilingual investigators from other offices around the country. As a result, at any one time since January 2006, WHD detailed up to nine additional investigators to New Orleans and the Mississippi Gulf Coast on a temporary rotational basis. These rotations included 33 different investigators—26 of whom are bilingual—from WHD offices around the country. In addition, WHD detailed five managers to the Gulf Coast region, including two Spanish-speaking managers, one of whom was detailed to New Orleans for nearly a year.

These staff details, which continue today, provide the Gulf Coast offices with experienced investigators and managers who can provide compliance assistance and conduct investigations efficiently. Moreover, because investigators often continue to work on cases they investigated while on detail upon their return to their home offices, the use of temporary details

has a greater impact than simply hiring or permanently assigning investigators to the Gulf Coast offices.

WHD's teamwork also showed in the fact that a number of offices outside of the Gulf Coast region handled hurricane-related cases. Because of the magnitude of the destruction and the large number of companies from outside the area that contributed to work in the region, WHD has conducted hurricane-related investigations from 20 different WHD district offices. In addition to investigations conducted from New Orleans and Gulfport, WHD investigators from the Baton Rouge, Louisiana, and Hattiesburg, Mississippi, field stations and from the Jackson, Mississippi, area office contributed to the agency's enforcement program. WHD district offices in Houston, Dallas, and San Antonio, Texas; Jacksonville, Orlando, and Miami, Florida; Louisville, Kentucky; Nashville, Tennessee; Birmingham and Mobile, Alabama; Albany, New York; Los Angeles and San Diego, California; Salt Lake City, Utah; St. Louis, Missouri; Atlanta, Georgia; Hartford, Connecticut; Mountainside, New Jersey; and Seattle, Washington, all conducted investigations related to the post-hurricane activities in the Gulf Coast region.

WHD anticipates additional demands on its resources as businesses are reestablished and federal reconstruction funds are allocated to the region. In response, WHD has hired four new investigators for the New Orleans district office and two new investigators for the Gulfport field station. In addition, WHD recently hired a new assistant district director for the New Orleans district office. WHD now has six bilingual investigators permanently assigned to the Gulf Coast region: three bilingual investigators are located in the New Orleans district office and three investigators are located in the Gulfport field station. WHD is also in the process of identifying a senior investigator and a team leader to transfer to the New Orleans district office for a long-term (multi-year) detail. Furthermore, we are close to securing satellite office space in Kenner, Louisiana, to better serve the local Hispanic community.

The President's FY 2008 budget for WHD requests an additional \$5.0 million and 36 investigators to strengthen enforcement resources for industries and workplaces that employ low-wage, immigrant, and young workers. The reconstruction activities in the Gulf Coast region will be a significant consideration in the allocation of additional resources if the President's request is approved.

Enforcement Of Labor Standards

Since the hurricanes, WHD has used virtually every enforcement tool at its disposal: directed cases, complaint cases, conciliations, withholding of funds on federal contracts, debarments, litigation, and referral to criminal prosecutors. As a result, WHD has opened 423 hurricane-related cases, more than half of which are now concluded. The agency has, to date, recovered nearly \$5.4 million in back wages for over 5,700 employees.

Although WHD prioritized investigations into allegations of noncompliance made by workers in the Gulf Coast region, it also recognized that many workers simply were not going to file a complaint. As a result, we also made it a priority to conduct directed investigations, *i.e.*, investigations conducted in the absence of a complaint, including investigating federally-funded government contractors and their subcontractors.

For example, WHD investigated construction contractors and subcontractors working on an Army Corps of Engineers contract to place blue tarps over the roofs of New Orleans. Investigations of these blue roof contractors were undertaken to ensure that the construction workers were paid the locally prevailing wage rate as required by the DBA. In Gulfport, WHD staff investigated contractors reconstructing the casinos along the Mississippi coast. Both the Gulfport field office and New Orleans district offices conducted investigations of debris removal contractors subject to the federal SCA, which requires payment of locally prevailing wages.

WHD began resolving some of the more significant back wage cases as early as January 2006, when it collected over \$140,000 in back wages owed to employees of a lower tier contractor at the Naval Construction Battalion Center in Gulfport, Mississippi.

In June 2006, WHD collected nearly \$363,000 in back wages for 680 employees of three companies involved in the clean-up and reconstruction of casinos along the Mississippi Gulf Coast. The companies had misclassified employees as independent contractors.

In July 2006, WHD recovered over \$181,000 in back wages for 164 employees who performed debris removal for three different companies in the Gulf Coast region. These three lower-tiered government subcontractors agreed to pay their workers back wages following investigations under the SCA.

WHD recovered over \$465,000 in back wages for approximately 640 employees following the work of two WHD enforcement task forces along the Mississippi Gulf Coast region. The first task force was completed in November 2006. The second concluded in April 2007. The task force investigations were conducted at construction sites, hotels, retail stores, and restaurants.

This past May, WHD collected more than \$847,000 in back wages for 239 employees of an SCA contractor performing clean-up on an Army Corps of Engineers contract in southern Mississippi. The company failed to pay prevailing wages and fringe benefits, and failed to pay the appropriate overtime. This month, WHD announced the recovery of nearly \$1.5 million in back wages for approximately 2,500 workers who cleaned up and renovated the U.S. naval facilities in Gulfport and Bellechase, Louisiana.

Although WHD has generally been successful in administratively resolving investigations, it has not failed to pursue litigation when appropriate. In August 2006, the Department filed a lawsuit against Benitez Drywall, L.L.C., a Houston, Texas, company performing post-Katrina construction work in Mississippi. The suit alleges that the company owes in excess of \$500,000 in back wages to over 500 employees for violations of the FLSA. This month, WHD announced an administrative hearing against a blue roof contractor, LJC Defense Contracting Inc. of Dothan, Alabama, to collect back wages owed to the workers of the company's subcontractor, Elite Labor Solutions of Pensacola, Florida.

In addition, WHD has requested that federal contracting agencies withhold over \$2 million in federal funds and has debarred two government contractors—Elite Labor Solutions and W.R. Jones of Spring Branch, Texas—following hurricane-related investigations under the DBA.

To strengthen its enforcement presence, WHD joined the U.S. Department of Justice Hurricane Katrina Fraud Task Force in April 2006. Participation in the Katrina Fraud Task Force allows WHD to better coordinate with federal, state, and local law enforcement, including the United States Attorneys Offices. WHD's participation has improved its ability to prosecute offending government contractors, including those that submit false certified payroll records, under applicable criminal statutes.

Compliance Assistance And Outreach

Compliance assistance activities have complemented WHD's enforcement in the region. WHD has joined with faith-based organizations, community activists, the federal contracting community, foreign consulates, and local media to provide information on the laws it enforces to employers and employees of the Gulf Coast region.

Given the unique situation presented in the Gulf Coast, many of WHD's traditional methods of reaching employees met with limited success, so WHD staff explored new avenues for educating workers regarding their rights. For example, staff participated in Spanish-language call-in radio shows and attended job fairs. They distributed bilingual compliance materials at locations providing disaster relief to individuals, and cultivated relationships with faith-based and workers' rights groups that had direct access to the employee population.

Media outlets provided some of the first opportunities to provide compliance information to employees in the region. In October 2005, WHD staff in Dallas taped an interview with Univision to educate Spanish-speaking workers about methods to ensure that they were properly compensated when they sought work in the affected areas. This interview also focused on the remedies available to workers if they were not paid for all the hours they worked.

By early December 2005, WHD had developed and disseminated a public service announcement in English and Spanish to increase awareness of the labor laws enforced by WHD. The two Spanish-language radio stations in the New Orleans metropolitan area ran the announcement, which ultimately led to WHD's participation in six community radio call-in programs over the course of the past year. These radio shows have allowed WHD staff to respond directly to callers' questions concerning compliance. The success of the call-in programs has, in turn, provided opportunities for additional outreach to the New Orleans Hispanic community.

Throughout the past nearly two years, WHD staff attended local job fairs and disaster relief centers to distribute compliance assistance information not only to the general population, but also to staff of the Small Business Administration and the Federal Emergency Management Agency. In February 2006, WHD began participating in job fairs sponsored by a variety of organizations, such as the Hispanic Apostolate of the Archdiocese of New Orleans, McDonald's Restaurant, Employ America, and the City of New Orleans.

In March 2006, WHD staff in Atlanta provided publications and answered questions during a Katrina Aid Today training session held in Atlanta. Katrina Aid Today is a consortium of social service and voluntary organizations that help families identify sources of support, develop personal recovery plans, acquire access to services, and take appropriate actions to

rebuild their lives. In Hattiesburg, Mississippi, WHD conducted a compliance assistance overview session for attendees of the Katrina Aid Today educational classes at Pearl River Community College.

In April 2006, the New Orleans District Director participated in a workers' rights seminar held at Southeastern Louisiana University in Hammond, Louisiana. Approximately 27 organizations participated in the seminar, including organizations from New Orleans and the Mississippi Gulf Coast. Participating organizations included ACORN, AFL-CIO, Catholic Charities, Interfaith Worker Justice, Laborers International Union of North America, Loyola Law Clinic, Mississippi Immigrants Rights Alliance, Service Employees International Union, Southern Poverty Law Center, and National Immigration Law Center.

Since October 2005, WHD staff and the entities with which they have worked have distributed thousands of timekeepers booklets, fact sheets, Handy Reference Guides, and other compliance materials—in both English and Spanish—to scores of affected workers in the Gulf Coast region, and have left these and similar materials at dozens of locations where affected workers are likely to visit.

The faith-based community in the Gulf Coast region provided numerous opportunities for WHD to reach workers. For six months in 2006, New Orleans investigators visited a faith-based encampment in City Park named "The Good News Camp." Volunteers at the camp provided free meals, clothing, and miscellaneous supplies to workers and other volunteers in the area. The investigators, who visited twice a week, talked to workers who had wage-related complaints or who needed information about the laws that the agency enforces.

The Good News Camp ceased operations in August 2006, but the relationships cultivated by the New Orleans district office allowed WHD to continue its outreach at similar locations. The Office of the Hispanic Apostolate of the Archdiocese of New Orleans and several local churches provided occasions to educate the faith-based community, pastors of churches in the New Orleans area with large Hispanic congregations, as well as immigrant workers. Indeed, since August 2006, bilingual WHD investigators have provided outreach to the workers who eat meals at the Lantern Light Ministry, based at St. Joseph's Catholic Church in mid-city New Orleans.

WHD staff also reached out to the Mexican Consulates with jurisdiction in the Gulf Coast area to request their help in reaching individuals coming into the area to work. This coordination led to a jointly-sponsored outreach event in New Orleans in late January 2006, and a similar two-day March 2006 event for workers in the Gulfport area. In May 2006, bilingual investigators on detail to the New Orleans district office attended a mobile Mexican Consulate held in Baton Rouge.

WHD has met with representatives of various organizations to discuss opportunities for collaboration in the region. Among those organizations are the League of United Latin American Citizens, the National Immigration Law Center, the Workplace Justice Clinic of the Loyola Law School, the Catholic Legal Immigration Network, the Mississippi Immigrant Rights Alliance, the Southern Poverty Law Center, Interfaith Worker Justice, and the New Orleans Worker Justice Coalition.

WHD's compliance efforts have not been limited to employees. Staff in Mississippi and New Orleans have been working with the federal contracting community, employers, and employer associations to educate contractors and other employers of their obligations under the statutes enforced by the agency. Following complaints of noncompliance with the government contract labor standards laws, WHD staff began meeting with the Army Corps of Engineers and the Department of the Navy in early November 2005 to promote compliance among their contractors.

The New Orleans office, with assistance from the Army Corps of Engineers, hosted a seminar for federal contractors on the requirements of the DBA and SCA in late January 2006. This seminar provided WHD with the opportunity to advise prime contractors of their obligations to ensure labor standards compliance by their subcontractors and the consequences and liabilities for failing to do so. In June 2006, the New Orleans WHD district office, with the cooperation of the Army Corps of Engineers, sponsored a seminar for prime contractors and subcontractors working in the New Orleans area on Katrina recovery efforts.

During March 2006, WHD staff on the Mississippi Gulf Coast provided compliance assistance to a number of construction contractors in the area, including the two largest contractors involved in renovating the hotels and casinos and to SCA subcontractors working on debris removal contracts in Mississippi. In September 2006, staff in Gulfport provided compliance assistance materials to a Home Depot located in Biloxi in an effort to educate small contractors who purchase materials from the Home Depot store. Also that month, staff in Gulfport gave an FLSA presentation to the Gulf Coast Business Technology Center. The audience included a variety of employers from the Mississippi Gulf Coast area. In October 2006, staff in Gulfport attended a meeting of the Mississippi Associated Builders and Contractors during which they provided compliance information to the association's membership.

Most recently, in June 2007, WHD staff, accompanied by other U.S. Department of Labor agencies, hosted an employer forum in New Orleans. The event attracted nearly 200 employers, both large and small, who attended seminars on core labor standards laws. The forum was held on the campus of the University of New Orleans's Lindy Boggs International Conference Center. The forum, entitled "Do It Right the First Time—Compliance, the *EASY* Way," was a success. A total of 179 employers responded to invitations, and the plenary session, which seated 200, was almost full to capacity.

Continuing Efforts To Promote Compliance

WHD's future compliance strategies in the Gulf Coast region will build on the lessons learned over the past two years. New investigators for the New Orleans and Gulfport offices are now receiving advanced training in the government contracts statutes—a course typically reserved for more senior investigators. As government-funded reconstruction continues, WHD's directed enforcement program in the region will take a more coordinated top-down approach to enforcing the government contract statutes, holding prime contractors responsible for their subcontractors' violations. WHD is developing new compliance materials to promote compliance in the construction industry in advance of the major rebuilding efforts. As the Gulf Coast offices begin planning their core compliance initiatives for fiscal year 2008, they will

integrate new methods to reach the more vulnerable worker populations in the area as those workers transition from clean-up activities to construction work and eventually to employment opportunities in other industries.

The long-term reconstruction of the Nation's Gulf Coast region will require a strong and continuing WHD presence. Federal assistance to the region will drive employment opportunities as the area rebuilds its infrastructure and attracts more workers, further shifting its workforce demographics. Throughout the next several years, WHD will continue to allocate enforcement resources to the region, explore new strategies and partnerships to reach vulnerable workers, and pursue all opportunities to meet any new compliance challenges that may arise in along the Gulf Coast.

Mr. Chairman, this concludes my prepared remarks. I will be happy to answer any questions you or the Members of the Subcommittee may have.

Mr. KUCINICH. I want to thank the gentleman for his testimony. I think any one of us who has listened to the testimony of the preceding panel would agree that your responsibilities must at times be quite daunting, so we have compassion for that. At the same time, the comments of the first panel I am sure had to be of great concern to you. Am I correct?

Mr. DECAMP. They were of concern, but I would say they were of concern in part because I think they reflect a misunderstanding of the work that we have done in the region. I have no doubt about the sincerity of the panelists who care about these workers, and I applaud their efforts, but I think that there has been a misunderstanding.

For example, the representation that we have reduced our enforcement somehow in the Gulf Coast or in New Orleans following the hurricane is simply wrong. In the year following Katrina, we opened approximately 300—more than 300 hurricane-related cases in the Gulf Coast.

Mr. KUCINICH. Let me, if I may, just go over some of the suggestions that I think were offered in good faith—

Mr. DECAMP. Sure.

Mr. KUCINICH [continuing]. By the Interfaith Worker Justice group, where they are asking, among other things, that the Department of Labor develop a public protocol, including unannounced visits, targeting regions, industries, and employers with records of widespread abuses. How do you respond to that?

Mr. DECAMP. We already do that. I agree with their recommendation that we should be doing that, and we do. I would note that, although in the ordinary course about 80 percent of our work is in response to complaints that we receive, we specifically recognize that in the Gulf Coast, because of the large influx of undocumented workers and other low-wage workers, we have had to adjust our enforcement strategy.

So, for example, in the first year following the hurricane, close to half of our cases were cases that we initiated, as opposed to complaint cases, and in the second year following the hurricane it was more than 80 percent of our work was cases that we initiated, as opposed to sitting back and waiting for employee complaints. So we have had to adjust our approach, and we have really gone to great lengths to do that.

Mr. KUCINICH. Tell me something. Help me figure this out. According to our staff report, the number of Department of Labor investigations in New Orleans decreased from 70 in the year before Katrina to 44 in the year after Katrina, a 37 percent decrease. Are you disputing that? Are you saying that is not true, that you actually have more investigations and not less?

Mr. DECAMP. Two points. Yes, the numbers are wrong, but, more importantly, the number doesn't tell the whole story. What the number reflects is the 12 months preceding Katrina versus the 11 months following Katrina. Now, what that also reflects is work that was done in the city of New Orleans, the city limits, proper, involving employers who had addresses in New Orleans. That ignores the fact that many of the cases, perhaps most of the cases that we handled involved employers who came in from outside of New Orleans, who had addresses that were outside of New Orleans, and there-

fore many of the cases—as I said, we had over 300 hurricane-related cases that we opened in that first year.

We had cases that were not handled by the New Orleans District Office, even though the workers and the violations may have been in New Orleans. If the employer was based in, say, Kansas City or Seattle, or any of the 19 other offices where we had investigations being conducted, those would be benefiting the workers in New Orleans and in the Gulf Coast, but not necessarily reflected in that situation.

Mr. KUCINICH. Well, did your case load, for example, in New Orleans increase after the hurricanes?

Mr. DECAMP. It depends on what we mean by in New Orleans. That is the issue. The New Orleans office, itself, was shut down for about 2 months following the hurricane. We were shut down and we were able to open up space in a retail mall in Metairie 2 months to 3 months later. But what happened is the investigators that had been in New Orleans went to other offices. They went to Grand Rapids, they went to Jacksonville, Dallas—

Mr. KUCINICH. OK. I understand the point you are making, but here is my question: the attorney, Ms. Rosenbaum, testified “even workers who did contact DOL WHD and who were able to communicate with a staff person were often dismissed with a shallow, cursory review. Often their complaints were not even recorded by the agency. Workers simply went away.”

Now, isn't that why, in response to my staff's document request in which they requested the total number of complaints pursued and not pursued, you did not submit the total number of cases not pursued by the DOL?

And at this point I want to enter in the record an e-mail sent from a congressional liaison to the Department of Labor, Sarah Cudworth, that states that the Department of Labor does not keep a record of what it terms non-actionable complaints.

[The information referred to follows:]

Erakat, Noura

From: Cudworth, Sarah - OCIA [Cudworth.Sarah@dol.gov]
Sent: Monday, June 18, 2007 4:13 PM
To: Erakat, Noura
Cc: Pierce, Sarah - OCIA
Subject: RE: Request 2

*email from
S. Cudworth*

Hi Noura!

Here is the response from WHD regarding your question below. I will have the other information you are seeking shortly.

Sarah

"As we discussed at the meeting, WHD does not track information regarding inquiries made to WHD that do not rise to the level of an actionable complaint. These inquiries may relate to safety and health, unemployment, workers' compensation, or any number of other issues outside the scope of WHD's authority. WHD often refers individuals making such inquiries to the appropriate agencies.

To the extent that individuals made 'inquiries' regarding potential FLSA, SCA, and/or DBA violations, such inquiries would be treated as complaints.

The bulk of WHD's enforcement in the Gulf Coast region has been in the form of directed investigations. Directed -- i.e., targeted -- investigations are focused in particular areas and on particular industries. The decision to initiate directed investigations in particular areas or industries is based on a number of factors, including, but not limited to, anecdotal reports of violations in the media or through industry or advocacy groups, as well as WHD's understanding that some workers in those areas or industries are reluctant or unable to file a complaint."

From: Erakat, Noura [mailto:Noura.Erakat@mail.house.gov]
Sent: Thursday, June 14, 2007 11:37 AM
To: Cudworth, Sarah - OCIA
Subject: Request 2

Greetings Sarah,

In our document we request we included a request for all complaints submitted, pursued or not pursued, to the DOL. You clarified that a complaint is an inquiry that has become case that is being investigated and pursued.

In that case, I'd like to revise this request to ask for a log of sorts indicating the number of employee inquiries alleging wage theft (overtime or non-payment all together), safety and health hazards, and other violations of the FLSA, the Davis-Bacon Act, or the SCA. We'd like to evaluate the case load of the New Orleans' District Office. In the meeting Paul indicated that there has not been an increase in complaints despite the influx of labor and yet your press releases and response to the Kennedy-Landrieu letter indicates that you've increased your capacity in the Gulf Coast region since the Hurricanes. Clearly this is confusing. One way to wade through it is to take a look at the case load requested of the DOL and what in fact it is able to handle in New Orleans. Thanks so much Sarah.

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Mr. KUCINICH. Do you have a response to that?

Mr. DECAMP. Right. When someone comes to the Department and makes an allegation that does not involve a violation of our laws or does not on its face appear to involve a violation of our laws, the case would not necessarily be registered. If it is not registered, we are not going to be tracking that as a complaint. For example, if someone comes in and says I was paid only \$7 an hour, if that is not a minimum wage situation or another prevailing wage kind of situation we wouldn't record it, because it doesn't on its face constitute a violation.

I did hear the comments in the first panel about the need for the Department to go further to investigate, but there is a certain amount of screening that goes on to weed out complaints that on their face don't have any information.

If we have a worker, for example, who calls and says, look, I didn't get paid at all for the work I did but I don't know who my employer is and I don't know where he is and I don't know where I did the work, if there is nothing that we can go on for an investigation we wouldn't have registered that complaint.

Mr. KUCINICH. I am going to complete my questions in this first round and ask you why can't you submit the total number of cases that weren't pursued? I mean, let me give you an example. I have a District office. It handles 10,000 requests for services a year. We have 14 employees in the Cleveland area. We track every call that comes in, and we give it a number. Then I can go into any one of those cases like that and know what action was taken or wasn't taken. I am asking you why could you not submit the total number of cases not pursued by the DOL?

Mr. DECAMP. Because they are not cases in terms of how the Department keeps track of the information. We have a data base that records complaints that have been registered, and when complaints have not been made, if they haven't risen to a level of a complaint to the point where it would be registered in our computer, then we can't track that, so we wouldn't have the record.

Mr. KUCINICH. And I am told that in a FOIA the Department of Labor would not release information on what their process was related to targeted investigation, because this would violate law enforcement confidentiality.

Mr. DECAMP. Correct.

Mr. KUCINICH. And that the drop in cases resolved from 70 to 44 was the Department of Labor's answer to a FOIA for the New Orleans metro area, not just—

Mr. DECAMP. The FOIA request did not request the metro area. That was part of the issue, was that the FOIA request talked about in New Orleans, and the answer was within the city of New Orleans.

Mr. KUCINICH. So when does something become a case?

Mr. DECAMP. When it is registered in our data base.

Mr. KUCINICH. And could people conceivably call you and staff just says, well, this doesn't even merit being a case?

Mr. DECAMP. Yes. If the facts don't indicate, you know, any kind of likelihood of a violation of laws that we can deal with, either because substantively there is no violation or we don't have coverage of the issue—I mean, it is important to keep in mind that about

half of the work that day laborers perform, according to a UCLA study from 2006, is not covered by the Federal wage and hour laws because the employers are too small to be covered if they don't have \$500,000 in annual volume, annual business volume.

Mr. KUCINICH. I am going to ask for the Freedom of Information response to be put in the record. Without objection.

Mr. ISSA. Mr. DeCamp, I want to pick up on the same line, because I think on this, this is a good example of the kind of bipartisan work that we need to do here.

I am sure you would agree that if a 9-1-1 call comes in and someone says, well, you know, that is not actually an emergency, there is still a record of it?

Mr. DECAMP. I am not familiar with 9-1-1 practices, but I am not going to dispute that.

Mr. ISSA. You would say that there should be, wouldn't you?

Mr. DECAMP. I don't know.

Mr. ISSA. OK. Do your employees log their time and tell you what they are doing all day so that you can evaluate whether or not they are scurrying off, to use a technical term? [Laughter.]

Mr. DECAMP. We use a different technical term.

Mr. ISSA. We are both Clevelanders, so this is a technical term we are used to.

Mr. KUCINICH. We understand those technical terms.

Mr. DECAMP. Investigators do record their time.

Mr. ISSA. OK. So they record their time, so they tell you effectively, in some at least anecdotal way, the volume of calls that they are turning away, don't they?

Mr. DECAMP. No.

Mr. ISSA. Well, let me ask it another way. Would it be too much trouble for them to, in fact, document those requests which do not rise to the level of your office's responsibility or authority?

Mr. DECAMP. It depends on what we are talking about. For example, we get a lot of questions where somebody will call in, possibly a worker, possibly with a wage hour issue, possibly not, just asking questions. What is the minimum wage this year, or that kind of question. I don't think we document those calls. So it is hard to find, you know, the line as to when it becomes a case, but where we have facts that would indicate a likelihood of a violation, that is when that is recorded.

Mr. ISSA. Well, this is the Committee on Oversight and Government Reform.

Mr. DECAMP. Right.

Mr. ISSA. So, looking at the other half of our hat for a moment, because sometimes oversight is of absolutely no value if we don't make changes substantively, would you please, on behalf of this committee's request, come back to us with a basic assessment, if you can't give it today, of what would it take to maintain a data base?

I will put it in perspective. Mr. Kucinich and I do handle 10,000 inquiries. Now, to be honest, both of us receive I would say almost the gaylords, if you know what that is, filled with faxes and little post cards that have particular issues on them, and we will receive hundreds or even thousands on a particular issue. They are all identical. It is important, it is critical for us, in order to make our

decisions, to know how many people wanted us to add guns, take away guns, save lives, not save lives, believe in the death penalty, whatever it is, and every office in some way, shape, or form tasks their people to provide them with basic data reports, not the individual names of somebody who calls and says how much is the minimum wage and you say it is \$8.50. You don't have to get the name, address, and phone number. You answered the question and you data base it.

How hard would it be to be able to give us that kind of information if you can't give it to us today? And do you believe today that it is reasonable that, in fact, you maintain assessments, not only for your management, but for places like this, we can get some idea of why they are increasing your budget or your budget request is \$16.7 million more. And what percentage increase is that, if I can ask?

Mr. DECAMP. The percentage? I don't know the percentage. It is from \$165 million to about \$182 million.

Mr. ISSA. Well, 10-plus percent increase in 1 year.

Mr. DECAMP. Approximately. Yes.

Mr. ISSA. OK. Would you give a 10-plus percent increase without knowing why, if you were sitting on this side of the dias?

Mr. DECAMP. What I would submit is that what we are trying to do is carry out our enforcement mission. I would submit that the kind of information that you are talking about doesn't allow us to do that.

Mr. ISSA. I appreciate that, but we have to know where the 33 people are that are so busy taking a huge amount of calls that you say aren't worth logging or us knowing what they are about because they are not enforceable.

If you could see it from our standpoint, you haven't justified what your people are doing in light of the statistics. And, by the way, I am as empathetic as any Member would be that conditions were horrific, that your people were under a stress load, that they were getting a lot of calls, and that every factor that both you have said and the previous panel said existed. From our standpoint, sitting here today, looking to the future, this is not the last time a hurricane is going to hit in the south. It certainly is not the last time you are going to have a flood of illegal workers who are being abused by opportunistic day labor contractors.

My time is expiring, but I want to give you a fair chance, tell us how the mistakes that clearly were made—you didn't come here to say they weren't made—and the opportunism that went on, not just because of the hurricane but because of how we handled the aftermath, how your office can tell us or give us an assurance that if a hurricane hit tomorrow that we wouldn't simply have a do-over of the exact same set of mistakes.

Mr. DECAMP. We certainly did learn a number of lessons from the hurricane experience, and I think that the most important that we learned was that when this kind of disaster happens it can be a magnet for employers that are less likely to comply with the law and a magnet for day labor. Day labor, in particular, poses an extreme enforcement challenge for us, because enforcement tends to be blended with a lot of non-covered work that is outside our jurisdiction. It is more difficult to find because it is geographically dis-

persed, and you are dealing with a lot of workers who will not complain to us. It makes it very difficult for us to do our job.

We have done a lot of things to try to overcome those challenges, including outreach, including working with community groups, religious groups, churches—anybody who will help us get the message out to the workers that they should be willing to talk with us.

In addition, we have learned of the importance of very early on evaluating, when we have a Government contract going on, and getting up the chain as far as we can as quickly as we can to identify the prime contractors and first-tier contractors, who are much more likely to be solvent, they are going to have cash, they are going to be able to make these wage payments, whereas a lot of the more fly by-night operations we see at lower tiers in the contracting chain don't have any cash and are not prepared to pay the workers, even though they are obligated to, even if the money on the contract hasn't flowed to them yet.

Mr. ISSA. My times has expired. I just want to followup with one thing that you could answer.

Mr. KUCINICH. Without objection, the gentleman is granted another 3 minutes.

Mr. ISSA. Thank you. Thank you very much, Mr. Chairman.

If you don't have the information to add, I would appreciate a followup in writing.

First of all, what is your statute of limitations typically on these violations?

Mr. DECAMP. For Fair Labor Standards Act it is 2 years or 3 years for a willful violation.

Mr. ISSA. OK. So, knowing that it is 3 years for willful, are you still pursuing willful violations today? If so, how many from the post-Katrina period?

Mr. DECAMP. Let's see. We have over 430 hurricane-related cases that we have opened. We have closed approximately something north of 250 of those cases, so that leaves somewhere between 100 and 200 hurricane-related cases—and that includes New Orleans and the Gulf Coast more broadly—that are still underway.

Mr. ISSA. And do you have the resources today to ensure that the statute not end prior to your completing your investigations today? Are people going to get away with this simply because you can't get to them?

Mr. DECAMP. It is important to remember that there was a lot of work that continued long after the hurricane happened, and so there is still hurricane recovery work going on now. That work is not subject to the statute tolling in the near future. We have certainly asked for more resources. I don't believe we have enough resources, and the President's budget request since 2004 has actually asked for more money than we have received each year since then. We are significantly under-funded in 2007. The continuing resolution really hurt our hiring efforts, frankly, and made it difficult to replace even retiring staff. We need more resources, and we have asked for them in the pending budget request.

Mr. ISSA. OK. Last question. I thank the chairman for his indulgence.

The \$500,000 level, although we can all appreciate that is a relatively small business, if businesses go in and out of business on

a monthly, twice a year, whatever, basis, or if they set up multiple entities in order to essentially never get big enough to be kept, do you have or should this committee author legislation to give you authority to reach down for willful violations for those who may have attempted to evade the system even if they are below \$500,000?

Mr. DECAMP. I would argue that we already have that authority. First of all, it is important to remember that on the Federal contracting side of things, Service Contract Act and Davis-Bacon Act, we don't have those kind of requirements. If you are a contractor and you have a covered contract, it doesn't matter what your dollar volume is, you are going to be covered and you are going to be obligated to pay the prevailing wages.

On the FLSA side, if we can show that an employer has been, you know, manipulating corporate forms to get in and out of coverage and basically stay under the radar of \$500,000 but is actually doing much more and it is a continuation of the same business, we could pursue theories of piercing the corporate veil and combining those entities. So I think that authority already exists.

Mr. ISSA. I appreciate that.

The only reason I asked that one, Mr. Chairman, is that I had earlier heard that, in not taking so much data on some of these complaints called in, that some of them were by people who, in fact, worked for small companies that may not have been covered, so that is a concern that you could have people calling in and their company was a day laborer, but, in fact, if the authority exists to go after them, then knowing the size and scope of these calls that are being turned away may, in fact, be critical to the committee.

Mr. KUCINICH. Well thank you, Mr. Issa. If I may respond before we go to Ms. Watson here, one of the people who testified earlier said that "even workers who did contact DOL WHD and were able to communicate with a staff person were often dismissed with a shallow, cursory review. Often their consumer polices were not even recorded by the Agency. The workers simply went away," which goes to the question that you are raising about perhaps the status of the day labor company, which is, you know, who knows if there is ever any chance for accountability.

As we are hearing this testimony, see, the one thing about some of us who are in the Congress is we take this case work approach to things, so we really understand this. My career started 40 years ago. I got elected 38 years ago. I still have the records from 38 years ago of each and every call that came into my city council office and the disposition of it. I had a tickler file and I just would see if it was taken care of or not. So, you know, this is 2007. Hello? And you are visited by—granted, and I think everyone understands here that is must be extraordinary to have to take on these responsibilities. But you know what? A 10-percent increase in the budget, \$185 million, come on. I mean, you know, we need a little bit more.

Ms. Watson.

Ms. WATSON. Mr. Chairman, I want to thank you for having this particular hearing. I am sorry I wasn't here when it started, because I have been highly concerned about New Orleans and its really benign neglect. During the midst of the crisis there were photo ops. I remember the President coming down and framed by

the large Catholic church saying, whatever it takes, as much as it takes, we will see that flows into New Orleans. I am quite stressed. We have gone down twice. The feedback to me is that some of the areas in the great 9th, the houses are still standing. They have not been repaired or taken down and people have left and there is unemployment. The crime rate is up, and so on.

The impact of that particular hurricane was just shocking, and I think the impact will continue, so I know people are dysfunctional and traumatized by the experience they went through, and so I am really pleased that we are trying to followup to see where we can make corrections along the way.

If we are to be ready—and I constantly hear that it is all about Homeland Security—well, first test we really weren't ready to secure our own land. So the purpose of my questions will be to try to followup and see what went wrong and what do we need to correct, and is there too much bureaucracy. Are the current ordinances, laws, rules not clear enough? Can we move fast enough to be able to save lives and property?

So it is my understanding that the New Orleans District Office staff—and that would be, I guess, your staff—lived in the community that was heavily damaged; is that correct?

Mr. DECAMP. That is. Yes.

Ms. WATSON. Great. So how many members of this staff had their homes damaged or destroyed by the hurricane? Do you have any idea?

Mr. DECAMP. I believe that in the New Orleans District Office proper it was all of them.

Ms. WATSON. All of them?

Mr. DECAMP. They were all displaced.

Ms. WATSON. And all of them were at a hardship, and I know that several of us attempted to say that the repair, rebuilding, the removal of the destroyed homes should be done by local people who lived in the area, and we hear tell that crews were brought in from other countries below the border. I think Halliburton was in on some of that. I just think that we have really lost trust with the people that we are supposed to help.

I know in that area, and as you said almost all of them had their homes destroyed by the hurricane, and many of the staff members have not returned home. Now, despite this hardship, I understand that no one was sent to help the staff do the job that they needed to do for 3 months. Am I tracking accurately?

Mr. DECAMP. Well, two issues. First, I would want to note that all of the people who were displaced from New Orleans from our office, as well as from Biloxi, MS, have come back and were back with the agency, so I want to commend them and note that for the record.

The second point is that a lot of help went to the New Orleans and Gulf Coast regions to assist the offices getting back on their feet. Almost immediately, as soon as we had office space we had additional staff from around the country that we put into the region, including Spanish-speaking individuals, because that language capacity was lacking on our staff in the region. It wasn't necessary before the hurricane because the demographics—

Ms. WATSON. Did it take over a year to get the Spanish-speaking staff in place?

Mr. DECAMP. No, no. What happened a year after was the hiring of employees in the New Orleans office who were Spanish-speaking, but we were bringing Spanish-speaking people from other offices within the agency almost immediately, as soon as we had office space.

It is important to note that because a lot of the work that was going on in the region was Government contracting work, and these are the most complex cases, it doesn't do a lot of good to put a brand new investigator into the mix and expect them to be able to handle those cases. Ordinarily we need investigators who have been experienced for 2 or 3 years and have gone through a second round of training to be able to handle those cases, so what we were mainly doing was bringing in experienced investigators from around the country, as well as experienced managers from around the country, to help in New Orleans and in the rest of the Gulf Coast because the cases were that complex.

Ms. WATSON. What would you suggest? I can understand the hardships. I represent Los Angeles, and we have a group called LA/LA—Louisiana/L.A. Many of the people from the great 9th came to Los Angeles, and we helped them there. We raised money. We housed them. We obtained clothing for them. And so I can understand what you are up against.

What I am having difficulty with understanding is that a lot of the labor laws were suspended, Davis-Bacon Act and so on. I understand you need experienced people, but I can't understand almost 2 years now what has happened in the second year and why can't we then have a plan for operating and addressing and tracking complaints and the reports and all. Why are we still laboring under the confusion? Can you bring me up to date? What is the problem?

Mr. DECAMP. Certainly. Thank you for the question. We have actually hired additional investigators in New Orleans on a permanent basis, as well as in Mississippi. We have brought in additional management staff. Currently we have postings out to hire additional people. We are looking, for example, to bring in on a long-term detail basis a senior investigator and a team leader into New Orleans.

We recognize that what is going on is there is actually a much shrunken work force in New Orleans, but it has been a demographic shift. Right now the city is anywhere from 40 to 60 percent below its pre-hurricane population level, so the work force is much smaller.

Ms. WATSON. They are all in Los Angeles.

Mr. DECAMP. And Texas and a number of places, certainly. And so long term we don't think that there is going to be a need for a very large staff in New Orleans, so that is part of why we are trying to avoid over-staffing that office, in effect. We want to staff it now with a larger work force than it had before the hurricane, but not overly so. We think that the bulk of the problem will be in the next 2 to 5 years as this contracting and rebuilding scenario works its way through the system, and we think that it is kind of a temporary bubble now over the next 2 to 5 years, a significant bubble

in terms of violations and in terms of workload in the Gulf Coast and in New Orleans, in particular. But that is why we are trying to address it without hiring permanent employees in New Orleans more so than the workload on a long-term basis will justify. We are trying to be more flexible, in other words, in how we staff the situation.

Ms. WATSON. You wouldn't consider training and retraining those people who lost property, who moved away, and we are pushing this come home, return home? You wouldn't consider wanting to train them and hire them permanently to give them work in their own home community and train them the way they should be trained so they can assist in rebuilding the devastated communities? Has that ever come up as a way to increase the number of employees that you are going to need?

I am certain that we are going to have another hurricane, and particularly with the effect of global warming. It is going to happen again. How can we be ready? And how can we compensate the people who lost so much, lost their jobs, probably never be able to go back to those jobs, but maybe a work force that could be trained and to fill those slots, rather than looking for experienced people that would have to leave their current employment and come back to an area that could be devastated in the next few weeks?

Mr. DECAMP. Well, that has actually been part of the challenge for the agency is finding people willing to work in New Orleans. That has been a challenge. We have posted job positions, and not necessarily—people who have jobs with wage hour in other parts of the country don't necessarily want to leave where they are and come to New Orleans. So to the extent we have positions available in New Orleans, the local work force, subject to all the rules that go with hiring Government employees, would certainly seem to be an option.

Ms. WATSON. It seems to me that the bureaucracy is one of the obstacles to rebuilding, and I would think for the particular needs of this Gulf Coast area that we would change some of the regulations, some of the policies.

They were talking about a data base when I came in. If we had an accurate data base and we could seek out the people who lived in the area who could be potential trainees and employees, I think that might be one way. Find people who live there and might want to return.

As you said, there are people living elsewhere, and they are doing much better living elsewhere than they would living at home, but I think there is something deep inside of us where we want to go home.

I don't know, Mr. Chairman, if that data base you were talking about were a list of the people who needed help and are other places within the country, but I think an effort could be made on the part of the Department to locate these people and bring them in for training. I mean, you can train them exactly the way you need to so they can be there to face up and have the skills they need to face the next hurricane. There will be another.

This is a suggestion and recommendation. I am sure I am just following in the tracks of our other Members. We want to be helpful, and not only to the Department but to the victims of that ter-

rible hurricane. And we are all in a way victims. So I would suggest that we look at the rules, regulations, procedures that we had before, loosen them up, target people who lost their jobs, lost their homes, lost their incomes, and see if we can reach out to them, bring them back, train them the way they need to be trained.

We learned a lot, I hope, since then, but I would never want to see another lame response that happened. You know, we are rushing around the world trying to help others and we can't even rebuild one of our historical cities. There is something wrong with that picture.

So my suggestion is that, taking the questions that we are raising here, the concerns that we have here—I am connected by family to New Orleans, so I have a sensitivity about what is going on there—I would like to see our famous historical, unique city restored and the people having the option to come back and live a better life. That is just a word to you.

Maybe we ought to put something in writing to the Department.

Thank you so much for the time, Mr. Chairman.

Mr. KUCINICH. Listen, your presence here is imperative. I just want to say that, in line with increasing communication between this subcommittee and your division, I am going to ask staff of the majority and minority to work together in drafting a letter as a followup that would have the following elements: Taking from the concerns that were expressed by the previous panel, specifically the recommendations that were made, perhaps some of which you have already addressed, perhaps some of which you haven't, but I want to make sure that we take the letters, read over the letters from those that testified, look at the recommendations, incorporate them in a bipartisan letter to Mr. DeCamp, and then we will await your response as a way of continuing to engage here.

The importance of having communication between us cannot be stressed strongly enough. For example, one of the things I want to enter into the record, without objection, is a letter from a Loyola Law Clinic intern who referred Jeffrey Steele's case to the Department of Labor, and I have an e-mail dated Thursday, February 22, 2007, where Vanessa Spinazolla, a student practitioner with Loyola Law Clinic's Workplace Justice Project wrote an e-mail to Barbara Hicks that pretty much outlines failure of the Department to act on this specific complaint. Without objection, that will go into the record.

You will be given a chance to respond to that, as well.

[The information referred to follows:]

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NO. 504 861 5683

P. 02
 Page 1 of 1

Subject: DOL Claim Filed September
 CC: molina@loyno.edu,sabaraign@yahoo.com
 Date: Thu, 22 Feb 2007 16:01:08 -0600
 Status: normal
 From: "vaspinaz" <vaspinaz@loyno.edu>
 Reply-to: vaspinaz@loyno.edu

*V. Spinazola
 email*

Dear District Director Ricks:
 I sincerely hope this email finds you well. I just left you a brief phone message indicating that I would send along this email. I am a student in the Loyola Workplace Justice Project; you had shared your time with us early this past fall over at Loyola Law School.
 I am writing in regards to my client Jeffrey Steele, who filed a complaint with the New Orleans DOL on September 26, 2006. Since that time I have left several voicemails and exchanged emails with the DOL, and in fact a Ms. Black did get back to me, but Mr. Steele has not yet been assigned a case manager. In the DOL letter acknowledging receipt of Mr. Steele's complaint (dated September 29, 2006), you indicated that a case manager would be assigned "as soon as possible."

It has now been five months since DOL's receipt of the complaint.
 Additionally, I am somewhat concerned, because the events at issue in Mr. Steele's case take place between October and December of 2005. In my estimation, the evidence is growing cold, memories are becoming foggy, and more and more disreputable contractors are leaving the New Orleans area, all making it increasingly difficult for investigation of Mr. Steele's claim. I feel that DOL's inaction is directly corollary to the success of Mr. Steele's claim. Were this claim not the sole jurisdiction of DOL, I would not be so concerned. Being that it is, my client feels somewhat powerless that he is not able to move this along, and I am beginning to feel the same way. Please help me explain to him why, after five months, there is not a case manager available to investigate his claim. Surely he cannot be the only individual with a complaint against ECC and JNE? They appear to me to be major contractors post-Katrina. I look forward to the speedy resolution of this issue. I would sincerely appreciate any help you could offer us in investigating the lack of urgency on the part of DOL in this matter. Please feel free to respond in whichever manner is more convenient (phone or email); we can also set up a time to talk that works for you, as I am sure you are still incredibly busy.

Sincerely,
 Vanessa Spinazola
 Workplace Justice Project
 Student Practitioner
 504.861.5746

Mr. KUCINICH. I think that there is an issue here of whether the New Orleans staff could handle the case load after the hurricane. Were you able to or not? Was that an area that you just couldn't do it?

Mr. DECAMP. The issue was that we didn't try to handle New Orleans with New Orleans staff, alone. We brought all the resources—

Mr. KUCINICH. OK. So you had staff. So here is my question. Take Mr. Steele's case, for example. Why hasn't it been concluded? I mean, he filed his claim with you in September 2005. It is going to be a year now. I am sure he is not the only one. What is going on?

Mr. DECAMP. First of all, I am not sure that he said 2005. I think he may have said 2006.

Mr. KUCINICH. OK. Let's say he said 2006. What is going on?

Mr. DECAMP. The point is there is a pending case and we can't talk about, for enforcement reasons, the case that—

Mr. KUCINICH. Fine, but generally speaking in terms of these cases, isn't time of the essence?

Mr. DECAMP. Yes, time is of the essence. And, more generally, what happens in some of these cases is that we get a complaint or we hear information involving one employee, and we end up looking at the employer more broadly because we think that the issues may affect not just that employee but other employees and the same employer.

Mr. KUCINICH. Is 5 months a long period of time to assign a case manager to a case?

Mr. DECAMP. Not necessarily.

Mr. KUCINICH. Really?

Mr. DECAMP. Depends on the nature of the case, and, again, in that case—

Mr. KUCINICH. Really?

Mr. DECAMP. Depends on the case. Depends on the office. Depends on what is going on in the office.

Mr. KUCINICH. You know, that is interesting.

Let me ask you this. Staff raises the question. That is why there are people whispering in my ears, by the way. What would cause this kind of a delay?

Mr. DECAMP. Again, I can't comment on Mr.—

Mr. KUCINICH. I am not asking you about a specific case. Let's speak generally.

Mr. DECAMP. Speaking generally—

Mr. KUCINICH. Generally, what would cause a delay of 5 months?

Mr. DECAMP. If, for example, we are already looking at that employer, we are already investigating that employer in a case that might encompass that employee already, that employee's individual complaint might not get a high priority in terms of being assigned because those rights are already in play, they are already being investigated.

Mr. KUCINICH. Let me ask you something. I know no one here needs to be reminded that you are under oath. I won't do that. But I will ask you: have you ever been told not to pursue a case at any time in any way whatsoever by any superior?

Mr. DECAMP. Absolutely no.

Mr. KUCINICH. Mr. Passantino.

Mr. PASSANTINO. No.

Mr. KUCINICH. Dr. Carlson.

Mr. CARLSON. Absolutely not.

Mr. KUCINICH. I know you don't want to talk about an individual case, and I will respect that, but if someone is not assigned to a case it is not a case; is that right?

Mr. DECAMP. If there is a possible pending investigation we are not going to discuss it.

Mr. KUCINICH. If someone is not assigned to a case, is it a case? Just like, you know, you don't keep records of certain things because—

Mr. DECAMP. If a complaint has been registered, then there is a pending case, and if it hasn't been assigned to an investigator yet, there is still a pending case and we can't talk about it.

Mr. KUCINICH. If you can't talk about a pending case—

Mr. DECAMP. Yes.

Mr. KUCINICH [continuing]. Is a case a pending case if you didn't even begin an investigation?

Mr. DECAMP. If a complaint has been registered, yes.

Mr. KUCINICH. OK. Now, I understand that you believe that an impediment to workers complaining to the DOL is the fact they don't trust you as a Government agency because they fear deportation; is that true?

Mr. DECAMP. For undocumented workers, yes.

Mr. KUCINICH. And did you think about approaching community organizations that did establish trust with the workers in order to gain their trust?

Mr. DECAMP. Absolutely. We did extensive outreach. In fact, I would like to submit for the record, with your permission, a document that outlines in great detail all of the efforts we had—

Mr. KUCINICH. Without objection, we would like to have it.

Would you like to describe it just a little bit?

Mr. DECAMP. Certainly. It is 10 pages.

Mr. KUCINICH. Just give me a caption.

Mr. DECAMP. Sure. We talked about the outreach that we had with particular churches, with particular community organizations.

Mr. KUCINICH. Can you give me any names?

Mr. DECAMP. Sure. For example, we worked with the Hispanic Apostolate, the Archdiocese of New Orleans. We worked with the Lantern Light Ministry in New Orleans. We worked with the Workplace Justice Clinic of Loyola University School of Law; Our Lady of Fatima Church in Biloxi, MS; the Good News Camp in New Orleans; Mexican consulates in Atlanta and Houston; Katrina Aid Today; McDonald's; FEMA; U.S. Army Corps of Engineers; the Small Business Administration, and many others that are discussed at length in the document.

Mr. KUCINICH. Did you work with the Loyola Law Clinic?

Mr. DECAMP. Yes.

Mr. KUCINICH. Did you work with Luz Molina?

Mr. DECAMP. Yes.

Mr. KUCINICH. I wondered about that. We haven't had a chance to go back over the list since you are just submitting this for the

record, but I just wanted to share something with you, and maybe you could respond.

My staff followed up with Luz Molina about the collaborative relationship with her, and we asked her to submit her recollection of the relationship that she had in writing. I have a statement here and we will enter it into the record, but I wanted to read for our purposes an excerpt from it.

Here is what it says: “After the initial efforts by the Department of Labor reach out to the WPJP—” that is the Workplace Justice Project—“after these efforts were essentially exhausted, there was no further meaningful collaboration. I would have truly appreciated the opportunity to develop a strong relationship with the Department of Labor. Such relationships would have been a good way to finally reach out to the community of workers long term and thus maintain a relationship with the community of clients most conducive to effectively addressing their claims. However, the DOL, especially at the national level, offered no such opportunity, and to my knowledge has taken no steps to develop and keep these relationships open long term.

“More than anything else, we would have welcomed a strong statement from DOL to the effect that ‘we want to meet with your clients and take on their cases.’ At a time when labor enforcement resources were and still are nearly nonexistent, such a gesture would have gone a long way to establish their presence as an enforcement agency in the area. The absence of such opportunities was a big disappointment.”

Would you say that this is an exception rather than the rule in terms of your relationships?

[The information referred to follows:]



SCHOOL OF LAW
LAW CLINIC
Clinical Extern Programs
Homeless Advocacy
Callis Long Pro Bono Program
Catholic Legal Immigration Network Detention Program

*Aus Molina
statement*

June 19, 2007

Subcommittee on Domestic Policy
Committee on Oversight and Government Reform
Washington, D.C.

Dear Sir or Madam

I have been asked to recollect and transmit to you my experiences with labor conditions in the immediate aftermath of Hurricane Katrina and what I know of the federal governmental response to those conditions, in particular the response by the United States Department of Labor (hereinafter "DOL").

Labor conditions became a critical issue immediately after Hurricanes Katrina and Rita in light of the need to remove dangerous and massive amounts of debris and to protect citizens' property by installing "blue tarps" on their roofs.

As I began to return to my own home to assess damage and regroup, I was approached at the Loyola Law Clinic by several individuals and agencies, including the Southern Poverty Law Center, and the Hispanic Apostolate (Catholic Charities) with concerns regarding the mistreatment of workers engaged in the post Hurricane Katrina recovery. Mistreatment included non-payment of wages, failure to pay overtime under federal law, as well as safety issues.

The Loyola Law Clinic, a part of the Loyola University New Orleans College of Law, was sought out in particular because it provides legal services to low income and indigent individuals, and many of the post Katrina workers could be fairly characterized as such. If the workers were not low income or indigent before coming to the Gulf, many of the abusive employer practices they encountered when they got here certainly would have put them in that situation.

As a result of these concerns, the Loyola Law Clinic redirected some of its legal efforts to deal with workers' issues and created the Workplace Justice Project (hereinafter "WPJP").

Immediately after its establishment, the WPJP set out to collaborate with a variety of individuals and groups in trying to find resources and solutions to worker abuse, which by January 2006 had become endemic and which regrettably remains troubling and pervasive as of this writing. Many of these individuals, groups and agencies, in turn, sought out the WPJP as a way to either, provide a conduit to the workers, or to ask it to directly render legal services to those workers by helping them legally seek payment of wages, wage overtime, workers' compensation and other labor related issues. It must be noted however, that the legal landscape for the post Katrina workers was very complicated because of the suspension of the Davis-Bacon Act, employers' verification of work authorization under the Immigration Reform and Control Act of 1986, and OSHA enforcement. Further, many of the enforcement efforts necessary in non-payment of wages and overtime cases were to be found in the context of the expenditure of federal funds, and therefore, were under the exclusive jurisdiction of the DOL, thus, workers seeking redress of their claims were, per force, dependant on DOL's vigilance.

I was approached in early 2006 by several individuals from the DOL, in particular, Mr. Alexander J. Passantino, a Senior Policy Advisor to the Assistant Secretary; Ms. Cynthia C. Watson, Regional Administrator, and Ms. Betty R. Campbell, Deputy Regional Administrator, Southwest Region (Wage and Hour Division); Mr. William E. Everheart, Regional Solicitor, Office of the Solicitor, Region VI, and Ms. Barbara J. Hicks, District Director for the Wage and Hour Division with the DOL in New Orleans, Louisiana. These individuals, singly and jointly, were seeking an entree into the post Katrina worker communities, if they could be so characterized, in order to find avenues for disseminating labor law information to the workers, which, in part, also needed to be done in other languages, including Spanish and Portuguese. As a response to their stated needs, I referred them to several places¹ where workers were known to congregate, places other than the obvious and highly publicized worker "corners" throughout the city. I also know that they placed public service announcements in the Spanish radio stations, and offered to participate in already established efforts available through other concerned groups; to my knowledge, these efforts netted very spotty results. However, in our discussions, generally, it was noted and made clear, over and over, that the DOL could do little to enforce federal labor law in the majority of the violations, which were identified as being committed by construction contractors who did not meet the federal standards under the Fair Labor Standards Act (hereinafter "FLSA"). As a result, it appeared that many of the wage abuses affecting the post Katrina workers were mostly beyond the jurisdiction of the DOL because their employers, local and from other states, were not subject to the FLSA for a variety of reasons, including not having an interstate commerce connection, and failure to meet the minimum annual gross income threshold.

¹ One particular place was known as the "Good News Camp." It was set up and run by a private charity at New Orleans' City Park and it attracted a good many workers because they served hot meals and offered free non-perishable groceries and household items. I know that the DOL made information available to the workers at this location. A copy of the DOL's flyer is attached and made part of this letter.

As to those workers which were indeed protected by the federal FLSA, it is unclear how the DOL attempted to contact them or establish some sort of avenue for them to file their complaints with them². The WPJP assisted several workers in filing claims with the DOL, but the workers found the process unduly lengthy and the investigators did not engage in any meaningful communication with the workers, thus leaving them largely uninformed as to the status and/or progress of their cases. It is worth noting at this point however, that although I have no personal knowledge as to how many workers might have been covered by FLSA, given the level of destruction in New Orleans, and the Gulf region, it is not unreasonable to surmise that there were a great many of them. Further, all of the workers engaged in debris removal and the installation of "blue tarps," as well as FEMA trailer installation and maintenance, would have been covered by the FLSA, and thus, most of those claims would have been exclusively within the jurisdiction of the DOL since they involved certain federal funds. In the chaotic "wild west" labor environment existing post Katrina, the labor violations were likely many judging from clients' stories, which time and again demonstrated the pervasiveness and predictability of those violations, which among other abuses, included failure to pay wages altogether, or failure to pay overtime. It was particularly sad to hear workers tell of work performed 12 hours per day, seven days per week, sometimes under dangerous and unhealthy conditions and show nothing for it.

After the initial efforts by DOL to reach out to WPJP were essentially exhausted, there was no further meaningful collaboration. I would have truly appreciated the opportunity to develop a strong relationship with the DOL. Such relationship would have been a good way to finally reach out to the community of workers long term and thus maintain a relationship with the community of clients most conducive to effectively addressing their claims. However, the DOL, especially at the national level, offered no such opportunity and, to my knowledge, has taken no actions to develop and keep these relationships open long term. More than anything else, I would have welcomed a strong statement from the DOL to the effect that "we want to meet with your clients and take on their cases." At a time when labor enforcement resources were, and still are, nearly non-existent, such a gesture would have gone a long way to establish their presence as an enforcement agency in the area. The absence of such opportunities was a big disappointment.

Otherwise, I made an effort to reach out to their regional counsel, Mr. Everheart and suggested to him the fact that the Loyola Law Clinic would be an excellent partner in helping prosecute many of the labor claims falling under their jurisdiction in New Orleans, Louisiana. Mr. Everheart graciously provided support to the WPJP by sending one of his attorneys, Margaret Cranford, to speak to my classes on Fair Labor Standard Act issues, but the litigation collaboration never came into being. I have no knowledge as to what share of the litigation which the DOL conducts or has conducted in the Gulf region involves post Katrina reconstruction labor issues. Again, perhaps this was another missed opportunity.

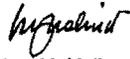
² That is, other than through the efforts I have noted *supra*.

As a last note, I want to convey to the Committee that I think governmental intervention immediately post Katrina was essential and vital in order to send a strong message to employers that violations would not be tolerated. Additionally, it was crucial in order to capture, record and preserve claim information which, in fact, was eventually lost, or hard to reconstruct due to the passage of time, and the lack of oversight in the disbursement of federal funds used in emergency services in the Gulf region. The expression "time is of the essence" was never truer in regards to the prevention and prosecution of labor violations as in late 2005 and early 2006. The chaotic labor environment was created by a combination of the availability of massive amounts of money, with little to no realistic oversight, and a DOL which at the national level lacked foresight, and was ill prepared and/or disposed to deal with the large quantity of workers, employers, and the resulting violations.

In considering future remedies, such must include an overhaul of the accountability which direct employers, contractors, and subcontractors must have in disbursing federal emergency funds for purposes of wages, and the DOL must establish an emergency plan for situations such as the one we have in New Orleans, which in the aftermath of the Katrina disaster, saw a total collapse of the socio-economic structure. Otherwise, any and all protections legally available to workers will be meaningless.

Thank you for this opportunity to contribute my perspective to the Committee and trust that it is of some use in directing future policy.

Yours truly



Luz M. Molina
Clinical Professor
Workplace Justice Project
Loyola Law Clinic

Attachment

Mr. DECAMP. It is certainly my hope that is an exception and in my experience that is an exception.

Mr. KUCINICH. Would you be willing to find a way to determine how it was that someone could have this kind of an assessment and perhaps learn to see if there is anything that could be done to—

Mr. DECAMP. I would be happy to meet with Ms. Molina at her convenience.

Mr. KUCINICH. OK. Great.

Let's see. I just have one other area I want to cover. This is for Dr. Carlson. Thanks for being here. Can you comment on what you have done to investigate the case of Matt Redd?

Mr. CARLSON. Yes, I can, and thank you for the opportunity to be here.

I probably should draw a distinction before I comment on that, that my office is separate and apart from Mr. DeCamp's, and I have no specific investigative authority other than reviewing an application which is filed with us on its merits.

Mr. KUCINICH. Is there an investigation going on?

Mr. CARLSON. I have no investigative authority.

Mr. KUCINICH. Mr. DeCamp.

Mr. DECAMP. The Wage and Hour Division, under the statute, under the Immigration and Nationality Act, section 214(c)(14) does not have authority. The statute assigns investigative authority under the H2-B program to the Department of Homeland Security.

Mr. KUCINICH. So Homeland Security is the one that would be able to answer that; is that right? Do you know, though, if there has been any progress at all?

Mr. DECAMP. You would have to ask the Department of Homeland Security.

Mr. KUCINICH. So you are saying this is really outside your jurisdiction; is that right?

Mr. DECAMP. Yes.

Mr. CARLSON. Yes.

Mr. KUCINICH. Did you know anything about it? Can you enlighten us? Could you share with us anything? Do you know anything about the case of Matt Redd?

Mr. CARLSON. I can tell you that we looked in our data base for that name and found no applications that were filed specifically in his name.

Mr. KUCINICH. Well, wasn't there something about wage theft involved? Do you look into cases involving wage theft?

Mr. DECAMP. Well, with wage theft, again, it is important to understand that is an imprecise term that does not necessarily spell out a violation of any of our laws. It may include a violation of somebody's rights, but not necessarily rights that are within the jurisdiction of the Wage and Hour Division if our statutes don't apply or if—

Mr. KUCINICH. But isn't the Fair Labor Standards Act, if I may, Mr. DeCamp, you have jurisdiction over Fair Labor Standards Act?

Mr. DECAMP. Yes.

Mr. KUCINICH. Weren't you notified that Mr. Redd was in violation of Fair Labor Standards Act, at least since February 15, 2007?

Mr. DECAMP. To my knowledge we have not received any information on—

Mr. KUCINICH. You have not received any notification of that?

Mr. DECAMP. To my knowledge.

Mr. KUCINICH. You don't have any awareness of that at all? Is that what you are telling this subcommittee?

Mr. DECAMP. My understanding is we do not have any active case involving Mr. Redd.

Mr. KUCINICH. So—

Mr. DECAMP. It is important to keep in mind that Mr. Redd, at least according to the media reports—and we are certainly aware of what has been reported publicly—is what would be called a labor contractor rather than an employer, at least by all of the information that we have seen. We see this in the H1-B context, as well. We also see it in the agriculture context. These are people who are not necessarily employing people, but they are funneling people from other countries and, you know, connecting them with employers in the country. Our laws don't necessarily apply to them in terms of the Wage and Hour Division's laws, but there may be laws that do apply, including the H2-B statute that is outside our jurisdiction under the statute.

Mr. KUCINICH. What about, you know, Mr. Redd? Let's talk about his business, LA Labor, LLC. This is the business that is the formal name of the employer owned by Matt Redd, so in the interest of absolute clarity what about LA Labor, LLC? Are we talking about any notice of a violation of Fair Labor Standards Act?

Mr. DECAMP. I don't believe that we have checked our records for that entity. We checked for Matthew Redd.

Mr. KUCINICH. Are you aware of this protest in front of the Department of Labor to try to get someone to begin an investigation of this employer?

Mr. DECAMP. I am not, other than what has been said today.

Mr. KUCINICH. And you said that no one has ever told you don't investigate anyone or don't look at this?

Mr. DECAMP. That is correct.

Mr. KUCINICH. Because you don't work that way?

Mr. DECAMP. That is correct.

Mr. KUCINICH. OK. We have, you know, will. Have you been presented with information about LA Labor, LLC, which Mr. Redd apparently runs? Are you aware of it? Has it ever been brought to your attention in any official capacity?

Mr. DECAMP. Only listening to your remarks in the past few minutes here.

Mr. KUCINICH. Really?

Mr. DECAMP. Yes.

Mr. KUCINICH. But didn't you say something that you heard some news accounts, you know? I would just like to enter into the record, you know, like I can't tell you that I am aware of everything that is on the media about what is going on in Congress because, like my dear colleague here, it is quite possible you could hear a report a few days later relating to some action that you weren't aware of, so I will take it that is possible, but there was a report on Channel 7, KPLC, out of—what city is that?

STAFF. New Orleans.

Mr. KUCINICH [continuing]. New Orleans by Teresa Schmitt, headlined, "Mexican Workers Protest Company." Katrina survivors and immigrant workers unite to arrest slave owner. This is what it says in this article. What I would like to do is submit this whole package and the interpretation, without objection, to the record.

[The information referred to follows:]

Mexican workers protest company



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February 15, 2007

By [Theresa Schmidt](#)

A protest in Sulphur today by workers from Mexico who say they are victims of slavery and have been trapped here by their employer.

The group had a news conference in a parking lot and then walked along Beglis Parkway carrying protest signs until they arrived at the office of Redd Properties where they hoped to make a "citizens arrest" of businessman Matt Redd.

The purpose of the spectacle was to bring to light allegations of slavery and illegal seizure of their passports. "Close to 100 Mexican guest workers have been trapped for months in Westlake, Louisiana. Their employer illegally confiscated their passports," said organizer Saket Soni. Soni describes Redd as, "A prominent business leader, who has violated anti-slavery and human trafficking laws while leasing the workers to local businesses, for a profit."

Through interpreters the workers demand the return of their passports. Fernando Rivera says, "All I have is a copy of my passport that the company gave to me. And officials who've stopped me have told me the second time they stop me without my papers, they're going to deport me." Jose Sanchez worries about settling with Redd saying, "He told a whole group of us, there's 29 of us, that he paid \$1000 for each of us so now he says we have a debt with him of \$400."

And a New Orleans civil rights activist is here to lend support. Curtis Mohammed tells the media, "We're not going to stand for slavery in 2007."

Through interpreters the workers explain that they came here through a legitimate work program..but have been defrauded and treated inhumanely. Says Ramon Jacinto Rios, "When we got here we realized that they put themselves in charge and they kind of rent people out and exploit them."

Once they arrive at Redd's office, they find he is not there. Ultimately, sheriff's deputies help set up a system to return passports to workers.

Later, we're able to reach Redd who responds, denying the allegations. "We're proud of what we've done in forming the company we've formed and bringing legal workers from Mexico to Lake Charles to work and currently we've been approved for 300 work visas and we currently have approximately 130 people here."

Redd says he welcomes scrutiny from local, state or federal agencies. "We're not holding anybody here unwillingly." Though he admits making a mistake holding visas. "Some of the workers have requested that we keep them because we keep them in a secure area and they're afraid they might lose them. We are in the process of getting every one of their visas - passports back to them."

Plus Redd says he's helping to supply badly needed labor. "We've had to prove to the State of Louisiana and to the Labor Department and state and federal officials that there's a need for these workers and we're helping with the labor shortage."

Redd says there are many satisfied workers and employers. Redd says his workers are in a wide variety of jobs and make a minimum of \$6.50 an hour. He says the wage depends on the type of work. Also, Redd says they live in apartments he owns in Westlake for \$35 a week including utilities.

Katrina Survivors and Immigrant Workers Unite to Arrest Slave Owner



Guest workers demand arrest of their slave boss, Matt Redd, at his office.

February 15, 2007

Poor black working class New Orleans residents are facing the worst racist attack in decades. At the same time, immigrant workers from Central and South America are being trafficked as slaves in New Orleans and across Louisiana. These two groups have come together to arrest one of the slave owners and traffickers.

Public housing residents who just last Saturday reoccupied their homes in the C.J. Peete housing development were told last night, Wednesday, February 14, that they must vacate their units or lose their vouchers. This would leave their extended families homeless. Today, young volunteers from New Jersey who have been helping to clean up the development were threatened with arrest for their efforts to help the residents.

Despite this emergency, when organizers from the New Orleans Survivor Council heard that immigrant workers had located their slave owner and were ready to make a citizen's arrest, they left New Orleans to come help their brothers and sisters.

Slave trafficker Matt Redd has been running about one hundred Mexican workers as virtual slaves near Lake Charles, Louisiana. About forty of these workers, accompanied by supporters from the New Orleans Survivor Council, walked to the offices of Redd Properties in Sulphur, LA to attempt to execute a citizen's arrest.



Workers and supporters march to Matt Redd's office

At a press conference in a CVS parking lot, just before going to Redd's office, workers told the press that Redd had taken their passports without their consent at the US consulate in Mexico where they obtained their H2B (guest worker) visas. Redd then charged them plane fare and then put them in vans to bring them to Louisiana, where he leased them out to low-wage employers in restaurants, car washes and municipal waste management. He also recently imported dozens of skilled pipe fitters and welders, who have not worked in the two weeks they've been in the country. These workers have had no income, and because they do not have their passports, they can't even go home. One worker told the press that his mother needed blood for a liver operation, and that he was the only family member whose blood was a match for hers, but he is unable to return because he doesn't have his passport. In the past several days, Redd had begun firing workers for circulating a petition demanding their passports back.

A spokesperson for the New Orleans Survivor Council told the immigrant workers to some freedom songs: "I, slave, I'll be buried in my grave, who believe in freedom when it comes." He pointed out that if NOSC organizers had come to make the citizen's arrest that at 11:30 the night before, the workers who had reoccupied their public housing units were put out in the street by the Housing Authority on one of the coldest nights of the winter. Even so, the speaker said, "we are all the same people, the only thing that separates us is language;

Matt Redd - articles

and we who believe in freedom cannot rest until it comes.”

The citizen’s arrest statement said in part, “You are officially accused of taking an official passport of a person and refusing to return it in order to prevent the movement and travel of that worker without lawful authority in order to maintain the labor of that worker – this is a felony under the law of the United States of America.” The statement quoted the particular U.S. and Louisiana laws against slavery and trafficking in slaves, and pointed out that it is the right of a private person to make an arrest of a person who has committed a felony. That person can then hold the criminal until law enforcement comes to take him into custody, or can take him to law enforcement.



H2B workers look for slave boss in his office

Redd was not in his office, but the group had notified law enforcement agencies of their intention to make an arrest, so when they arrived at the office they demanded law enforcement find and arrest him. Sheriff’s police must have been a little worried about openly defending slavery while the press cameras were rolling, and they quickly worked out an agreement with Redd by phone to give back the passports of the workers present. The Sheriff’s office took possession of the passports and returned them to the workers, but the workers are still

adamant in their demand that Redd be arrested for violating the anti-slavery laws. They vowed to continue their struggle, and to make sure that all passports Redd is holding will be returned to their owners. Meanwhile, the Survivor Council members jumped back in their cars to return to the struggle to reopen public housing, to rebuild the homes of black residents the government doesn’t want to come home, and to continue its campaign to build a world-class levee around the Lower Ninth ward.



Workers demand Sheriff’s office arrest Redd for slavery

These beginnings of unity between black New Orleans hurricane survivors and immigrant guest workers – the descendants of the old slaves uniting with the modern day slaves – is a very significant event. As one of the Sheriffs pointed out, it was the U.S. government itself that gave the passports to the slaveholder. Just as in the days of African slavery, the government is on the side of the owners. When the descendants of the former slaves were asked what should be the next step, they suggested filing suit against the government of the United States for being an accomplice to slave owning and trafficking.

NOSC Goes to Venezuela to Get Support

Just after Katrina, the government of Venezuela gave money to the people of New Orleans. The U.S. government directed that money to the Red Cross, not the people. This month, NOSC members are going to Venezuela to get support directly into the hands of the people on the bottom. The following is the statement they are carrying to the people of Venezuela

We are a group of survivors and organizers working for the people who were left to die when New Orleans flooded after Hurricane Katrina. We are visiting your country for the second time on an urgent mission on February 19 to 25 to appeal to you as friends of the poor, black, working class people of New Orleans. We need your help and support, as our government has attacked us and then turned its back on our desperate needs.

When Katrina threatened our city, local and national government united to keep us in the city as the floodwaters rose. The poorest and darkest skinned of working class people were left to die, and more than 6,000 of us did. We were herded into shelters with no food or water, and later dispersed all over the country with no way to get back home. A quarter of a million Katrina survivors are still scattered all over the country, and tens of thousands of us are living in trailer camps that are like concentration camps. Until now, the government has put every possible obstacle in our way, has not rebuilt our neighborhoods and has not even built levees around them that would keep out the water in the next hurricane. They closed the public hospital and most of the schools. Even the public housing units thousands of us lived in are scheduled to be torn down, though the flood did not damage them. Some residents moved back in anyway, and this week heavily armed special police units have kicked in the doors at 2 AM to throw people out and arrest them.

To replace us in the jobs we once held, the government has brought in so-called guest workers from Latin American countries, who they tell a pile of lies to get them here. Then they house them in trailer concentration camps, too, don't give them medical care or safety protection, and pay them a fraction of what they used to pay us for the same jobs. These workers cannot quit their jobs without becoming illegal immigrants, so they are forced to work under these conditions. This is modern day slavery used to take the place of the descendants of their former slaves.

As former slaves and modern slaves, we are building unity. We realize that we must take

our future into our own hands. The government has proven that it won't help us. We are actively organizing to bring the poor, black working class communities back to our city and to unite with oppressed working people of other hues. We know that we all have the same oppressors, and in unity there is strength. We are one people. This is why we are coming to you to ask for your solidarity and support.

We have been struggling for over a year now to rebuild our communities and bring our families back home. However, it has become clear to us that we are being cast aside by the government and much of our society. Although everyday people have poured in to help us rebuild, no one with any resources has helped us. No money is coming to us from government or private sources, except the small donations of poor people like ourselves. We have come to see that the poorest black working class people in the United States today are in the same position that our ancestors were in on the Middle Passage from Africa, that Jews, Gypsies and other oppressed peoples in Europe were in during the 1930's. Our young people are thrown in jail by the thousands and shot down in the streets by the police. Our access to health care is so poor that tens of thousands of us die of preventable causes in the richest country in the world. Our children cannot get a decent education and look to a future without a decent job. We are being set up for genocide, and few people see this, either in our country or internationally.

What is happening to us is important to every struggle in the world today. We are the descendants of the African slaves who built this country with their labor. We look around us in America and all the world, and we see that the darker your skin, the closer you are to the bottom of the heap. Like oppressed people everywhere, poor black people in the United States have always fought for freedom. We have a culture of resisting exploitation. We refuse to work hard for someone else's profit. We fought slavery; we joined the army in large numbers to fight fascism in Europe during World War Two, because we know racism

Los Angeles Times

Guest workers' Gulf Coast dream unmet

Mexican and Indians say housing and pay for post-Katrina labor was not as billed, but employers cite a lack of skills.

By Ann M. Simmons, Times Staff Writer
March 14, 2007

NEW ORLEANS — When Sabulal Vijayan saw the advertisement in a newspaper in his native state of Kerala in southwestern India, he thought he had found the solution to his family's financial problems.

The ad offered laborers job opportunities in the U.S. Gulf Coast region after Hurricane Katrina under a guest worker program.

Vijayan said the ads for Signal International, a marine and fabrication company with shipyards in Texas and Mississippi, promised welders and pipe fitters a 10-month work visa, followed by permanent U.S. residency. Good wages and comfortable accommodations also would be provided, Vijayan remembers the ad saying.

"It was my big dream to come to America," said Vijayan, 39, a pipe fitter.

So he used his life savings and money borrowed from relatives to pay \$15,000 to people who identified themselves as Signal's recruiters. He was told this was "the price of coming to the U.S."

But when Vijayan arrived in Pascagoula, Miss., in December, the situation was not as advertised.

"We were like pigs in a cage," he said.

His living quarters were cramped bunk houses where two dozen laborers shared two bathrooms.

Then the company cut the workers' wages from \$1,850 a week to \$1,350 or \$950, depending on the position, Vijayan said. When he and other workers complained, they were fired without notice.

Vijayan had been issued a H-2B guest worker visa, which allows laborers into the country for certain non-agricultural jobs, typically for a year or less, and only once. An employer must secure the visa, and a laborer may not use it to work for another employer. Unlike the claims Vijayan said he read, workers are not guaranteed permanent residency after the term of their visa.

"I cannot go back to India because I cannot pay my debt," Vijayan said of the money he borrowed to pay recruiters.

He was so distraught that he recently slashed his wrist in a suicide attempt. His left arm is still bandaged.

On Tuesday, Vijayan joined other Indians and Mexicans who are members of the Alliance of Guest Workers for Dignity in a protest outside a U.S. Department of Labor office in New Orleans.

The workers wore enlarged photocopies of H-2B visas around their necks and delivered a letter to the agency demanding that U.S. officials investigate employers who exploit guest workers.

"We are exposing the reality of the H-2B visa," said Saket Soni, who heads the New Orleans Workers' Center for Racial Justice. "We have people who are tricked and trafficked, and now they are trapped."

Ron Schnoor, Signal's Pascagoula-based senior vice president and general manager, said claims of workplace violations and abuse by his company were "absolutely a fabricated lie," generated by "disgruntled workers."

Schnoor said that at least 10% of the 300 Indian laborers his company hired on H-2B visas did not have the "first class" welding and fitting skills they claimed to have on their applications.

"They falsified their credentials," Schnoor said.

The company had to demote some workers to lower-paying jobs in line with their qualifications, he said, and fire unskilled laborers for whom alternate positions could not be found.

"There is no servitude here, or all the other horse crap that people are asserting," he said.

But advocates said guest workers were routinely unfairly docked wages, forced to live in squalor and denied benefits.

"Guest workers are usually poor people who are lured here by the promise of

decent jobs, but all too often their dreams are based on lies," said Mary Bauer, director of the Immigrant Justice Project at the Southern Poverty Law Center in Montgomery, Ala. The group published a report this week on instances of abuse among the estimated 90,000 workers currently in the country on H-2B visas

"The guest worker program has created a band of quasi-criminal recruiters in Mexico and other countries, and they really wield enormous power over peoples' lives," she said.

Labor Department officials did not return calls seeking comment. But Schnoor said agency investigators last week inspected Signal workers' accommodations in Pascagoula, audited the company's books and checked its work visa compliance.

"We are fully compliant with U.S. law," Schnoor said.

Mexican welder Juan Jose Trejo Hernandez, 33, said he was promised a salary of \$18 an hour to work a minimum of 40 hours a week in Westlake, La., for Louisiana Labor, the labor recruitment company that secured his work visa.

But since his arrival in January, Hernandez said, the company, owned by Matt Redd, a real estate entrepreneur in Sulphur, La., had reneged on promises to get the welders certified so they could begin work.

Instead, Hernandez and other Mexican workers said, Redd temporarily confiscated their passports and leased the workers out to other businesses,

including a carwash and a garbage company.

The laborers say they were underpaid and fear they will return to Mexico empty-handed at the end of July when their visas expire.

Redd did not respond to calls seeking comment.

Nestor Vallerio, 22, said his hopes of earning enough money to finish college in Mexico and eventually opening an

import-export business there had been dashed because the high-paying job he thought he would get with Louisiana Labor did not materialize.

Instead, he said, he was rented out to wash cars, bus restaurant tables and collect garbage — work for which he was never fully paid.

ann.simmons@latimes.com

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IS FOR US



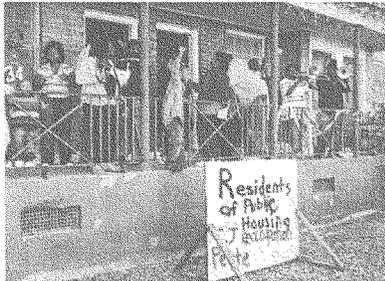
PEOPLE'S ORGANIZING
COMMITTEE

People's Organizing Committee

Return, Rebuild,
Resist!



Public Housing Residents Take Back Their Homes



C.J. Pete resident families celebrate move-in

February 10 was a historic day in New Orleans. Residents of the C.J. Pete public housing development moved back into their homes, which the government had slated for demolition.

Although Hurricane Katrina did not seriously damage the buildings HANO and HUD used the excuse to evacuate all the public housing in the city and lock the residents out of their homes. Then they decided to demolish the public housing and replace it with so-called mixed-income housing, which basically means most people would never be able to come home.

In all previous hurricane evacuations, residents were able to come back to their homes after the storm passed. In this case, they were not even allowed to come back and get their belongings. Tens of thousands of residents evacuated to distant cities or trailer parks have not been able to get home at all. The government later broke into the apartments to throw refrigerators down stairs, breaking doors off hinges and leaving the units open to widespread looting and destruction, including theft of pipes and

electrical fixtures. The \$10,000 the government offered some residents can never cover what they have lost, including baby pictures, diplomas and other sentimental personal items. And still HANO and HUD have claimed that it would be illegal for the residents, who hold valid leases to their apartments, to come home.

Despite all of this, public housing residents have come together over the past several months and formed an organization, Residents of Public Housing, which is part of the New Orleans Survivor Council. They decided to move back home.

People's Organizing Committee, which is committed to developing and following the leadership of those most affected by Katrina, helped provide support for the residents' move. At the direction of the residents, they cleaned apartments, obtained generators to provide light and heat, canvassed the surrounding neighborhood to explain the move and build support, and sent out a press release for the residents' press conference. At this writing, two dozen volunteers from a high school in New Jersey are working for the residents, cleaning out more apartments in the complex.

The move and the press conference were managed and led entirely by the residents themselves. Six residents spoke before the cameras about their determination to come home. "The government wanted us to get out and stay out," said one resident. "I voted for Nagin, but he did nothing for us. They want black people out of New Orleans, and they figured this was one group they could get rid of. But nothing is going to stop us from coming home. C.J. Pete is back!"

This event was a change from earlier public housing reoccupations. Some of them were

mainly symbolic, and in most cases, people who were not residents took a major hand in leading them. A few weeks ago, when residents attempted to move back into a different development, the rally and speeches were mainly led by white activists, not by the residents. This displayed a lack of respect for the black residents, who are not only capable of leading their own movement, but on principle should be leading it. Racism in America has created a situation where poor, black working class people are so marginalized and disrespected that even many politically progressive groups and individuals don't trust them to organize and lead their own fight. POC is dedicated to bottom-up leadership, so its role was to provide every possible support and encouragement to the residents to lead themselves.

About 60 people, residents and supporters, came to the press conference and support rally. Balloons decorated the front porch of the newly opened units. A big sign announced the reoccupation. Residents took turns speaking on a bullhorn to the assembled crowd and passers by, repeating for all to hear that C.J. Pete is back to stay. The Community Kitchen donated food for the event. Residents also thanked organizations that donated generators, including Hope House, the Workers' Center and Moving Forward Gulf Coast. And The Hot 8, a second line band played at the end, while residents danced and sang along in a happy celebration of their victory. "I don't know what you've been told, but the projects is livable!" went the words to the last song. This chant echoed as supporters drifted away and residents went back to the work of settling into their new apartments.



Residents dance to the music of the Hot 8 after their press conference

Residents and POC staff provided a security watch through the night, aware that HANO could descend on them at any moment and try to evict them. The residents will remain vigilant to defend their homes.

Meanwhile, on the wave of this victory, Residents of Public Housing is making plans for reoccupying the next development, the Lafitte projects. Their intention is to open all the projects now slated for demolition and bring their communities back.

Support Public Housing Residents!

Donate to:
IFCO/New Orleans Survivor Council
418 W. 145th Street
New York, NY 10031

**HANO Evicts C.J. Peete Residents
into the Cold Night
The Struggle Continues!**

At 11 PM on Valentine's Day, the Housing Authority of New Orleans (HANO) sent a message to the courageous families that had reoccupied C.J. Peete that their families would lose their housing vouchers and they would be declared in violation of their leases if they remained in their homes.

HANO had arranged for public housing residents to get Section 8 vouchers in order to keep them from moving back into their original homes. Faced with the prospect of their children and elders being homeless, the occupiers felt they had to submit to this pressure. However, they are definitely NOT giving up the fight!

At this writing, Residents of Public Housing is finding C.J. Peete residents who are willing to move back in, face arrest, put their families at risk, and take HANO to court about what is surely an illegal attack on their rights. Several people have come forward so far. Meanwhile, residents of Lafitte are also ready to reoccupy, face arrest, put their families at risk and go to court.

Stay tuned: the story is sure to get hotter!

Guest workers allege slavery locally

MARY ANN DUTTON, Staff Writer

In a press conference held in Sulphur on Thursday, the Alliance of Guest Workers for Dignity spokesman Saket Soni was the voice of 30 plus Mexican guest workers, all here in the U.S. legally, gathered beside him.



Guest workers protest alleged mistreatment by their employer. Photos by Victoria Hartley

“Close to 100 Mexican guest workers have been trapped for months in Westlake after their employer illegally confiscated their passports,” Soni said. “These workers were recruited under false pretenses and transported to the U.S. where they have been subjected to humiliating conditions and treatment.

“Workers and advocates allege that the employer, a prominent business leader, has violated anti-slavery and human trafficking laws while leasing the workers to local businesses for profit.”

Soni said workers were defrauded by their employer who promised steady work and fair pay. Workers say the employer collected \$400 for airfare from each of them, but after they paid the money were transported by vans to the U. S. Once they crossed the border, the drivers collected their passports. Despite numerous requests by the workers, the employer refuses to return their passports. Workers who have organized to demand their passports say they have faced retaliation and threats of deportation.

According to Soni the men were hired by a company under the name of Louisiana Labor, LLC. The workers say their employer is Matt Redd of Redd Properties.

Fernando Rivera said he was one of the first workers brought to the U. S. by Matt Redd. He has been in the Sulphur area for about five months.

“We get stopped by the police here and our asked for identification,” said Rivera. “We showed them the photocopy of our visa that our employer gave us, but they want the legal documents. They told me if they stop me a second time without my papers, they will deport me.”

The “papers” necessary to prove the men are here legally are their passports which were confiscated by the employer.

Rivera's mom has liver cancer and is going to have surgery. He wants to go to Mexico for the surgery so he can donate blood. Without his documents he is unable to travel.

Jose Juan Sanchez was told he would be working as a welder in the U. S., and the only cost that he would incur would be for passports. Instead, the company took away his visa and told him they had no work for him. Sanchez said the man spoke to the group, about 30, and told them that he had paid \$1,000 for each of them. He went on to say that each of them now owed him \$400, plus \$200 more that he lent to them over the last two weeks. Sanchez said the man was not Matt Redd.



A Calcasieu Parish Sheriff's deputy talks with protest organizers outside of Redd Properties in Sulphur. Photos by Victoria Hartley

Now Sanchez and the other workers have been offered work elsewhere, but are unable to go because they do not have their documents.

Another worker, Hernando Reni from Mexico City, has not worked for two weeks. He came to the U. S. with an H-2B visa which allows him to work here. Now he feels like a prisoner.

One of the workers contacted an attorney in Mexico when the employer would not return his passport. He had met the attorney while sharing a taxi ride in Mexico City. The attorney then contacted the Alliance of Guest Workers for Dignity.

When Curtis Muhammad of the New Orleans Survivors Council heard about the plight of the men in Westlake, members from his organization and the New Orleans Workers Center for Racial Justice traveled with Soni to Sulphur to address the employer.

Muhammad and Soni led the group of men on a march down Beglis Parkway to the Redd Properties Office. Office staff said Matt Redd was not there. When Soni asked if he could phone Redd, he was told Redd was in a meeting in Lake Charles and could not be interrupted. Another man in the office asked the crowd of workers, protesters and media to leave the office.

“May I have your name, sir,” Soni said. The man responded by saying, “I think you should leave now.”

About the time the crowd left Redd Properties' office the Calcasieu Parish Sheriff's officers arrived. Organizers of the protest explained what was going on and Sheriff Tony Mancuso was contacted.

Prior to arriving in Sulphur, organizers and workers alerted the U. S. Attorney General, U. S. Department of Justice, F.B.I., and other state and local law enforcement agencies.

No resolution has been reached as of yet, though Rivera heard from other workers that he was being fired and sent back home. Yesterday's events resulted in the Calcasieu Parish Sheriff's Office assisting the workers in retrieving their passports.

Mr. KUCINICH. This is the first time you have heard of this?

Mr. DECAMP. I have heard of Matthew Redd before, but not the protest or not the name of—

Mr. KUCINICH. But the case, have you heard about this case, though? Do you know about the case?

Mr. DECAMP. I don't know what case you are talking about, sir. Are you talking about an investigation of—

Mr. KUCINICH. An investigation of someone willfully misrepresenting a business and labor certification for guest workers, someone who is said to have violated the Fair Labor Standards Act. Has anybody ever said anything? Do you have any complaint about this?

Mr. DECAMP. All that I have heard about with Matthew Redd or any business that he owns, as far as I know, would be arguable violations of the H2-B worker program, which would be outside the jurisdiction of our Department. However, we do enforce all of the other laws that apply to the H2-B workers under the Fair Labor Standards Act.

Mr. KUCINICH. Does it concern you to know that there was a protest in front of the office in New Orleans relative to what has been charged as to be lack of enforcement in this case?

Mr. DECAMP. I wouldn't say that would concern or not concern me. It is information. People have the right to—

Mr. KUCINICH. Do you act on such information? Do you hear that? I mean, I am chairman of this Domestic Policy Subcommittee. I am calling this to your attention right now. Are you willing to investigate this case relating to LA Labor, LLC, and Mr. Redd, who apparently, and I use the word apparently, allegedly, has violated the Fair Labor Standards Act and certain other provisions of labor law? Will you look into it?

Mr. DECAMP. I will certainly consider it and pass the information on to the field managers who can make a better decision about—

Mr. KUCINICH. I would like you to report back. Listen, if there is not a case there is not a case, and if there is not a case after your careful determination, then I have to accept that. But if there is a case and it has been called to your attention, then you have to accept that. So let's follow this line, please.

Mr. DECAMP. And, Mr. Chairman, I would note that we frequently initiate cases based on media reports across the wide range of our—

Mr. KUCINICH. I get involved in things based on media reports. I mean, that is the nature of our business here. But I am calling to your attention a media report that I read. I didn't see it. I didn't experience it, but I read it and I want to make sure that we present this. We are also going to be, just so you understand, we are also going to be notifying the Inspector General of this discussion, as well. You know, I think and I believe that you are making a good faith effort coming in front of this committee. I really believe that. But I also know that there are certain things here that don't really jive. My ranking member pointed it out. Just a feel of this, there is something wrong.

Now, you can have this avalanche of work activity and responsibilities that probably few agencies really have in the way that you have. But you know what? We just want to make sure that

nothing falls through the cracks here, and so we are going to be in touch with the Department of Labor's Office of Inspector General to request an investigation of whether Mr. Reed willfully misrepresented his business and labor certification process, but, in addition to that, this goes outside of, you know, that is their responsibility. We are passing this on to you right now. It is a matter of record.

I want to thank my colleague. Do you have any followup at all before we go to the next panel?

Ms. WATSON. Mr. Chairman, would you yield?

Mr. KUCINICH. I will yield to the gentlelady.

Ms. WATSON. I would hope that, as a result of this hearing, that we will take a CoDel down and go through the offices after we receive back from your response to the letters that the Chair had suggested. I would like to have a CoDel—congressional delegation—come down and walk through your offices, address your response, and allow us to ask questions, because there is conflict of information coming through my ears from back here, and these are the people who do the investigations for us. They are showing us information by the second of what they saw on TV, the investigation, and so on.

I am suggesting, Mr. Chairman, that we take a CoDel down an appropriate amount of time, go through their offices, raise the question, see if they have addressed some of the procedures that have really, I think, violated the rights of workers in the labor process, as a followup.

Mr. KUCINICH. What I will do is I will council with my minority leader of this committee, and we will get together and have a meeting on this. I am certainly responsive to that request.

Ms. WATSON. We could be hands-on.

Mr. KUCINICH. I think it is a great idea. Just so you know, we are going to get to know each other a little bit more. I think to have the support of Mr. Issa here is absolutely critical, so let me speak to him and see if we can proceed. I would like you to be involved in intelligence, as well, because of your initiative here.

I want to go back to this Department of Labor Office of the Inspector General. Will the DOL's Office of the Inspector General investigate whether Mr. Redd willfully misrepresented his business in the labor certification process?

Mr. DECAMP. I am not sure whether that is their jurisdiction or Homeland Security's IG's jurisdiction, but—

Mr. KUCINICH. Are you saying you don't have any jurisdiction?

Mr. DECAMP. We don't have jurisdiction over fraud in the certification process, yes.

Mr. KUCINICH. Well, according to the semiannual report to the Congress from the Office of the Inspector General of the Department of Labor for the 6-month period ending on March 31, 2007, the Office of the Inspector General describes its work as including investigations of fraudulent applications filed with the DOL. In some cases, the Office of the Inspector General conducts joint investigations with ICE. So the Office of the Inspector General does have the authority to conduct an investigation as to whether or not there is fraud involved, does it not?

Mr. DECAMP. I have no knowledge one way or the other. I am not disputing what you are reading there. I simply—

Mr. KUCINICH. Well, I am going to ask staff to provide you with a copy of this report for 6-month period ending March 31, 2007. Let's include this in the record, without objection.
[The information referred to follows:]



Memorandum

June 21, 2007

TO: House Domestic Policy Subcommittee
Attention: Noura Erakat

FROM: Margaret Mikyung Lee
Legislative Attorney
American Law Division

SUBJECT: Authority to investigate or sanction employer violations re H-2B labor certifications

This memorandum is in response to your request for an analysis and clarification of which federal agency has the authority to investigate or sanction employer violations related to labor certifications for H-2B visas; the issue has arisen in the context of investigation and enforcement of labor certification compliance in New Orleans amidst allegations of widespread non-compliance in the aftermath of Hurricane Katrina. The Department of Labor (DOL) has informed you that it does not have the authority to investigate employer violations of labor conditions related to H-2B visas nor does it have the authority to suspend labor certifications for employers based on determinations that they have violated the requirements for labor certifications,¹ although it has such authority in connection with H-2A and H-1B visas. As discussed below, there appears to be a statutory basis for this description of its authority, although the DOL has proposed regulations in the past that imply that it could debar/suspend employers from labor certifications *in accordance and consistent with* DHS debarment/suspension of employers from visa petitions. Furthermore, temporary labor certification regulations for certain H-2B occupations (*e.g.*, logging) which traditionally have needed stronger worker protections permit the DOL to debar non-compliant employers from labor certifications. Each employment-based nonimmigrant visa category is subject to its own set of conditions, established through statute and implemented through regulations of the agency with authority over the conditions. Therefore, the Secretary or Department of Labor may have authority over certain actions related to one visa category and yet not have the parallel authority over a different category.

¹ See S. Hrg. 109-427, *Forest Service Workers: Hearing Before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate 11* (prepared Statement of Victoria A. Lipnic, Assistant Secretary of Labor, Employment Standards Administration, Department of Labor) and 57 (Responses of Elaine Chao to Questions from Senator Bingaman) (2006) [hereinafter *Forest Service Workers Hearing*].

Generally, with regard to nonimmigrant employment visas, the DOL is responsible for administering and approving the labor certification sought by or labor attestation submitted by the employer. The U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS) is responsible for adjudicating the visa petition submitted by the employer with the labor certification received from the DOL. Generally, non-compliance with labor certifications/attestations falls under the authority of the DOL, while non-compliance with the conditions for a particular visa falls under the jurisdiction of U.S. Immigration and Customs Enforcement (ICE) within DHS. The Office of Foreign Labor Certification (OFLC) of the Employment and Training Administration (ETA) in DOL administers the labor certification program for the various employment-based visas; it bases its actions against non-compliance on investigations conducted by the Wage and Hour Division in the Employment Standards Administration (ESA) of the DOL. ICE conducts traditional worksite enforcement by investigating and bringing criminal charges against employers that intentionally violate the law and knowingly hire illegal aliens. The Office of the Inspector General within the DOL is responsible for investigating fraud in the programs administered by the DOL;² accordingly, it is not generally responsible for allegations of violations of relating to labor certifications/attestation, including the labor conditions required for labor certifications/attestations, such as satisfying standards for wage, transportation, housing, and other worker rights, unless there is an element of fraud.³ According to the DOL regulations, it appears that allegations of fraud are not necessarily referred to the OIG ; in some instances, they are referred to the DHS.⁴ Where investigative responsibilities overlap, the federal agencies may cooperate in joint investigations.⁵

The Immigration and Nationality Act (INA) does not expressly provide the Secretary of Labor with the direct authority to investigate and impose penalties for non-compliance in connection with H-2B labor certifications, nor does it expressly provide for a labor certification or attestation process, unlike for H-2A and H-1B visas. INA § 214(c)(1) (8 U.S.C. § 1184(c)(1)) provides that the DHS shall determine whether to grant an employer's petition for nonimmigrant workers "after consultation with appropriate agencies" of the

² The authority of the OIG is derived from a number of statutes, primarily the Inspector General Act of 1978, Pub. L. 95-452, 92 Stat. 1101, codified as amended at 5 U.S.C. Appendix; various provisions in the Immigration and Nationality Act (INA) and the federal criminal code at 18 U.S.C. provide authority for OIG investigations of criminal activity including immigration-related fraud.

³ The Semiannual Report to the Congress from the OIG of DOL for the six-month period ending March 31, 2007, describes its work as including investigations of fraudulent applications filed with DOL on behalf of fictitious companies or applications using names of legitimate companies without their knowledge and gives specific examples of labor certification and employment visa fraud (such as filing employment visa petitions with fraudulent/forged labor certifications). A labor leasing company owner was convicted of fraud for knowingly hiring hundreds of mostly undocumented Hispanic workers and employing them in asbestos removal and extensive Hurricane Katrina cleanup work around the Midwest and in the South. This case was a joint investigation conducted with other federal and state/local law enforcement agencies, including ICE and the OIG of the Social Security Administration.

⁴ For example, with regard to labor certification for logging and non H-2A agricultural employment, which generally are occupations for which H-2B visas are petitioned, 20 C.F.R. § 655.208 provides that if possible fraud or willful misrepresentation involving the labor certification application is discovered prior to the final certification determination, the OFLC Administrator shall refer the matter to the DHS for investigation.

⁵ See *supra*, note 3.

Federal Government. Accordingly, this consultation process may take whatever form the agencies choose to implement. Section 404 of the REAL ID Act of 2005,⁶ a provision of the Save Our Small and Seasonal Businesses Act of 2005 (Title IV of the REAL ID Act), amended INA § 214(c) (8 U.S.C. § 1184(c)) by adding a new paragraph (14) to authorize the Secretary of Homeland Security to impose administrative penalties, including monetary fines not exceeding \$10,000, and to deny employer petitions for at least one year but not more than 5 years for an employer who the Secretary finds has substantially failed to meet any of the conditions for an H-2B petition or has made a willful misrepresentation of a material fact in the petition. The Secretary of Homeland Security may delegate authority to impose administrative penalties such as the civil fine to the Secretary of Labor, but not the authority to deny a visa petition. The Secretary of Labor was not similarly authorized by the statute to deny labor certification for a period to an offending employer and was not authorized to investigate labor certification violations for H-2B visas in a manner similar to the Secretary of Homeland Security's authority over visa petitions (which would include authority to investigate failure to comply with the labor certification required for the visa petition).

Although the statute permits the Secretary of Homeland Security to delegate administrative penalties to the Secretary of Labor with the agreement of the Secretary of Labor to undertake this authority, as yet, there apparently has been no such delegation. The DOL regulations concerning labor certification and enforcement for H-2B workers do not provide for investigations and penalties for non-compliance.⁷ Although DHS and DOL each proposed regulations in 2005 that apparently would have amended the immigration and labor regulations respectively to provide for complementary investigations and sanctions with regard to H-2B visa and certification non-compliance, there has been no final action on these proposed rules.⁸ The general statutory authority cited for the amended regulations is INA § 214(c)(1) (8 U.S.C. § 1184(c)(1)), regarding consultation with other agencies. The regulations would be amended to permit H-2B visa petitions to be filed with a labor attestation supplement stating that certain recruitment and working conditions have been or will be met; these would be randomly audited by the DOL. Only certain H-2B occupations would be required to obtain from the DOL a labor certification that qualified U.S. workers are unavailable and that U.S. workers will not be adversely affected; these occupations would include logging, the entertainment industry, or professional sports. The DOL may recommend that an employer be debarred/suspended from being granted H-2B visas for workers for a period of time if the DOL determines during an audit that an employer has misrepresented a material fact or has made a fraudulent statement in its attestation; has failed to comply with the terms of the attestation; or has failed to cooperate in the audit process. The DHS would debar the employer for at least the period recommended by the DOL, but could extend the time. In its notice of proposed regulations, the DHS also solicited suggestions for establishing a DHS-initiated debarment process separate from the DOL audit

⁶ Pub. L. 109-13, Division B, 119 Stat. 319.

⁷ These regulations are found at 20 C.F.R. §§ 655.1-655.4 (Labor Certification Process for Temporary Employment in Occupations Other Than Agriculture, Logging, or Registered Nursing in the United States (H-2B Workers)) and 655.200-655.215 (Labor Certification Process for Logging Employment and Non-H-2A Agricultural Employment). The latter typically relates to H-2B visas for logging and goat-herding unrelated to farm work.

⁸ DHS Proposed Rule for Petitions for Aliens to Perform Temporary Nonagricultural Services or Labor (H-2B), 70 Fed. Reg. 3984 (2005) and DOL Proposed Rule for Post-Adjudication Audits of H-2B Petitions in All Occupations Other Than Excepted Occupations in the United States, 70 Fed. Reg. 3993 (2005).

and debarment recommendation process. These proposals were made before the enactment of the Save Our Small and Seasonal Businesses Act of 2005; the notices of proposed regulations indicate that the DHS and the DOL found that they had the authority to establish the proposed procedures under existing authority. One should note that DOL would not have had authority to debar employers from labor certifications or attestations under this process; DHS would carry out DOL's recommendations.

At least one comment from an employer representative on the proposed regulations criticized the debarment penalty generally and specifically asserted that DOL is in a better position to make determinations about the appropriate period for debarment; therefore the DHS should not have the option of extending the period recommended by the DOL.⁹ Other comments from labor representatives and Members of Congress reflected the view of labor and immigrant advocates generally that the existing H-2B statutory and regulatory framework does not adequately prevent employer noncompliance with alien worker protections and that the proposed regulations would further weaken an already weak system for protecting H-2B workers.¹⁰

DOL regulations at 20 C.F.R. §§ 655.208 and 655.210 concerning labor certification for logging and non-H2A agricultural employment, which generally are applied for as H-2B occupations, provide that the OFLC Administrator shall refer suspected fraud involving labor certification to the DHS for investigation; if a court or DHS finds there was fraud, the DOL shall invalidate the qualified temporary labor certification. Also, the OFLC Administrator may notify an employer that it will not be eligible for a temporary labor certification for the coming year if the Administrator finds that the employer has not complied with the terms of the labor certification. These regulations predate the amendments made by the Save Our Small and Seasonal Businesses Act of 2005 and are based on the consultation requirement of INA § 214(c)(1) (8 U.S.C. § 1184(c)(1)).¹¹ The regulations have not been revised in light of the Save Our Small and Seasonal Businesses Act of 2005, so one could argue that the DOL could implement similar authority for other H-2B categories as long as the DHS had already debarred an employer from H-2B visa petitions. However, as noted above, the DOL clearly believes it is constrained from doing so by the Save Our Small and Seasonal Businesses Act of 2005.

⁹ Randel K. Johnson, Vice President for Labor, Immigration & Employee Benefits, U.S. Chamber of Commerce, Comments submitted regarding: Proposed Rule, "Petitions for Aliens to Perform Temporary Nonagricultural Services or Labor (H-2B)," 70 Fed. Reg. 3984, January 27, 2005 (Feb. 28, 2005).

¹⁰ See, e.g., Ana Avendaño, Associate General Counsel, American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), Comment re: Notices of Proposed Rulemaking posted on January 27, 2005, by the U.S. Department of Homeland Security (DHS) and U.S. Department of Labor (DOL), at 70 Fed. Reg. 3984 *et seq.* and 70 Fed. Reg. 3993 *et seq.* (April 8, 2005); Comment re: DHS-2004-0033 signed by eleven Members of Congress, Hon. Steven C La Tourette *et al.* (March 28, 2005); and Jacob Wedemeyer, *Student Note: Of Policies, Procedures, and Packing Sheds: Agricultural Incidents of Employer Abuse of the H-2B Nonagricultural Guestworker Visa*, 10 J. Gender Race & Just. 143 (2006).

¹¹ 43 Fed. Reg. 10306, 10312 (1978).

Statutes providing worker protections for U.S. workers, such as the Fair Labor Standards Act, generally protect H-2B workers and other workers also.¹² Accordingly, H-2B workers can file complaints concerning violations of these general worker protection laws with the Wage and Hour Division of the ESA.¹³

Compared to the absence of direct investigative and penalties authority for DOL with respect to H-2B labor certifications, INA § 218(b)(2) (8 U.S.C. § 1188(b)(2)) expressly grants DOL authority to suspend/debar employers from eligibility for labor certifications for H-2A workers for up to three years; INA § 218(g)(2) (8 U.S.C. § 1188(g)(2)) authorizes the DOL to take other actions to ensure employer compliance with labor conditions. Regulations at 20 C.F.R. § 655.108 require the OFLC Administrator to refer cases of possible fraud involving H-2A labor certification applications to the DHS and the OIG of DOL for investigation that can result in invalidation of a labor certification. Regulations at 20 C.F.R. § 655.110 require the OFLC to investigate suspected cases of noncompliance with existing labor certifications and authorize debarment for up to three years for violations; the OFLC may also base such determinations and debarment on investigations conducted by the ESA.

INA § 212(n)(2) and (t)(3), codified at 8 U.S.C. § 1182(n)(2) and (t)(3), authorizes the Secretary of Labor to administer labor condition applications and attestations and to investigate and impose administrative penalties for certain violations in connection with labor condition applications and attestations for H-1B and H-1B1 visas. However, these provisions do not expressly authorize the Secretary of Labor to suspend/debar employers from eligibility for labor condition applications and attestations. Instead, the Secretary of Labor would notify DHS of violations and DHS would debar employers from eligibility to petition for visas. Regulations at 20 C.F.R. §§ 655.810(d) and 655.855(c) require the Secretary of Labor to notify the DHS of violations, whereupon the DHS shall suspend/debar the employer from H-2B petition eligibility and the DOL shall accordingly suspend/debar the employer from eligibility for labor condition applications and attestations for the duration of the DHS debarment.

¹² See Office of the Assistant Secretary for Policy, U.S. Department of Labor, *Employment Law Guide* 70 (2005) (discussing employee rights for H-2B workers) and Forest Service Workers Hearing at 5 (Prepared Statement of Mark Rey, under Secretary for Natural Resources and Environment, Department of Agriculture) and at 9-10 (Prepared Statement of Victoria A. Lipnic, Assistant Secretary of Labor, Employment Standards Administration, Department of Labor). An exception with regard to H-2A workers is the Migrant and Seasonal Agricultural Workers Protection Act, which expressly does not apply to H-2A workers, whose rights are detailed in the INA § 218 (8 U.S.C. § 1188).

¹³ *Id.*



Memorandum

June 21, 2007

TO: House Domestic Policy Subcommittee
Attention: Noura Erakat

FROM: Margaret Mikyung Lee
Legislative Attorney
American Law Division

SUBJECT: Authority to investigate or sanction employer violations re H-2B labor certifications

This memorandum is in response to your request for an analysis and clarification of which federal agency has the authority to investigate or sanction employer violations related to labor certifications for H-2B visas; the issue has arisen in the context of investigation and enforcement of labor certification compliance in New Orleans amidst allegations of widespread non-compliance in the aftermath of Hurricane Katrina. The Department of Labor (DOL) has informed you that it does not have the authority to investigate employer violations of labor conditions related to H-2B visas nor does it have the authority to suspend labor certifications for employers based on determinations that they have violated the requirements for labor certifications,¹ although it has such authority in connection with H-2A and H-1B visas. As discussed below, there appears to be a statutory basis for this description of its authority, although the DOL has proposed regulations in the past that imply that it could debar/suspend employers from labor certifications *in accordance and consistent with* DHS debarment/suspension of employers from visa petitions. Furthermore, temporary labor certification regulations for certain H-2B occupations (*e.g.*, logging) which traditionally have needed stronger worker protections permit the DOL to debar non-compliant employers from labor certifications. Each employment-based nonimmigrant visa category is subject to its own set of conditions, established through statute and implemented through regulations of the agency with authority over the conditions. Therefore, the Secretary or Department of Labor may have authority over certain actions related to one visa category and yet not have the parallel authority over a different category.

¹ See S. Hrg. 109-427, *Forest Service Workers: Hearing Before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate* 11 (prepared Statement of Victoria A. Lipnic, Assistant Secretary of Labor, Employment Standards Administration, Department of Labor) and 57 (Responses of Elaine Chao to Questions from Senator Bingaman) (2006) [hereinafter *Forest Service Workers Hearing*].

Generally, with regard to nonimmigrant employment visas, the DOL is responsible for administering and approving the labor certification sought by or labor attestation submitted by the employer. The U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS) is responsible for adjudicating the visa petition submitted by the employer with the labor certification received from the DOL. Generally, non-compliance with labor certifications/attestations falls under the authority of the DOL, while non-compliance with the conditions for a particular visa falls under the jurisdiction of U.S. Immigration and Customs Enforcement (ICE) within DHS. The Office of Foreign Labor Certification (OFLC) of the Employment and Training Administration (ETA) in DOL administers the labor certification program for the various employment-based visas; it bases its actions against non-compliance on investigations conducted by the Wage and Hour Division in the Employment Standards Administration (ESA) of the DOL. ICE conducts traditional worksite enforcement by investigating and bringing criminal charges against employers that intentionally violate the law and knowingly hire illegal aliens. The Office of the Inspector General within the DOL is responsible for investigating fraud in the programs administered by the DOL;² accordingly, it is not generally responsible for allegations of violations of relating to labor certifications/attestation, including the labor conditions required for labor certifications/attestations, such as satisfying standards for wage, transportation, housing, and other worker rights, unless there is an element of fraud.³ According to the DOL regulations, it appears that allegations of fraud are not necessarily referred to the OIG ; in some instances, they are referred to the DHS.⁴ Where investigative responsibilities overlap, the federal agencies may cooperate in joint investigations.⁵

The Immigration and Nationality Act (INA) does not expressly provide the Secretary of Labor with the direct authority to investigate and impose penalties for non-compliance in connection with H-2B labor certifications, nor does it expressly provide for a labor certification or attestation process, unlike for H-2A and H-1B visas. INA § 214(c)(1) (8 U.S.C. § 1184(c)(1)) provides that the DHS shall determine whether to grant an employer's petition for nonimmigrant workers "after consultation with appropriate agencies" of the

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³ The Semiannual Report to the Congress from the OIG of DOL for the six-month period ending March 31, 2007, describes its work as including investigations of fraudulent applications filed with DOL on behalf of fictitious companies or applications using names of legitimate companies without their knowledge and gives specific examples of labor certification and employment visa fraud (such as filing employment visa petitions with fraudulent/forged labor certifications). A labor leasing company owner was convicted of fraud for knowingly hiring hundreds of mostly undocumented Hispanic workers and employing them in asbestos removal and extensive Hurricane Katrina cleanup work around the Midwest and in the South. This case was a joint investigation conducted with other federal and state/local law enforcement agencies, including ICE and the OIG of the Social Security Administration.

⁴ For example, with regard to labor certification for logging and non H-2A agricultural employment, which generally are occupations for which H-2B visas are petitioned, 20 C.F.R. § 655.208 provides that if possible fraud or willful misrepresentation involving the labor certification application is discovered prior to the final certification determination, the OFLC Administrator shall refer the matter to the DHS for investigation.

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Federal Government. Accordingly, this consultation process may take whatever form the agencies choose to implement. Section 404 of the REAL ID Act of 2005,⁶ a provision of the Save Our Small and Seasonal Businesses Act of 2005 (Title IV of the REAL ID Act), amended INA § 214(c) (8 U.S.C. § 1184(c)) by adding a new paragraph (14) to authorize the Secretary of Homeland Security to impose administrative penalties, including monetary fines not exceeding \$10,000, and to deny employer petitions for at least one year but not more than 5 years for an employer who the Secretary finds has substantially failed to meet any of the conditions for an H-2B petition or has made a willful misrepresentation of a material fact in the petition. The Secretary of Homeland Security may delegate authority to impose administrative penalties such as the civil fine to the Secretary of Labor, but not the authority to deny a visa petition. The Secretary of Labor was not similarly authorized by the statute to deny labor certification for a period to an offending employer and was not authorized to investigate labor certification violations for H-2B visas in a manner similar to the Secretary of Homeland Security's authority over visa petitions (which would include authority to investigate failure to comply with the labor certification required for the visa petition).

Although the statute permits the Secretary of Homeland Security to delegate administrative penalties to the Secretary of Labor with the agreement of the Secretary of Labor to undertake this authority, as yet, there apparently has been no such delegation. The DOL regulations concerning labor certification and enforcement for H-2B workers do not provide for investigations and penalties for non-compliance.⁷ Although DHS and DOL each proposed regulations in 2005 that apparently would have amended the immigration and labor regulations respectively to provide for complementary investigations and sanctions with regard to H-2B visa and certification non-compliance, there has been no final action on these proposed rules.⁸ The general statutory authority cited for the amended regulations is INA § 214(c)(1) (8 U.S.C. § 1184(c)(1)), regarding consultation with other agencies. The regulations would be amended to permit H-2B visa petitions to be filed with a labor attestation supplement stating that certain recruitment and working conditions have been or will be met; these would be randomly audited by the DOL. Only certain H-2B occupations would be required to obtain from the DOL a labor certification that qualified U.S. workers are unavailable and that U.S. workers will not be adversely affected; these occupations would include logging, the entertainment industry, or professional sports. The DOL may recommend that an employer be debarred/suspended from being granted H-2B visas for workers for a period of time if the DOL determines during an audit that an employer has misrepresented a material fact or has made a fraudulent statement in its attestation; has failed to comply with the terms of the attestation; or has failed to cooperate in the audit process. The DHS would debar the employer for at least the period recommended by the DOL, but could extend the time. In its notice of proposed regulations, the DHS also solicited suggestions for establishing a DHS-initiated debarment process separate from the DOL audit

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and debarment recommendation process. These proposals were made before the enactment of the Save Our Small and Seasonal Businesses Act of 2005; the notices of proposed regulations indicate that the DHS and the DOL found that they had the authority to establish the proposed procedures under existing authority. One should note that DOL would not have had authority to debar employers from labor certifications or attestations under this process; DHS would carry out DOL's recommendations.

At least one comment from an employer representative on the proposed regulations criticized the debarment penalty generally and specifically asserted that DOL is in a better position to make determinations about the appropriate period for debarment; therefore the DHS should not have the option of extending the period recommended by the DOL.⁹ Other comments from labor representatives and Members of Congress reflected the view of labor and immigrant advocates generally that the existing H-2B statutory and regulatory framework does not adequately prevent employer noncompliance with alien worker protections and that the proposed regulations would further weaken an already weak system for protecting H-2B workers.¹⁰

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¹¹ 43 Fed. Reg. 10306, 10312 (1978).

Statutes providing worker protections for U.S. workers, such as the Fair Labor Standards Act, generally protect H-2B workers and other workers also.¹² Accordingly, H-2B workers can file complaints concerning violations of these general worker protection laws with the Wage and Hour Division of the ESA.¹³

Compared to the absence of direct investigative and penalties authority for DOL with respect to H-2B labor certifications, INA § 218(b)(2) (8 U.S.C. § 1188(b)(2)) expressly grants DOL authority to suspend/debar employers from eligibility for labor certifications for H-2A workers for up to three years; INA § 218(g)(2) (8 U.S.C. § 1188(g)(2)) authorizes the DOL to take other actions to ensure employer compliance with labor conditions. Regulations at 20 C.F.R. § 655.108 require the OFLC Administrator to refer cases of possible fraud involving H-2A labor certification applications to the DHS and the OIG of DOL for investigation that can result in invalidation of a labor certification. Regulations at 20 C.F.R. § 655.110 require the OFLC to investigate suspected cases of noncompliance with existing labor certifications and authorize debarment for up to three years for violations; the OFLC may also base such determinations and debarment on investigations conducted by the ESA.

INA § 212(n)(2) and (t)(3), codified at 8 U.S.C. § 1182(n)(2) and (t)(3), authorizes the Secretary of Labor to administer labor condition applications and attestations and to investigate and impose administrative penalties for certain violations in connection with labor condition applications and attestations for H-1B and H-1B1 visas. However, these provisions do not expressly authorize the Secretary of Labor to suspend/debar employers from eligibility for labor condition applications and attestations. Instead, the Secretary of Labor would notify DHS of violations and DHS would debar employers from eligibility to petition for visas. Regulations at 20 C.F.R. §§ 655.810(d) and 655.855(c) require the Secretary of Labor to notify the DHS of violations, whereupon the DHS shall suspend/debar the employer from H-2B petition eligibility and the DOL shall accordingly suspend/debar the employer from eligibility for labor condition applications and attestations for the duration of the DHS debarment.

¹² See Office of the Assistant Secretary for Policy, U.S. Department of Labor, *Employment Law Guide 70* (2005) (discussing employee rights for H-2B workers) and Forest Service Workers Hearing at 5 (Prepared Statement of Mark Rey, under Secretary for Natural Resources and Environment, Department of Agriculture) and at 9-10 (Prepared Statement of Victoria A. Lipnic, Assistant Secretary of Labor, Employment Standards Administration, Department of Labor). An exception with regard to H-2A workers is the Migrant and Seasonal Agricultural Workers Protection Act, which expressly does not apply to H-2A workers, whose rights are detailed in the INA § 218 (8 U.S.C. § 1188).

¹³ *Id.*

Mr. KUCINICH. I also think it would be helpful to Mr. DeCamp if you could make a copy of this right now. Can we do that?

Staff. YES.

Mr. KUCINICH. Let's make a copy.

Mr. CARLSON. Mr. Chairman, if I may, I can speak for the Employment and Training Administration with respect to the semi-annual report from our OIG. Our office routinely participates in fraud investigations across the broad spectrum of employment-based immigration programs with regard to fraud.

Mr. KUCINICH. If someone misrepresents their business in the labor certification process for guest workers then, can that person be debarred from Labor certification for up to 3 years? And would that come under your jurisdiction?

Mr. CARLSON. My office has no debarment authority. Again, I would defer to Mr. DeCamp—

Mr. KUCINICH. Mr. DeCamp.

Mr. CARLSON [continuing]. About Homeland Security.

Mr. KUCINICH. Mr. DeCamp.

Mr. DECAMP. The Wage and Hour Division has no enforcement authority under the H2-B program.

Mr. KUCINICH. So only DHS has that authority?

Mr. DECAMP. That is my understanding.

Mr. KUCINICH. And so you only have the authority to debar employers who sponsor H1-B and H2-B visas; is that right?

Mr. CARLSON. My office can debar H2-A employers.

Mr. KUCINICH. OK, H2-A.

Mr. CARLSON. The agriculture program.

Mr. KUCINICH. OK. What about H1-B?

Mr. DECAMP. I believe the Wage and Hour Division would—

Mr. KUCINICH. Wage and Hour can do that, right?

Mr. DECAMP [continuing]. Would proceed debarment of H1-B.

Mr. KUCINICH. OK. I have a list of employers who sponsored H1-B visas. This is a list here which I submit for the record of H1-B employers who have been debarred.

[The information referred to follows:]



U.S. Department of Labor
 Employment Standards Administration
 Wage and Hour Division



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H-1B Debarred/Disqualified List of Employers

Employers that have committed certain violations of the H-1B nonimmigrant program are debarred/disqualified from obtaining approval of any petitions to employ aliens. Listed below is a list maintained by the Wage and Hour Division of employers that have been debarred/disqualified for violations of the H-1B nonimmigrant worker program.

This list is effective as of March 12, 2007.

Employer Name	Willful Violator	Debarment Period
Adept Consulting Technology Group, Inc. Nashville, TN	YES	4/1/2006 to 3/31/2008
Ajay International Inc. Bothell, WA	YES	4/1/2006 to 3/31/2008
Alstyle Apparel/A&G Inc. Amin Amdani 1501 E. Cerritos Avenue Anaheim, CA 92805	YES	3/1/2005 to 2/28/2007
Anyware Technology Roy Han 17837 Rowland Street City of Industry, CA 91748	YES	8/1/2005 to 7/31/2008 (3 Year Debarment)
Danville Family Practice Dr. Mubashar Kharal 416-A West Walnut Danville, KY 40422	YES	8/1/2005 to 7/31/2008 (3 Year Debarment)
Emerald Financial Resources Michael Route 22 West Bridgewater, NJ 08807	NO	3/1/2007 to 2/28/2008
Excel Electrocircuit, Inc. Nipur Shah 50 Northpointe Drive Orion, MI 48359	NO	3/1/2007 to 2/29/2008
HPN Consulting Group, LLC Ridgeland, MS	YES	4/1/2006 to 3/31/2008
ICXC, Inc., d/b/a Home Instead Senior Care Martie Cruz 715 El Camino Real, Suite 205 San Bruno, CA 94066	YES	3/1/2005 to 2/28/2007
Law Offices of Anil Shah, PLLC 299 Broadway, Suite 304 New York, NY 10007	YES	3/1/2005 to 2/28/2007

*H-1-B
employers*

Mai Logic Inc. Jason Hou 47697 Westinghouse Drive, #200 Fremont, CA 94539	YES	12/1/2005 to 11/30/2008 (3 year Debarment)
McNally Systems, Inc. Venkat Koneru 2045 S. Arlington Heights Road, #116 Arlington Heights, IL 60005	YES	8/1/2005 to 7/31/2007
Micro Technology Concepts, Inc. Roy Han 17837 Rowland Street City of Industry, CA 91748	YES	8/1/2005 to 7/31/2008 (3 Year Debarment)
Neoreach, Inc. Jay Wright 6701 Democracy Blvd. Suite 300 Bethesda, MD 20817	YES	3/1/2005 to 2/28/2007
NutraMed Inc. Manu Patolia 13840 Magnolia Ave. Chino, CA 91710	NO	3/1/2007 to 2/29/2008
Paradigm Sintered Products, Inc. Ron Holcomb 201 Fritz-Keiper Boulevard Battle Creek, MI 49015	YES	8/1/2005 to 7/31/2007
Piminco, Inc. d/b/a Meng Li's Asia Pacific Grille 2601-41 South Military Trail West Palm Beach, FL 33415	YES	3/1/2007 to 2/29/2008
PS Info Tech, LLC Thulasi Vudya 5152 Prairie Grass Lane Colorado Springs, CO 80922	NO	8/1/2005 to 7/31/2006
QuikCAT.com (QuikCAT.com, Inc.) 6700 Beta Drive, Suite 200 Mayfield Village, OH 44143	YES	9/1/2005 to 8/31/2007
Rhode Island Red Inc. d/b/a UPS Store (The) Jacksonville, FL	YES	4/1/2006 to 3/31/2008
Rose Garden Court Lillette Rosete 958 Vermont Street San Jose, CA 95125	YES	3/1/2007 to 2/28/2008
Sibir Sys Inc. Shravan Penumudi 8507 E. Vernon Ave. Scottsdale, AZ 85257	YES	8/1/2006 to 7/31/2008

Sifa Infotech Inc. Arif Ismail Mohideen Syed 21550 Oxnard Street, #300 Woodland Hills, CA 91367	YES	8/1/2005 to 7/31/2007
Soft Labs Inc. Kishore Mehrotra 32080 Schoolcraft Road, Suite 100 Livonia, MI 48150	NO	3/1/2007 to 2/28/2008
South Seminole Sheet Metal, Inc. Ronald Fields 5450 S. Bryant Ave. Sanford, FL 32773	YES	3/1/2007 to 2/28/2008
SpaceAge Consulting Corp. Surender Malhan 26 Journal Square Suite 705 Jersey City, NJ 07306	YES	3/1/2007 to 2/29/2008
Strong Family Practice, LLC Dr. Betty Strong, MD P.O. Box 608 Blakely, GA 39823	YES	3/1/2007 to 2/29/2008
Subway d/b/a Hari Krishna Inc. Rajesh Patel 19224 Maurer Lane Colonial Heights, VA 23834	YES	8/1/2005 to 7/31/2007
The Home Mortgage Co. of America 100 Quarry Road Route 517 North Hamburg, NJ 07419	YES	8/1/2006 to 7/31/2008
Tree Equipment Design, Inc. Lee Squyres 1392 West Penn Pike New Ringgold, PA 17960	YES	8/1/2005 to 7/31/2007
U.S. Rural Health Services, LLC d/b/a Tazewell Primary Care Clinic & Rutledge Primary Care Clinic Dr. Mohammad Hussain 320 Park 40 North Blvd., Suite B Knoxville, TN 37923	YES	3/1/2007 to 2/28/2008
University of Psychiatrists of Cleveland 11100 Euclid Avenue Hanna Pavilion Building Cleveland, OH 44106	YES	8/1/2005 to 7/31/2007
Waltech, Inc. Harsh Wallia 199 Forest Street, Suite 300 Marlborough, MA 01752	NO	3/1/2005 to 2/28/2006

YMCA of Coastal GA, Inc., Islands Branch Randy Bugus 66 Johnny Mercer Boulevard Savannah, GA 31410-2181	YES	3/1/2005 to 2/28/2007
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Mr. KUCINICH. It is actually quite a lengthy list.

Mr. DECAMP. We have an active enforcement program.

Mr. KUCINICH. So there is enforcement. This list is on the Department of Labor's Web site, as you are aware.

Now, doesn't it make sense that you would have the authority, and you just said you can debar H2-B.

Mr. DECAMP. H2-A and H1-B, between the two—

Mr. KUCINICH. H1-B. What about H2-B? Doesn't it make sense you would have the ability to debar H2-B?

Mr. DECAMP. It is the statute. The statute is what it is. It is for Congress to decide what the statute is. We enforce—

Mr. KUCINICH. Does that make sense to you?

Mr. DECAMP. There are a lot of statutes that don't necessarily make sense. We do our best.

Mr. KUCINICH. Are you familiar with the Department of Labor proposed rule for post-adjudication audits of H2-B petitions in all occupations other than excepted occupations in the United States, 70 Federal Register, 3393-205?

Mr. CARLSON. Yes, sir.

Mr. KUCINICH. And have you ever followed up on these proposed regulations?

Mr. CARLSON. My office issued a notice of proposed rulemaking that you reference there. We received extensive comments, many in opposition to the proposed rulemaking, which, as you all probably know, included a proposed debarment authority in H2-B. We are still in the process of analyzing those with our counsel's office to see whether we can go forward with our final—

Mr. KUCINICH. Is it your understanding that the statute permits the Secretary of Homeland Security to delegate administrative penalties to the Secretary of Labor with the agreement of the Secretary of Labor to undertake this authority?

Mr. CARLSON. That is my understanding.

Mr. KUCINICH. And if the DHS can delegate this authority to you, and you are in the best position to assess employer violations, then have you approached the DHS to delegate this authority to you, Mr. DeCamp?

Mr. DECAMP. My understanding is there have been discussions about that.

Mr. KUCINICH. And if I understand correctly, your proposed regulations in 2005 to have greater authority over H2-B visas in 2005 is rendered moot after the passage of Save our Small and Seasonal Businesses Act. This new act gave the DHS the ability to delegate authority to you. You say you are following up. You know that the state of non-agricultural guest workers is rife with labor exploitation and fraud, so are you following that up with that in mind?

Mr. DECAMP. My understanding, as I said, is that there have been discussions that did not result in a delegation of authority from—

Mr. KUCINICH. Say that again.

Mr. DECAMP. My understanding is that there have been discussions, but that those discussions did not result in a delegation of authority from Homeland Security to Labor on the H2-B enforcement.

Mr. KUCINICH. So what's the enforcement then?

Mr. DECAMP. That is with Homeland Security.

Mr. KUCINICH. Are you still having discussions now? Are there serious discussions about you assuming the authority, or are you just not interested in that, you are letting them drop? What is it?

Mr. DECAMP. My understanding is that there were discussions that did not result in a delegation of authority.

Mr. KUCINICH. OK. Well, we can followup on that.

Honorable Congressman, do you want to ask any more questions? I am done.

Ms. WATSON. You are going to followup on the last point?

Mr. KUCINICH. Yes.

Ms. WATSON. OK.

Mr. KUCINICH. OK. I want to thank each of you for being here. We could not have held this hearing without your participation, and we are going to need your help in order to keep trying to find a way to make this system work. And it is in that spirit we are going to proceed here, and the communications with this committee and with you will be in the spirit of trying to find a way to make this work better. These hearings are not gotcha hearings, but wherever there is a loose string or a loose matter such as the LA Labor, LLC, we want to find out what is going on there.

Again, I trust your integrity. We need your cooperation. Thank you.

We will go to the next panel.

Mr. DECAMP. Thank you.

Mr. KUCINICH. Mr. DeCamp, I just want you to know this is going on the record, so thank you.

We are momentarily going to move to the third panel.

While we are getting ready, I want to thank the members of the third panel for hanging in here for 2½ hours. As you see, this subcommittee takes these things very seriously. We go into them in depth because the people of New Orleans and people of this country deserve no less.

I would like to begin by making an introduction of both of the panelists.

Tracie Washington is founder and director of the Louisiana Justice Institute. This Institute was founded in April 2007 as a non-profit public interest legal advocacy group focusing on the Gulf Coast. A native of New Orleans, Ms. Washington owned her own civil legal practice focusing on employment, labor, and education issues for 16 years before Hurricane Katrina forced Ms. Washington to evacuate with her son to Texas.

Ms. Washington returned to New Orleans in December 2005, and she now represents Katrina survivors in a wide spectrum of cases, from education to housing to voter rights.

Welcome.

Ms. WASHINGTON. Thank you.

Mr. KUCINICH. Also Ms. Catherine Ruckelshaus is a litigation director at the National Employment Law Project in New York City. Her primary areas of expertise on behalf of lower-wage workers are the labor and employment rights of contingent workers, immigrants, and workfare participants.

Among recent cases, Ms. Ruckelshaus was lead counsel in a landmark case, *Lopez v. Silverman*, which established for the first time

that a garment manufacturer was liable for the sweatshop conditions of its subcontractors. It was a very important case.

At this point I would ask both of the panelists to please rise. It is the custom of our committee and our subcommittee to swear in witnesses. We would ask you to raise your right hands.

[Witnesses sworn.]

Mr. KUCINICH. I thank you. Let the record show that both witnesses answered in the affirmative.

As with the first and second panel, we ask that you give an oral summary of your testimony and keep the summary under 5 minutes in duration. I want you to bear in mind that your complete written statement will be included in the hearing record.

Ms. Washington, let's begin with you. Welcome. We appreciate it.

STATEMENTS OF TRACIE WASHINGTON, PRESIDENT AND CEO, LOUISIANA JUSTICE INSTITUTE; AND CATHERINE RUCKELSHAUS, LITIGATION DIRECTOR, NATIONAL EMPLOYMENT LAW PROJECT

STATEMENT OF TRACIE WASHINGTON

Ms. WASHINGTON. Thank you so much. I want to thank you for this opportunity to meet with Congress to discuss the impact of immigrant labor on the ability of African Americans to participate in the labor market post-Katrina.

You have my statement. I will speak a little bit from this, but much of what I was about to testify to this afternoon you have heard, but I want to place particular emphasis on the impact of immigrant labor on African American workers in New Orleans and what DOL has failed to do and what it could do, first of all, to enhance what was miserable employment opportunity prospects, conditions for African American workers prior to Hurricane Katrina, and what post-Katrina had been abysmal, often slave-like conditions for immigrant workers.

I decided when I was asked to come and testify to not really talk from my perspective as an attorney first, but to tell you about some of what I hear on a day-to-day basis in my practice and what came in through the NAACP and now through the Louisiana Justice Institute, some of those frustrations.

From the employer perspective, especially on the construction front, what you hear oftentimes are stories like that of Raymond Rock, Ray Rock, who owns with a partner a construction company in New Orleans. Even prior to Hurricane Katrina, Ray is a master carpenter. He has taught carpentry. He has been doing this type of work for, you know, decades.

Post Hurricane Katrina, when we had been promised so much growth and expansion beyond our wildest dreams in New Orleans, our master construction workers really believed that it was going to be a renaissance time in New Orleans. But they didn't find that. What they found was the inability to really compete for good construction work because the market and prices and what they could bid and get for jobs—I outline that a little bit here in the paper—has been driven down so dramatically by immigrant labor, but by the unwillingness of employers to pay immigrant workers living wages.

We see on the side of employees, and I recount the story, a representative story of one of my clients who is a public housing resident, former public housing resident in New Orleans who worked in the hospitality industry, hotel industry, for over 20 years prior to Hurricane Katrina.

I think you heard from Saket Soni some of the stories, and Ms. Price's story is no different. She came back to the city of New Orleans after Hurricane Katrina, thought she could get her job back in the hotel, was offered her job. But guess what? She wasn't offered any place to live. Well, the cost of housing in New Orleans has skyrocketed so much that she couldn't afford to work, but immigrant workers were being offered housing—housing with abysmal conditions in many instances, but still housing. So she was displaced, and in that assessment by immigrant workers.

So we are often asked what is the problem. Is there a conflict? Is there tension between African American workers and immigrant workers? What is going on in New Orleans, Tracie? You know, what has been the effect of the immigrant work force on African American labor? Well, we can't sugar-coat it. We can't say there has been no effect and sort of live like we are in a la-la world. But what we don't want to do, and we have worked really hard as activism advocates to work with our clients and within the community to understand is it is not the fault of immigrant workers that you cannot get living wage work in the city of New Orleans. We have more than enough work to go around. The problem is greedy employers, immoral employers oftentimes, who will not abide by the laws concerning the payment of wages, the payment of overtime, the payment of prevailing wages, in many cases.

So that factor, unfortunately, drives down the standard of living for the African American workers. They can't come home and work for \$5 an hour or risk being told that they are going to make \$100 a day only after 30 days to be told, Psych, we are not paying you anything, which often happens with the immigrant workers. Or my experience when I first came home and started doing this work, you know, when payday came for immigrant workers they weren't greeted by checks; they were greeted by ICE—Immigrations and Customs Enforcement. That was your every-two-week pay call.

So what do we do? That is really what I want to focus on. We know what the problems are. What do we do?

We have to understand that we have to bridge the gap between black and Latino workers, providing the necessary skills to end divisive struggles over low-quality jobs. We can no longer have companies with open positions and no training systems in place, and what we most certainly cannot do is fight each other over the chance to get \$5.15 an hour to clean somebody's toilet. We can fight with each other to ensure that job pays \$15 an hour, but fighting each other for \$5.15 when the employer is getting ridiculously rich doesn't make a lot of sense.

We know that the Department of Labor—and you have heard this, and you heard the responses from the Wage and Hour representatives—they have failed miserably in enforcement. That is just the bottom line. I don't want to sugar-coat that either, and nobody should allow that to happen.

If they need more money, let's get them some more money. If they need more investigators, fine, get some more investigators. But at the end of the day you can't say that now, some 2 years after Katrina—you know, it is very difficult for us as advocates to sit and listen to folks whine about, well, we have been trying to get this money for a long time. As an attorney who practices labor and employment law, I know that next year that statute of limitations is over. These folks are not going to have a chance to do anything.

DOL can also be proactive. It can be proactive in reaching out to the community with advocacy groups such as LGI, such as Southern Poverty Law Center, such as the Workers Center, to help with job reforms in this community, working to improve wages, benefits, and working conditions in New Orleans.

Let's be a little creative. If you knew that you didn't have enough Spanish-speaking people in the city of New Orleans to do something at the Department of Labor, we have more than enough Spanish-speaking people. Obviously the Spanish-speaking people who have problems can come in and speak Spanish. That is just stupid. I am sorry.

Let's work on education and training. Over the next few years we know we are going to see an incredible amount of jobs opening up in New Orleans for infrastructure and construction as construction takes off. Sure, we know some of these jobs, many of these jobs are going to require college education, but most of them will not. We don't need to have people fighting at the margins for jobs in the secondary market when the Department of Labor can be creative with its funding and work with nonprofit organizations and other organizations to move people out of these jobs very low at the margins and bring people up and help develop a community. That is what President Bush said he wanted to do. That is what we are waiting for.

Finally, one of the things I heard often from the skilled trades folks that I spoke with about this testimony is they said—and most of them know me from the community. I was born and raised in New Orleans—Tracie, we need to do more to have an African American workers center so we can join together and organize even among the model that we have had in the immigrant worker community. And DOL can help with that, as well. It may be on the margins of what they do. It may not be principally what happens with the Department of Labor, but the Department of Labor, again, can be creative and assist in those efforts.

Thank you.

[The prepared statement of Ms. Washington follows:]

**Testimony of
Tracie L. Washington, Esq.**

**Hearing Before the
United States Congress House of Representatives
Committee on Oversight and Government Reform**

Adequacy of Labor Law Enforcement in New Orleans

Thank you for this opportunity to meet with you and discuss the impact of immigrant labor on the ability of African-Americans to participate in the labor market in New Orleans.

My name is Tracie L. Washington. I am a civil rights attorney in New Orleans, Louisiana. I am a New Orleans native, born and raised in the city. After attending college in Northfield, Minnesota, graduate school in Des Moines, Iowa, and law school in Austin, Texas, and then 10 years of law practice in central Texas, I returned home in 1998 to practice principally labor & employment law. In 2005 my private law practice was devastated as many of my clients – individuals and businesses – could not return to the city. But full-time civil rights work called. Until April 2007 I served as the Director of the NAACP Gulf Coast Advocacy Center. Just last month I formed the Louisiana Justice Institute. LJI is Louisiana's only non-profit civil rights organization dedicated to legal advocacy for poor communities and communities of color.¹

I applaud the local and national nonprofit organizations that immediately recognized the scope of the worker justice issues in New Orleans after the hurricanes. Since returning to New Orleans in December 2005 I have represented and otherwise assisted many African-American workers in resolving wage claims and retaliation issues. LJI's advocacy work extends to all communities of color, and we are proud to work in partnership with the New Orleans Worker Justice Center on immigrant worker issues, including serving as local counsel with Southern Poverty Law Center in the representation of H-2B guestworkers in minimum wage claims against their New Orleans employer.²

¹ Please see attached bio for Tracie L. Washington.

² Castellanos-Contreras et al. v. Decatur Hotels LLC et al., Civil Action No. 06-4340, U.S. Dist. Ct., E.D. La.

I. Two Equally Compelling Stories

I am not here today to tell you my story. Instead, I want to relay to you representative examples of the problems African-Americans face in employment in New Orleans from two perspectives, i.e., the African-American construction employer, and that of a hospitality service worker still displaced and living in Houston, Texas.

First, the employer. Raymond Rock is a master carpenter and New Orleans native. Ray has always had gainful employment in New Orleans in the trade industry, and also as an educator. I spoke with Ray about work post-Katrina. Like many workers in the construction field, Ray returned to New Orleans believing that there would be plentiful work for him. Unfortunately, he could not compete due to the low wages being offered to and accepted by immigrant workers, even for demolition and gutting work. Initially, the money was good, but eventually employers – from the major construction crews to homeowners – refused to pay living wages, and it was impossible to compete and support his family in New Orleans, where the cost of living has skyrocketed. He has partnered with Denise Miller and Miller Construction, LLC doing mostly renovation work in the greater New Orleans area. His business must compete for jobs in a market now that has driven down the money paid to construction companies for renovation work, as many companies simply hire immigrant workers that they exploit on the back end with low wages. Ray and Denise are committed to hiring African-American workers from New Orleans, and not a day goes by that highly skilled workers don't come on site to ask for work. It's a horrible dilemma for them however, because if they hire folks at what should be a living/prevaling wage for skilled plumbers, electricians, etc., they will never turn a profit.

"Shelia Price"³ has worked in the hospitality industry for over two decades. But Shelia has always been a part of the underpaid service worker corps in New Orleans, struggling to make ends meet, and living in public housing. Post-Katrina with public housing closed, Shelia returned to New Orleans only to find herself shut out of work after just 4 months. She was offered her former hotel job, but her wages did not increase, even though her employer was earning unprecedented profits housing Katrina evacuees. She was not offered housing in the hotel, as were the immigrant workers, and with no public housing open

³ Shelia Price is the name I am using for this current client, who has requested that her real name not be disclosed in the public testimony. Unfortunately, Shelia's story is far too typical and really exemplifies how lack of labor law enforcement and other social justice system failures – namely public housing – have converged as barriers to African-American workers returning to New Orleans.

and available, her former position was not an option for her. Shelia worked for several months at a fast-food employer, which offered signing bonus, and increased wage and other benefits immediately after Katrina. Unfortunately, those benefits collapsed within 4 months, her hourly wage fell, and Shelia is now working several part-time jobs and other work simply to survive.

II. What's The Problem?

According to the Pew Center, the vast majority of African Americans believe Latin American immigrants are hard-working (79%) and have strong family values (77%). In New Orleans it is not uncommon to hear African-Americans recount how they or a family member have lost a job, or not gotten a job, because an employer hired an immigrant worker. Post-Katrina, there has been widespread discontent amongst Black service industry workers that immigrant workers have taken away their jobs, especially in the hotel and restaurant industries. For blacks, the growing presence of immigrant workers adds to the formidable obstacles they face in finding a job in New Orleans.

We cannot sugar coat this widespread perception among African Americans that immigrant workers are damaging local job prospects. But is the problem really the influx of immigrant labor? No, it is the disintegration of the Black working class and the professional/managerial class in New Orleans. This crisis began well before there was a significant influx of immigrants, and it is this crisis that has been haunting us. This crisis has been compounded by the assault post-Hurricane Katrina on public sector employment in New Orleans, in the public schools and in city/state government positions, which has had a disproportionate impact on African-American workers in our city.

While competition exists, particularly in very low wage work, the problem does not lie with the immigrants but with the desire on the part of employers to find workers who will accept the lowest possible wages. It has been the greed of employers who are always looking at the bottom line and who seek the cheapest possible workforce. We see this in the construction industry in New Orleans where immigrant workers are increasing dramatically as a significant proportion of the workforce. What is noteworthy is that this is happening largely in the lower-paid, non-union construction workforce. Black workers want construction jobs at home, but they are not looking for low-wage construction work with no benefits. These are the conditions into which Latino immigrant construction workers were placed when many were brought to New Orleans for the reconstruction of the city. Under non-union conditions, they were often housed in a prison-like environment, and frequently cheated out of pay.

But what we must understand is that this is a shared problem for native New Orleans African-American workers and for immigrant workers. How?:

- The nature of employment in the U.S. has changed and is changing. Good blue-collar jobs (with decent pay and benefits) in manufacturing, transportation, etc. are gone or on the decline. High technology, service, professional and managerial jobs are on the rise. Technological and international economic forces have driven these changes. Lowering labor costs, increasing profits and reducing worker power has been the motive.
- This shift has increased the demand for skilled workers and those with at least some college; also increased demand for low-wage workers to service "middle-class" – childcare workers, etc.
- And finally, instead of producing more skilled and educated workers, poor quality schools and immigration have converged with other complicated factors to create an overabundance of low-income, unskilled workers.

III. Let's Repair the Breach – Practical Solutions

"Our new conversation needs a new vocabulary. That vocabulary does not include phrases often used by well-intentioned immigrant rights advocates like "we're a nation of immigrants" or "immigrants work hard and take jobs that native born workers won't do." The former phrase negates the sacrifice and contribution that African Americans (as well as Native Americans) made in building our country. The latter plays into pernicious stereotypes about African Americans (as well as other low-income laborers) as loafers who'd rather get a welfare check than do an honest day's work." Alan Jenkins, Executive Director, Opportunity Agenda.

Bridging the gap between black and Latino workers means providing the necessary skills to end divisive struggles over low-quality jobs. We can no longer have companies with open positions and no training system in place to fulfill their demands.

There are real issues in terms of jobs, but it takes education and conscience building to overcome these animosities. What lessons can we draw from this?

- As long as there is a vulnerable workforce, capitalists will seek them out to utilize against other workers.
- Low-wage workers will not be competitors if they cease being low-wage workers, i.e., if they are unionized and gain power in their workplaces or jobs.

In New Orleans, African-Americans are slowly beginning to understand that our interests and those of immigrants are not at odds. And as advocates and activists for worker rights and economic justice, we must continue to target businesses that exploit and underpay illegal immigrants to the detriment of African American workers. It is on this point that the U.S. Department of Labor has failed miserably. But this damage is not irreparable. We need creativity and resolve from U.S. DOL, coordinating with other federal agencies to solve the employment crisis for African-American workers in New Orleans.

- **Jobs:** We need 'jobs reform' – improving wages, benefits and working conditions in New Orleans. This is an area around which the U.S. DOL and advocacy groups such as the Louisiana Justice Institute can partner to build alliances between "black" and "brown" workers. In particular, U.S. DOL must actively engage advocacy groups in New Orleans to fully examine: a) minimum wage; b) overtime enforcement; c) pay and benefits for full-time and part-time workers and; d) income supplement programs (refundable tax credits, etc.); e) occupational safety and health and; d) unionization or labor-community partnerships.
- **Education and Training:** Over the next few years, we will see an increase in job opportunities in New Orleans as infrastructure construction takes off. Many of these jobs will require a college education. Many WILL NOT, including those that pay a good salary, particularly in the construction field and in jobs such as medical and dental assistants, physical therapy aides, licensed practical nurses, etc. Instead of competing for low-paying jobs in the secondary sector, African Americans and immigrant groups need the coordinated assistance from U.S. DOL and the U.S. Department of Education for training and education programs that give both groups the skills needed to climb the ladder into higher paying jobs in the primary sector. Ultimately, it is the U.S. DOL that must hold employers accountable for job training and placement, especially where employers are receiving federal and state incentive grants for just this purpose.
- **African American Worker Centers:** Through worker centers, the immigrant community has built organizing muscle around jobs issues. Worker centers engage in service, organizing and policy work, some focusing on particular job sectors. The worker center model has yet to penetrate the African American community with any real breadth. Ray Rock was adamant in his call to me and to the U.S. DOL for assistance in fully forming and assisting African American groups to build their own centers.

Mr. KUCINICH. Thank you very much.
Ms. Ruckelshaus.

STATEMENT OF CATHERINE RUCKELSHAUS

Ms. RUCKELSHAUS. Mr. Chairman and members of the committee, thank you for the opportunity to testify today.

My name is Cathy Ruckelshaus, and I am the litigation director for the National Employment Law Project. As you mentioned, we are a national nonprofit and used to be a legal services organization that promotes good jobs for low-income workers.

In the last half of my 20 years of working with low-wage workers around the country, we have lost a partner in the Department of Labor. Not too long ago, DOL initiated strategic programs to combat the worst workplace abuses, but in recent years it has stepped out of the picture when it comes to enforcing basic standards.

At NELP we have had the opportunity to learn about job conditions in industries such as agriculture, construction, and day labor, garment, meat packing, janitorial, and domestic work. We have seen sub-minimum wage pay, lack of health and safety protections, and rampant discrimination.

My testimony today urges that we reinvigorate DOL's commitment to workers' rights and that we use this low point to bring it back.

In New Orleans, a recent and extreme microcosm of what goes on around the country, firms have used time-honored cost-cutting tactics that are common around the country. They hide behind subcontractors. They call workers independent contractors and then look for immigrant workers who are vulnerable to exploitation.

Workers whose rights are being evaded urgently need DOL to step in. In Louisiana, Mississippi, and Alabama there are no State agencies in charge of fair pay because the States have no State minimum wage law.

Private attorneys, except for Tracie, often will not or cannot take low-wage worker cases. The DOL is really their only option. However, while the number of businesses covered by the labor laws has expanded recently, DOL's activities have decreased. They only have 788 investigators for the entire country. The number of actions they have brought has decreased by 36 percent.

More disturbingly, the agency has, in a number of instances, used these dwindling resources to intervene on the side of employers in ongoing litigation and urging that workers' sides lose.

It is also becoming harder for workers to report abuses to the Department of Labor due to recent immigration raids sowing fear in the community, and workers who would like a union to protect them don't have one.

The good news is that we can repaint this bleak picture. Any success in moving forward with DOL to improve the response in New Orleans will reverberate around the country. DOL can make a difference in the wage levels of more than just the workplaces it targets, especially by dedicating attention to a particular region like New Orleans or a particular job sector.

I will conclude by highlighting some reforms that DOL, with your urging, could implement across the country. Most of these the

agency needs only to revive, not create out of old cloth, because it has already used these strategies successfully in the past.

First—and we have heard this already—target low-wage industries with persistent violations, like the construction, day labor, and hospitality industries in New Orleans, to start. This would entail tracking violations and conducting preemptive workplace investigations without waiting for workers to complain.

DOL could target violations by employers who seek to hide behind subcontractors or who call their workers independent contractors. DOL could target these employers by keeping data, as we mentioned earlier, on worker complaints that DOL chooses not to enforce, as well as data on enforcement efforts and outcomes.

DOL can do this by actively partnering with community groups who are the eyes and ears of the problems in order to learn of the worst abuses and assist in enforcement and fact gathering. DOL should share information with other agencies in DOL, like OSHA, and it could also share with the State Unemployment Insurance Agencies who target independent contractor abuses.

DOL should provide workers' rights information in foreign languages and hire bilingual investigators.

It should allow workers file claims anonymously.

It should encourage witnesses to come forward by fully enforcing its own firewall policy of not sharing information with ICE so that immigrant workers aren't afraid to come forward.

It should use its hot goods power that permits it to seize goods that are produced in substandard conditions.

And for complaints it cannot handle, DOL should refer workers to a private panel of attorneys or clinics available in the communities.

All of these reforms are reasonable, possible, and necessary. They could be implemented with little effort by DOL and with much impact on our country's workers, our law-abiding employers who are unable to compete, and our economy.

Thank you.

[The prepared statement of Ms. Ruckelshaus follows:]

Testimony of
Catherine K. Ruckelshaus
National Employment Law Project

Hearing Before the
United States Congress
House of Representatives
Committee on Oversight and Government Reform

Adequacy of Labor Law Enforcement in New Orleans

June 26, 2007

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**Testimony of Catherine K. Ruckelshaus
of the National Employment Law Project
Before the U.S. Congress House of Representatives
Committee on Oversight and Government Reform**

Adequacy of Labor Law Enforcement in New Orleans

Chairman Kucinich and members of the Committee: thank you for this opportunity to testify today on the important subject of the lack of labor law enforcement in New Orleans, LA and its impact on workers and their families and our economy.

My name is Cathy Ruckelshaus, and I am the Litigation Director for the National Employment Law Project (NELP), a non-profit organization that specializes in promoting access to and keeping good jobs for low-income workers. In the last half of my twenty years of working with low-wage workers around the country, we have lost a partner in the United States Department of Labor (DOL). Once a potent ally when it intervened to stop sweatshop jobs, DOL has become at best a nonentity and at worst a pariah in low-wage workers' worlds. It was not always so. During the Clinton years and before, DOL initiated affirmative and strategic programs aimed at combating the worst workplace abuses, and tracked its impact on working people. I submit my testimony today to urge that we redirect DOL back to its roots, check its misguided interventions for employers in on-going private lawsuits, and reinvigorate its commitment to worker's rights.

I and my colleagues at NELP work to ensure that *all* workers receive the basic workplace protections guaranteed in our nation's labor and employment laws; this work has given us the opportunity to learn up close about job conditions around the country in garment, agricultural, construction and day labor, janitorial, retail, hospitality, domestic and home health care, poultry and meat-packing, high-tech, delivery, and other services. We have seen low, often sub-minimum wage pay, lack of health and safety protections and work benefits, and rampant discrimination and mistreatment of workers in these jobs. Employers use common schemes in these jobs, including inserting subcontractors to source (often immigrant) labor, and calling employees independent contractors, to evade job standards. All of these mechanisms and corresponding bad jobs are potentially illustrated by the post-Katrina clean-up in New Orleans.

NELP prioritizes enforcing workplace laws on the books and closing loopholes enabling escape from those baseline protections. In addition to bringing private actions against employers, NELP partners with labor and immigrant community groups in the states to promote good models to encourage public enforcement by state and federal departments of labor and attorneys general. This background in direct workplace law enforcement and crafting agency practices informs my testimony today.

My testimony will give a national perspective on the impacts on workers and the economy of DOL's quiescence (and sometimes hostility), and will end with some recommendations for a reanimation of its former spirit.

Holding up the Wage Floor for Workers and Their Families

I. Post-Katrina Rebuilding: The Perfect Storm for Labor Abuses

As described in vivid detail by first-hand newspaper accounts, one-on-one surveys, lawsuits, and by the witnesses on today's panel, the conditions for workers in New Orleans as it began the massive rebuilding after hurricane Katrina were (and remain) abysmal.¹ A series of events, following closely on the heels of the hurricane and orchestrated or condoned by our government, combined to create a "perfect storm" for job injustices. Phase one:

- U.S. Occupational Safety & Health Administration (OSHA) suspended enforcement of worksite health and safety rules²;
- U.S. Department of Homeland Security suspended immigration law's "employer sanctions," permitting employers to hire workers without checking for work authorization (September 2005)³;
- President Bush suspended parts of the prevailing wage law, requiring government contractors to pay wages at rates that are customary for a particular job and to keep records of hours and pay (September 2005);⁴
- U.S. DOL suspended affirmative action requirements enforced by the Office of Contract Compliance Programs (OFCCP).⁵

While the immigration law and prevailing wage suspensions were rescinded a few months later after a public outcry, the adjournments protected those employers who

¹ See Samantha Henry, *False Promises*, Bergen Herald News, November 14, 2005); Roberto Lovato, *Gulf Coast Slaves*, Salon.com, November 15, 2005, http://www.salon.com/news/feature/2005/11/15/halliburton_katrina/print.html; Sam Quinones, *Many of Katrina's Migrant Workers Go Unpaid*, Los Angeles Times, September 11, 2006; Monica Campbell, *Post-Katrina Easing of Labor Laws Stirs Debate*, Christian Science Monitor, October 6, 2005); Ann Simmons, *Guest Workers' Gulf Coast Dream Unmet*, Los Angeles Times, March 14, 2007.

² Press Release, White House, *Fact Sheet: Federal Relief for the Victims of Hurricane Katrina, Task Force Response* (August 31, 2005), available at <http://www.whitehouse.gov/news/releases/2005/08/20050831-4.html>.

³ Press Release, Department of Homeland Security, *Notice Regarding I-9 Documentation Requirements for Hiring Hurricane Victims* (September 6, 2005), available at <http://www.dhs.gov/dhspublic/display?content=4788>.

⁴ Press Release, President George Bush, *Message to Congress of the United States Regarding Hurricane Katrina* (September 8, 2005), available at <http://www.whitehouse.gov/news/releases/2005/09/20050908-7.html>.

⁵ See Associated Press, *Minority Firms Getting Few Katrina Contracts*, "October 4, 2005, <http://www.msnbc.msn.com/id/9590752>.

arrived first, as the reinstatement of the two laws was not applied retroactively. The OSHA moratorium is still in effect in some of the hardest-hit areas.⁶

The overall effect of these early government (non-)interventions, on the heels of its announcement that millions of dollars in government money was available to clean up the Gulf Coast, was to send a message to employers that *all laws* were on a break. Employers heard that message, and acted accordingly, adding to the perfect storm, creating Phase Two:

- Anxious firms, wanting to capitalize on the clean-up money, recruited mostly immigrant workers from Maryland, California, Texas, and other states, through an elaborate subcontracting and labor broker structure that over-promised good jobs and housing;⁷
- Firms repeated scams they had practiced elsewhere to cut labor costs, including calling their employees “independent contractors” or paying workers in cash, taking unlawful deductions from workers’ pay, and requiring off-the-clock work without pay;⁸
- Firms cemented worker’s lack of options by using the U.S. H2B temporary guestworker program to recruit workers, which prohibits workers from working for another employer if the first job is bad, and has virtually no enforcement mechanisms for workers to use in the event of abuses.⁹

Phase Three of the upheaval was a complete lack of labor standards enforcement to respond to these violations:

⁶ Press Release, OSHA, *OSHA Resuming Regular Enforcement Along Most of the United States Gulf Coast* (January 20, 2006), available at http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASE&p_id=11805.

⁷ See NELP, Post-Katrina Policy Short, *Subcontracted Workers: The Outsourcing of Rights and Responsibilities*, <http://www.nelp.org/docUploads/subcontracted%20work%20policy%20updateKatrina%20final%2Epdf>.

⁸ See NELP Fact Sheet prepared in response to queries from Gulf Coast worker advocates: *Post-Katrina Fact Sheet- 1099d: Misclassification of Workers as Independent Contractors*, <http://www.nelp.org/docUploads/1099%2Ded%2Epdf>, and *Post-Katrina Fact Sheet – Day Labor: Workers’ Right to Be Paid*, <http://www.nelp.org/docUploads/day%20labor%20waiting%20time%20and%20deductions%2Epdf>.

⁹ See U.S. Department of Labor, Employment and Training Division, H-2B Certification, <http://www.foreignlaborcert.doleta.gov/h-2b.cfm>.

- U.S. DOL’s district office was shut down by Katrina and inoperable. The nearest DOL offices were in Baton Rouge, LA and out-of-state;¹⁰
- Louisiana, like a minority of states, does not have a state law requiring minimum fair pay and hours, and consequently does not have a state agency responsible for enforcing minimum wage and hour standards, meaning that the US DOL is the only option;¹¹
- In the handful of instances where workers were able to contact DOL and it did respond, the results were disastrous. Among other things, the DOL office handling complaints from New Orleans did not, as it is authorized to do: (1) investigate retaliation claims brought by workers fired after complaining of no pay; (2) go after “joint employers” or independent contractor abuses, letting responsible employers off; or (3) seek liquidated damages or other penalties beyond the back wages actually owed to the worker, giving employers an incentive to continue to underpay for work performed.

The three phases continue, in some respects, today. The culture of lawlessness emanating from the government’s early moratoria on key labor standards protections also persists. Without active and strategic intervention by the DOL to reclaim a foothold in the region, New Orleans will remain “Exhibit A” of the lack of a meaningful wage floor in this country.

II. As Goes New Orleans, So Goes the Rest of the Country

The stories of workers’ mistreatment in the post-Katrina clean-up and rebuilding efforts are unfortunately merely a local and particularly concentrated example of pandemic labor standards violations across the country and a corresponding lack of U.S. DOL response.

A. No Minimum Wage Floor in Too Many Jobs

In the bottom half of our economy, almost every growing sector—health care, child care, retail, building services, construction and hospitality—is plagued by bad jobs. In addition to providing paltry benefits, if any, employers in these sectors routinely violate bedrock employment rights like the right to be paid fully for work and the right to a safe workplace. Common schemes emerge in jobs with sweatshop conditions: employers hide behind subcontractors, call their workers “independent contractors” not covered by workplace laws, and hire immigrant workers who are vulnerable to exploitation. In addition, DOL has interpreted laws to exempt large classes of low-wage workers from basic wage and hour protections, including home health care companions, and some domestic and agricultural workers. Consequently, our “growth-sector” jobs are

¹⁰ See U.S. Department of Labor Announcement of Temporary Opening of Wage & Hour Offices in Gulf Region, <http://www.dol.gov/opa/media/press/esa/ESA20052250.htm>.

¹¹ See NELP, *Post-Katrina Fact Sheet: Strategies for Enforcing The Right to Be Paid*, <http://www.nelp.org/docUploads/strategies%20for%20enforcing%20the%20right%20to%20be%20paid%20.pdf>.

not bringing people out of poverty, and workers across the socio-economic spectrum are impacted.

Recent government and private studies show many of our fastest-growing service jobs have appalling minimum wage and overtime compliance rates:¹²

- A majority of restaurants in New York City were out of compliance;¹³
- 26% of domestic workers in New York City earn below the poverty line;¹⁴
- Retail workers comprised three-fifths of the 2.2 million at-or-below-minimum-wage workers nationwide in the BLS Survey of households 2002 study;¹⁵
- 50% of day laborers suffer wage theft;¹⁶
- 60% of nursing homes are out of compliance;¹⁷
- One in five home health care aides lives below the poverty level;¹⁸
- Poultry processing has a 100% noncompliance rate;¹⁹
- Garment manufacturing has a 50% noncompliance rate.²⁰

Additionally, in many sectors, including construction and day labor, employers misclassify employees as “independent contractors,” to avoid responsibilities under labor

¹² For more statistics and information on the numbers of workers in the growing job sectors, see NELP, *Holding the Wage Floor: Enforcement of Wage and Hour Standards for Low-Wage Workers in an Era of Government Inaction and Employer Unaccountability* (2006),

<http://www.nelp.org/docUploads/Holding%20the%20Wage%20Floor%202006.pdf>

¹³ Restaurant Opportunities Center of New York and New York City Restaurant Industry Coalition, *Behind the Kitchen Door: Pervasive Inequality in New York City's Thriving Restaurant Industry*, p. 2, Jan. 25, 2005.

¹⁴ Domestic Workers United and DataCenter, *Home is Where the Work is: Inside New York's Domestic Work Industry*, Executive Summary (2003-3004).

¹⁵ U.S. Department of Labor, Bureau of Labor Statistics, *Characteristics of Minimum Wage Workers: 2002*, August 8, 2003.

¹⁶ Abel Valenzuela and Nik Theodore, *On the Corner: Day Labor in the United States* (January 2006).

¹⁷ Employment Standards Administration, U.S. Department of Labor, *Nursing Home 2000 Compliance Fact Sheet*, available at <http://www.dol.gov/esa/healthcare/surveys/nursing2000.htm>

¹⁸ William J. Scanlon, *Nursing Workforce, Recruitment and Retention of Nurses and Nurse Aides is a Growing Concern*: Testimony before the Senate Committee on Health, Education, Labor and Pensions, GAO-01-750T, at 13 (released May 17, 2001).

¹⁹ U.S. Department of Labor, *FY 2000 Poultry Processing Compliance Report* (2000).

²⁰ Bureau of National Affairs, *Daily Labor Report 87* (May 6, 1996) U.S. Department of Labor, *Labor Department: Close to Half of Garment Contractors Violating Fair Labor Standards Act*.

standards laws. If an employer is successful in characterizing an employee as an “independent contractor,” the worker has no rights to labor and employment protections, including the right to be paid the minimum wage and overtime or the right to form a union.²¹ Jobs where independent contractor abuses are common routinely violate basic fair pay and other workplace rules.²²

Workers in many of these jobs make the minimum wage *or less*. The federal minimum wage is currently \$5.15/ hour; for a full-time worker that translates into an annual income of only \$10,712. The federal poverty level is \$13,690 for a family of two, meaning that minimum wage earners are not making ends meet and are otherwise eligible for public benefits.²³

What does all of this mean? It means we have an underclass of hard-working men and women who cannot make ends meet for their families. In 2004, 7.8 million people in our country were classified as “working poor,” working at least twenty-seven hours a week but still making below the federal poverty level.²⁴ Two million workers make at or below the minimum wage, according to the Bureau of Labor Statistics, and the Urban Institute found that 2.2 million immigrant workers make less than the minimum wage.²⁵ The employer-backed Employer Policy Foundation estimated that workers would receive an additional \$19 billion annually if employers obeyed workplace laws.²⁶

Our economy is hurt, too, by rampant workplace violations. Sub-par wages below even the minimum wage fail to drive our economy, and independent contractor abuses result in billions of dollars in lost tax and payroll revenues for our federal and state governments.²⁷

²¹ See Testimony of Catherine K. Ruckelshaus, National Employment Law Project, before the House Committee on Education and Labor, Subcommittee on Workforce Protections, March 27, 2007, available at <http://www.nelp.org/docUploads/IndependentContractorTestimony2007%2Epdf>

²² *Id.*

²³ Department of Health and Human Services, 2007 HHS Poverty Guidelines, <http://aspe.hhs.gov/poverty/07poverty.shtml>.

²⁴ Bureau of Labor Statistics, U.S. Department of Labor, *A Profile of the Working Poor, 2004* (2006), available at <http://www.bls.gov/cps/cpswp2004.pdf>.

²⁵ U.S. Department of Labor, Bureau of Labor Statistics, *Characteristics of Minimum Wage Workers: 2002*, Aug. 8, 2003; Randolph Capps, Michael E. Fix, Jeffrey S. Passel, Jason Ost, & Dan Perez-Lopez, *Profile of Low-Wage Immigrant Workforce*, Urban Institute, Oct. 27, 2003.

²⁶ See Craig Becker, *A Good Job for Everyone*, LegalTimes, Wk. of Sept. 6, 2004, Vol. 27, No. 36.

²⁷ See Testimony of Catherine K. Ruckelshaus, National Employment Law Project, before the House Committee on Education and Labor, Subcommittee on Workforce Protections, March 27, 2007, available at <http://www.nelp.org/docUploads/IndependentContractorTestimony2007%2Epdf> (citing studies showing increased tax receipts by \$34.7 billion over the period 1996-2004, and state studies in NY and MA finding that noncompliance with payroll tax laws resulted in

B. U.S. DOL is Not Enforcing its Laws

A lack of a strong public enforcement presence on workplace standards has certainly contributed to these dismal conditions. But even in the face of persistent and seemingly intractable sub-par jobs that have persisted for years, the DOL has not made it a priority to stem these abuses.

The Wage and Hour Division (WHD) at DOL enforces many laws, including the Fair Labor Standards Act (FLSA), which sets the minimum wage and overtime rules, prohibits retaliation against complaining workers, and restricts child labor.²⁸ The FLSA authorizes lawsuits by DOL on behalf of employees, as well as lawsuits by individual employees. WHD also enforces the Davis-Bacon Act, requiring payment of prevailing wages on federal government contracts for the construction, alteration, or repair of public buildings or works. There is no right on the part of aggrieved employees to enforce Davis-Bacon; only the Secretary of Labor has that right. WHD enforces the Service Contract Act, another prevailing wage law covering service contracts, such as those for removal of debris and trash; custodial, janitorial, or guard service; cafeteria and foodservice; packing and crating. There is no right on the part of aggrieved employees to enforce SCA; only the Secretary of Labor has that right.

Other departments within DOL enforce the Occupational Safety & Health Act (OSHA), which provides no private right for a worker to seek remedies in court. For guestworkers brought into the Gulf Coast on H2B or other visas, the DOL is the only agency charged with enforcing labor violations under the H2B program.

While public agencies are by their nature underfunded and understaffed, DOL has been particularly under-subsidized in recent years. In addition, it has failed to use its resources strategically, as it has in the past, to have the broadest impact.

From 1975-2004, the budget for DOL Wage and Hour investigators decreased by 14% (to a total of only 788 individuals nationwide), and enforcement actions decreased by 36%, while the number of businesses covered by wage and hour law increased from 7.8 million to 8.3 million.²⁹ By 2007, the DOL's overall budget used to enforce wage and hour laws will be 6.1 percent less than before President George W. Bush took office.³⁰

losses as large as \$1 billion each year in NY workers compensation taxes, and annual losses of up to \$278 million in uncollected income taxes, unemployment insurance taxes, and worker's compensation premiums in MA).

²⁸ 29 U.S.C. 201 *et seq.*

²⁹ Annete Bernhardt and Siobhan McGrath, *Trends in Wage and Hour Enforcement by the U.S. Department of Labor, 1975-2004* (September 2003).

³⁰ Judd Legum, Faiz Shakir, Nico Pitney, Amanda Terkel, and Payson Schwin, *Labor—Bush Priorities Hurt Workers, Help Employers (Under the Radar)*, The Progress Report, June 14, 2006.

Legal resources at DOL have also suffered, impacting its ability to enforce its laws. In fiscal year 1992, the Solicitor's Office, responsible for enforcing all laws under DOL's jurisdiction had 786 employees,³¹ an increase of 59 percent since fiscal year 1966. But, since fiscal year 1992, despite the fact that two additional laws have been added to the responsibilities of the Solicitor's Office: the Family and Medical Leave Act (FMLA) of 1993, and substantial amendments to the Mine Safety and Health Act (known as the Mine Improvement and New Emergency Response Act) in 2006, the number of employees of the Solicitor's Office has declined markedly; in January 2007, it was down to 590 employees.³²

DOL has focused its attention on employer compliance and education in the last eight years,³³ and has deemphasized audits and affirmative investigations. Some of the few enforcement actions it did engage in have been challenged as insufficient: a celebrated settlement with Wal-Mart over child labor violations in Connecticut aroused the wrath of Representative George Miller, Senator Dodd and others, who demanded that DOL investigate why it would permit Wal-Mart to have fifteen days to fix any worker complaints before DOL would investigate.³⁴

Disturbingly, in the context of fewer enforcement resources overall, DOL has affirmatively intervened in ongoing litigation on the side of employers. In one instance, DOL supported the employer's side in an opinion letter sought by a trade association during the pendency of litigation³⁵, and in another, wrote an internal memorandum purporting to clarify the intent of its previously-enacted regulations regarding coverage of home health care workers under the minimum wage and overtime, supporting the employer's argument that the worker was not covered while the case was pending before the U.S. Supreme Court.³⁶

³¹ U.S. Department of Labor Budget Submission to Congress for Fiscal Year 1993.

³² "Legal Services," in volume 3 of the U.S. Department of Labor's *FY 2008 Detailed Budget Documentation*, pp. DM-28 to DM 28, available at www.dol.gov/dol/budget/2008/PDF/CRJ-V3-02.pdf. Although the Solicitor's office had 590 employees in January 2007, it had funding to pay for only 551 employees. *Id.* at DM-28.

³³ See, e.g. DOL Officials Travel to Provide Compliance Assistance on New Overtime Rules, <http://www.dol.gov/opa/media/press/esa/ESA20041081.htm>

³⁴ See U.S. House of Representatives, Representative George Miller Press Release, *Inspector General Agrees to Review Deal Between Wal-Mart and Department of Labor, Says Miller*, February 18, 2005. See also Diane Stafford, *Wage and Hour Cases: Worker Advocacy Groups Object to Practice*, *The Kansas City Star*, October 1, 2006 (describing DOL settlements of half of unpaid wages owed).

³⁵ BNA, Inc., *Workplace Law Report, Wage and Hour Official Faces Criticisms Over Opinion Letters Linked to Litigation*, March 2, 2007, ISSN 1546-0266.

³⁶ U.S. Dept. of Labor, *Wage & Hour Advisory Memorandum, No 2005, Application of Section 13(a)(15) to Third Party Employers* (December 1, 2005), available at <https://dol.gov/esa/whd/FieldBulletins/AdvisoryMemoranda2005.pdf>

DOL's wage and hour law enforcement is nearly wholly conducted based on worker complaints, and low-wage and immigrant workers face serious barriers to enforcement.³⁷ In 2001, WHD conducted as many as 55% of its investigations by fax or phone, and it is five times more likely to find violations of recordkeeping requirements when it visits a workplace.³⁸ Workers are afraid to come forward to complain. Workers fear retaliation (including termination) by their employers, which may cause them to quietly accept substandard conditions.³⁹ The United States General Accounting Office (GAO) observed in a report on day labor in the United States that government agencies are unable to do their job with respect to day laborers because they do not find out about violations.⁴⁰

Undocumented workers are particularly vulnerable to workplace abuse, discrimination, and exploitation as well as the fear of being turned over to the INS.⁴¹ Recent ICE raids on workplaces with pending workplace violation investigations creates confusion and fear among workers, and sends a message that the U.S. government will enforce immigration laws against workers, but not labor standards laws against employers.⁴²

Unions are an important protective buffer for workers seeking to improve their jobs, and a lack of union presence in the workplace causes workplace standards to decline.⁴³

³⁷ For example, in 2004, 74% of all WHD enforcement was from worker complaints. David Weil and Amanda Pyles, *Why Complain? Complaints, Compliance, and the Problem of Enforcement in the U.S. Workplace*, Comp. 27 Labor Law & Policy Journal 59, 60 (2006).

³⁸ United States General Accounting Office (GAO), *Labor's Efforts to Enforce Protections for Day Laborers Could Benefit from Better Data and Guidance*, GAO 02-925, September 2002, at p. 18-19.

³⁹ See, e.g. *Mitchell v. Robert de Mario Jewelry, Inc.*, 361 U.S. 288, 292 (1960); *Contreras v. Corinthian Vigor Ins. Brokerage, Inc.*, 25 F. Supp. 2d 1053, 1058-59 (N.D. Cal. 1998).

⁴⁰ U.S. General Accounting Office, *Worker Protection: Labor's Efforts to Enforce Protections for Day Laborers Could Benefit from Better Data and Guidance*, GAO 02-925, 14 (September 2002).

⁴¹ See, e.g. *Rivera v. NIBCO*, 364 F.3d 1057, 1064 (9th Cir. 2004), cert. denied, 125 S.Ct. 1603 (2005).

⁴² See The Oregonian, *Fresh Del Monte Subject of Worker Safety Probes*, June 13, 2007 (describing an ICE raid on a Del Monte plant that had two pending OSHA investigations underway, where workers were rounded up and detained.)

http://blog.oregonlive.com/business/2007/06/fresh_del_monte_subject_of_wor.html

⁴³ See e.g. David Weil, *Enforcing OSHA: The Role of Labor Unions*, 30 INDUS. REL. 21, 22 (1) (Winter 1991); Cynthia Estlund, *Rebuilding the Law of the Workplace in an Era of Self-Regulation*, 105 COLUM. L. REV. 319, 362 and passim (describing the important role unions play in monitoring worksite conditions in today's era of "chronic under enforcement" of workplace standards) (March 2005).

Ninety percent of workers in this country are unrepresented by a union, even though most workers (57%) would vote for a union if an election was held at their worksite.⁴⁴

When the risk of enforcement is small, systemic violations of wage and hour laws become the norm in these sectors, and sweatshop conditions prevail.⁴⁵

III. Possibilities for a DOL Renaissance

When the DOL does enforce its workplace laws, it makes a difference in the wage levels of more than just the workplaces it chooses to enforce against.⁴⁶ Workplace enforcement of basic fair pay laws should be at a level to send a message that America will not tolerate non-payment and underpayment for work.

DOL can have an impact with strategic attention paid to a geographic region, like New Orleans, or to a particular sector or set of jobs, like any of the low-wage sweatshop jobs profiled above. This section will highlight some proposed reforms, noting where DOL need only resurrect a program or set of strategies it has employed in the past. These modest reforms, in particular the ones where DOL already has a track record and knows how to do them, could mean a significant change for workers in the Gulf coast and elsewhere around the country, with little hardship for DOL.

- Target low-wage industries with persistent violations of bedrock labor standards, like minimum wage and overtime, and health and safety. Target industries particularly prevalent in New Orleans with rampant violations are construction, day labor, and hospitality. Keep track of violations, conduct audits and investigations not solely based on worker complaints, and report on progress. DOL has done this in the past, with Initiatives in garment, agriculture, health care, and other low-wage jobs. In its *1999-2000 Report on Initiatives*, the DOL's WHD outlined a comprehensive compliance strategy for collecting data and ensuring future compliance.⁴⁷ DOL also launched a "No Sweat" Campaign, for which DOL had more than 100 garment firms sign its Compliance Monitoring

⁴⁴ See Frank Swoboda, *Labor Unions See Membership Gains*, Washington Post, p. E2, January 20, 2000; Peter D. Hart Research Associates, *The Public View of Unions* (2005).

⁴⁵ David Weil, *Public Enforcement/Private Monitoring: Evaluating a New Approach to Regulating the Minimum Wage*, 58 INDUS. & LAB. REL. REV. No. 2, 238-257 (January 2005).

⁴⁶ See David Weil, *Compliance with the Minimum Wage: Can Government Make a Difference?*, May 2004.

⁴⁷ U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, *1999-2000 Report on Initiatives*. (hereafter "1999-2000 DOL Report") See attached report in Word format.

Agreement, and it developed partnerships with community groups.⁴⁸ It also launched health care⁴⁹ and “Salad Bowl”⁵⁰ initiatives.

- Keep data on worker complaints coming to DOL, including wages and hours claimed by each worker, regardless of whether DOL “takes the case,” and keep data on results obtained by DOL, in case of enforcement.
- Seek more funding for more investigators, or reallocate existing funding to hire more investigators who speak a language other than English and who can research the extent of workplace standards in key sectors to make recommendations on fixing these problems. DOL has done this in the past.⁵¹
- Partner with community groups who have contacts in the local communities and develop plans for learning of worst abuses and for rectifying those violations, in concert with the groups, who are the “eyes and ears” of the workers. The Chicago Area Workers Rights Initiative between state and federal agencies and local community and labor groups is one example.⁵²
- Use DOL enforcement resources strategically to get at repeat violations, including going after “joint employers” in subcontracting jobs, where multiple levels of potentially responsible employers diffuse lines of responsibility for fair pay. Actively investigate employer claims of “independent contractors,” as suggested recently by the GAO.⁵³ DOL has done this in the past.⁵⁴
- Provide agency contact information and general rights information in multiple foreign languages so that immigrant workers can learn about their rights and complain of violations. *See, e.g., NYS Attorney General’s Labor Bureau information card* (available in ten languages).
- Allow workers to file claims anonymously so that they will not fear retaliation or possible deportation.

⁴⁸ http://www.dol.gov/wb/info_about_wb/sub2000.pdf

⁴⁹ <http://www.dol.gov/esa/media/press/esa/esa98185.htm>

⁵⁰ <http://www.dol.gov/opa/media/press/esa/archive/esa99073.htm>

⁵¹ *See* 1999-2000 DOL Report.

⁵² For information on the initiative, *see* <http://www.iwj.org/outreach.dol.html>.

⁵³ *Employment Arrangements: Improved Outreach Could Help Ensure Proper Worker Classification*, GAO-06-656 (July 2006), at p. 33, 35.

⁵⁴ *See, e.g.* DOL Report on agricultural initiatives, including FYI 1998 strategy to vigorously apply the joint employment standard under the AWPA and the FLSA (1998), http://www.dol.gov/wb/info_about_wb/sub2000.pdf.

- Share information with OSHA, state workers compensation and unemployment insurance offices to target repeat offenders. DOL has done this in the past.⁵⁵
- Reaffirm the DOL commitment to create a firewall between DOL and Immigration and Customs Enforcement (ICE), to encourage witnesses to come forward and prevent employer threats of deportation or other intimidation. DOL currently has such a policy.⁵⁶
- Aggressively pursue anti-retaliation protections in the FLSA, to send employers and workers a message that witnesses to labor standards abuses are protected.
- Reaffirm that in cases where the employer has not kept adequate records of hours worked and pay received, DOL will accept credible worker testimony on hours and pay, as established in the Supreme Court case *Anderson v. Mt. Clemons Pottery Co.*, 328 U.S. 680 (1946).
- Seek full liquidated damages and for the full statute of limitations so that employers fear getting caught by DOL and do not consider nonpayment a risk worth taking.
- Use DOL's "hot goods" power to seize goods produced in substandard working conditions. The federal government has this power to stop shipment of goods prepared under sweatshop conditions. 29 U.S.C. § 215 (a)(1).
- Refer complaints DOL receives but that it cannot handle to a private panel of attorneys or clinics trained and available to help. DOL has done this in the past, in Region 9 (in California and Nevada).

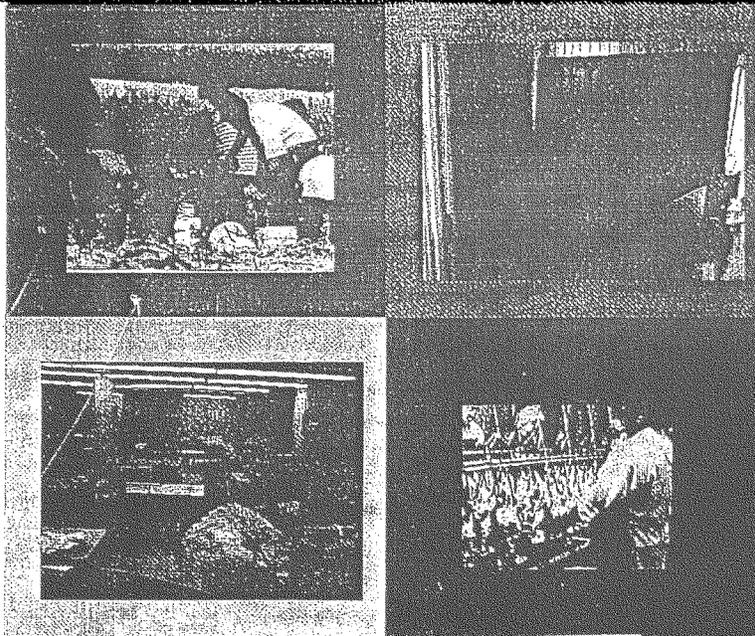
⁵⁵ See U.S. General Accounting Office, *Worker Protection: Labor's Efforts to Enforce Protections for Day Laborers Could Benefit from Better Data and Guidance*, GAO 02-925, 14 (September 2002), p. 17-18.

⁵⁶ See U.S. Department of Labor, *Memorandum of Understanding*, <http://www.dol.gov/esa/whatsnew/whd/mou/nov98mou.htm>.

U.S. Department of Labor

1999 - 2000 REPORT ON INITIATIVES

Employment Standards Administration
Wage and Hour Division



The U.S. Department of Labor's Wage and Hour Division is responsible for administering and enforcing a number of laws that establish minimally acceptable standards for wages and working conditions in this country. These labor standards statutes—including the Fair Labor Standards Act (FLSA), which sets the minimum wage, overtime standards and child labor restrictions—protect the most vulnerable in the workplace, *i.e.*, low-wage workers, the working poor and children.

Nationwide, Wage and Hour has approximately 1,500 employees. By the end of 2000, 949 of Wage and Hour staff were field investigators—a 21% increase since 1996. These new staff, many of whom are bilingual, have been deployed to those areas of the country where there are large numbers of low-wage workers and levels of compliance are low.

In both 1999 and 2000, the agency received additional funding from Congress. The agency's 2000 operating budget was \$141.9 million—up 17% from the 1998 level, and included additional funds sought and obtained to:

- Hire 36 additional investigators in 1999 and 30 in 2000 to enhance compliance activities, including child labor, in garment manufacturing and agriculture;
- Implement a nationwide education initiative through non-traditional partnerships with

The Wage and Hour Division is responsible for ensuring labor standards compliance in more than 7 million workplaces and protecting nearly 130 million workers. The agency seeks to achieve compliance with labor standards through its enforcement program, while promoting voluntary compliance through compliance education. Wage and Hour is responsible for enforcing and achieving compliance with:

- ◆ The Fair Labor Standards Act
- ◆ The Family and Medical Leave Act
- ◆ The Migrant and Seasonal Agricultural Worker Protection Act
- ◆ Field sanitation standards under the Occupational Safety and Health Act
- ◆ The Employee Polygraph Protection Act
- ◆ Certain employment standards and worker protections under the Immigration and Nationality Act
- ◆ Government contracts prevailing wage statutes such as the Davis-Bacon and related Acts and the McNamara-O'Hara Service Contract Act

intermediary organizations and institutions that provide services to workers and employers; and,

- Design and implement a nationwide toll-free number and "expert" system to allow the agency to respond more quickly and accurately to millions of information calls and thousands of employee complaints.

In addition, Wage and Hour continued to receive funding to pursue the process begun in 1999 for updating child labor hazardous orders to reflect current technologies, hazards, and other workplace factors.

determining compliance



"WHA is the largest agency within the Department of Labor with over 4,000 employees, pursues a mission, 'to enhance the welfare and protect the rights of American workers,' and is inspired by the vision, 'to achieve universally applied fair practices in the American Workplace.'"

*Testimony of Bernard E. Anderson,
Assistant Secretary for Employment Standards,
before the House Education and the Workforce
Subcommittee on Oversight and Investigations
June 27, 2000*

The Government Performance and Results Act (GPRA) calls on agencies to identify their core missions, establish meaningful challenging goals, and develop measures that will give Congress, the public and the agencies themselves a clear indication of the extent to which progress is being made towards the intended program results. GPRA requires agencies to develop strategic plans, structure their goals and measures, and focus their energies on achieving significant improvements in program results. GPRA—which is now an integral part of the budget process—provides the structure and the framework for Wage and Hour's strategic goals.

Consistent with GPRA's intent, Wage and Hour developed a new system of measuring its progress towards its goal of increasing compliance with the laws it enforces. Prior to this new measurement,

there was no other source of accurate, comprehensive information for which to create reliable compliance data.

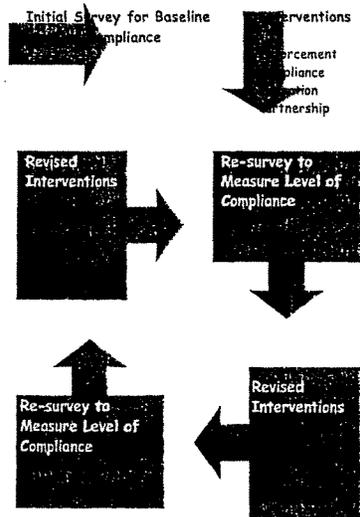
In order to determine a starting point—a compliance baseline—and whether progress is being made towards achieving its goal, Wage and Hour developed statistically valid investigation-based surveys as the means of measurement.

These measurement instruments serve four basic functions:

- They constitute a form of intervention to change compliance behavior because Wage and Hour conducts full investigations in carrying out the surveys;
- They provide Wage and Hour, the public, and the Congress with accurate measures of compliance levels from which changes can be assessed over the long term;
- They inform the agency on industry-wide non-compliance patterns from which strategies for changing behavior can be designed; and,
- They measure how successful the agency was in changing the compliance behavior of prior violators (recidivists). These recidivism measurements help the agency identify and replicate effective forms of interventions, and carefully evaluate unsuccessful intervention techniques.

Initially, a randomly selected representative number of establishments within a targeted industry are scheduled for investigation. From these investigations, a baseline level of compliance is established. Thereafter, interventions—based on Wage and Hour's multi-prong compliance strategy of enforcement, compliance education and partnerships—are designed and implemented in the intervening time period between the surveys. Subsequent compliance surveys—usually on a two- to three-year cycle—determine changes in compliance patterns and may shed some light on how effective intervening strategies have been in changing behavior to achieve compliance in a targeted industry. Such surveys also provide insight for modifying strategies and implementing a course for subsequent years.

Measurement Model



COMPLIANCE

As early as the enactment of the Fair Labor Standards Act (FLSA) in 1939, this Country recognized that responsible public policy decreed a basic guarantee of minimum standards for workers. The FLSA—and those workplace laws that have since followed—benefit and protect millions of workers. And, for that reason, compliance with these laws remains as crucial today as when first enacted. If we could say that each employer provides all its workers with the compensation and workplace standards set forth in the laws enforced by the Wage and Hour Division, then, as an agency, we will have "achieved" compliance. But having focused our attention and resources on those industries with some of the most pervasive compliance problems in this Country, we understand the dimensions of the task that we have set for ourselves—violative employment practices are often long-standing and pervasive, the extrinsic factors affecting compliance are difficult to overcome and the tools and resources for accomplishing the task are limited. It may be unrealistic to believe that we will obtain full and complete compliance, so the goals we have established and the strategies that we have deployed are geared toward achieving "substantial" compliance as defined by the individual characteristics of the targeted industries.

targeting low-wage

While Wage and Hour recognizes that resolving worker complaints and restoring back wages are important core functions of the organization, we found—in establishing five-year strategic objectives—that complaint-based investigations are not effective in securing widespread substantial compliance within an industry as a whole. Only those individual employers investigated by Wage and Hour based on complaints alleging violations would be likely to change their violative behavior and, often they would only change behavior related to particular kinds of violations identified during the course of an investigation. In short, Wage and Hour complaint-based interventions changed some behaviors of an individual employer, but they were not changing the compliance behavior of an entire industry. And, they were not producing long-term sustainable patterns of compliance.

In the early 1990s, beginning with agriculture and garment manufacturing, Wage and Hour began shifting its strategies toward pursuing industry-wide compliance. Garment manufacturing became the first of three low-wage industries targeted nationally. Agriculture and health care comprise the other two. In addition, Wage and Hour has renewed its efforts to examine child labor compliance in industries where the data indicate that the risk of serious injury of young workers is greatest. To date, Wage and Hour has determined baseline levels of compliance in 12 industries or industry sectors, and has conducted subsequent surveys in five.

TARGETING FACTORS

Enforcement data and history that demonstrate high rates of violations or egregious violations, including data that emerges from other agencies like the Department's Occupational Safety and Health Administration, the Immigration and Naturalization Service, and State labor departments.

Workforce demographics that show a high concentration of low-wage workers. These workers are among the country's more vulnerable—many are immigrant workers (legal or illegal) who become easy targets for exploitation. Low-wage workers rarely complain or seek assistance because they are either unaware of or afraid to exercise their rights.

Changes in an industry—growth or decline—frequently impact compliance levels. Labor-intensive industries striving to compete in a changing, often global, marketplace may view labor as a negotiable commodity at the expense of the workers.

Levels of Compliance in Nationally Targeted Industries				
Industry/Sector	Baseline Level of Compliance		Current Level of Compliance	
	Percent in Compliance	Year Determined	Percent in Compliance	Year Determined
Garment Manufacturing				
Los Angeles	22%	1994	33%	2000
San Francisco	57%	1995	74%	1999
New York City	35%	1997	35%	1999
Health Care				
Nursing Homes	70%	1997	40%	2000
Residential Care	57%	1999		
Agriculture				
"Salad Bowl" Commodities				
Tomatoes	75%	1996		
Onions	42%	1999		
Cucumbers	49%	1999		
Lettuce	65%	1999		
Garlic	38%	2000		
Poultry Processing	40%	1998	Zero	2000
Reforestation	30%	2000		
Child Labor in Industries Where Risk Of Serious Injury Is Greatest				
Full Service Restaurants	79%	2000		
Fast Food Restaurants	70%	2000		
Grocery Stores	83%	2000		

As importantly, every regional and local Wage and Hour office also targets local low-wage industries and carries out child labor initiatives within its jurisdiction. In 1999 and 2000, Wage and Hour offices conducted statistically valid surveys in a number of locally-targeted industries/industry sectors. All but two of these surveys established baselines. The two surveys—the

Southeast Region's Hotel/Motel initiative, and the Seattle District Office's State of Washington Adult Family Homes initiative—were resurveys of a targeted industry. The level of compliance in the Southeast Region's Hotel/Motel initiative declined. The level of compliance for the State of Washington Adult Family Homes stayed the same.

Compliance Rates in Local Low-Wage Industries

Location	Low-Wage Industry	Compliance Rate	Year
Northeast Region			
NE Region-wide	Temporary Help	79%	1999
Richmond, VA	Automobile Repair	64%	1999
Pittsburgh, PA	Restaurants	50%	1999
Pennsylvania	Day Care	47%	2000
Long Island, NY	Radiology Offices	83%	2000
Caribbean	Security Guards	24%	2000
Southeast Region			
Georgia	Day Care	26%	2000
South Carolina	Day Care	67%	2000
SE Region-wide	Hotel/Motel	56%	2000 ¹
Tennessee	Day Care	46%	2000
Carolinas	Consumer Loan/Mortgage	57%	2000
Gulf Coast, AL	Day Care	33%	2000
South Carolina	Child Labor Recidivism in Myrtle Beach	88%	2000
Jacksonville, FL	Florists	81%	2000
Louisville, KY	County Jails	74%	2000
South Florida	Security Guards	60%	2000
Tampa, FL	Full Service Restaurants	53%	2000

¹ The 1998 survey determined a baseline of 72%.

Compliance Rates in Local Low-Wage Industries			
Location	Low-Wage Industry	Compliance Rate	Year
Midwest Region			
Chicago, IL	Restaurants	42%	1999
Indianapolis, IN	Restaurants	47%	1999
Kansas City, MO	Day Care	24%	1999
Minneapolis, MN	Gas Stations	70%	1999
Columbus, OH	Restaurants	72%	2000
Des Moines, IA	Child Labor in Grocery Stores	48%	2000
Minneapolis, MN	Rainbow Foods Stores	5%	2000
Kansas City, MO	Day Care	55%	2000
St. Louis, MO	Nursing Homes	50%	2000
Springfield, IL	Day Care	68%	2000
Southwest Region			
Houston, TX	Roofing	77%	1999
Salt Lake City, UT	Fast Food Restaurants	59%	1999
New Mexico & Texas	Red Chili Peppers	44%	2000
Bexar & Webb Counties, Texas	Restaurants	69%	2000
Western Region			
Reno, NV	Hotels/Motels	62%	1999
Seattle, WA	Adult Family Homes	52%	1999
Los Angeles, CA	Grocery Stores	57%	2000
Los Angeles, CA	Garlic	47%	2000
Phoenix, AZ	Restaurants	77%	2000
Phoenix, AZ	Produce Sheds	69%	2000
Portland, OR	Restaurants	81%	2000
Portland, OR	Pharmacies	98%	2000
Seattle, WA	Adult Family Homes	53%	2000 ²
West Covina, CA	Child Labor	94%	2000
West Covina, CA	Residential Care	35%	2000

² The 1999 survey determined a baseline of 52%.

Mr. KUCINICH. Thank you for your testimony. We are now going to go to questions of the panel. Again, thank you both for being here.

We will begin with Ms. Washington. Thank you for your commitment to people. When you raise the questions about how people are being manipulated, set against each other, I was thinking about some hearings that we have held in the past about how all this billions of dollars of construction is going on in Baghdad and that area, and not Iraqis can't get jobs. It is an interesting symmetry in terms of policy of this reconstruction, so to speak.

Do you believe that the lack of enforcement contributed to low wages?

Ms. WASHINGTON. It is the lack of enforcement and failure to take a proactive stance. I mean, we saw the hurricane. We saw the devastation. We knew from the perspective of the Federal Government just how much manpower, money, and, you know, workers were needed in the first couple of months.

I was in Beaumont, for example, and in Austin, and, you know, we all saw the ads. "Go to New Orleans. Do the cleanups. Make \$15 an hour." So they were all over the Internet.

I would just think, as a person who has been practicing labor and employment law, who has dealt with the Department of Labor, I would think, jeez, that is where I need to be, because if I know there is an influx of all of these workers, I had better make sure that these employers, Mr. Halli, Ms. Burton, handle these people properly, and that is not what was happening.

Mr. KUCINICH. Let me ask you something, because it occurs to me people would want to go back home if they had a wage they could make.

Ms. WASHINGTON. Yes.

Mr. KUCINICH. But if they don't have a wage they can make or they can't get a job, are they going to go back home?

Ms. WASHINGTON. You know, the funny thing about New Orleans is that we are finding people coming home regardless sometimes, you know, and the only way to account for that is that folks really desperately want to be back in the city of New Orleans and they are taking jobs, be they African American workers who are returning or the immigrant workers who are there, sometimes taking jobs under really horrendous conditions. I think that is what we have to fight against.

Mr. KUCINICH. Did these low wages impact the ability of African American workers to return to their homes?

Ms. WASHINGTON. Yes, to the extent that, you know, if you don't have anybody to live with, you know, because the cost of living is so much higher in the city of New Orleans right now, if you don't have a place to stay that you can afford then you just can't come home.

What we have found is that, because many immigrant workers aren't bringing their families with them, and they can, you know, oftentimes live four, five, six to a room or to a house, they are not coming with families that they have to take care of, but instead of the ability to send money elsewhere. There is just a difference in what folks can tolerate.

From an advocacy perspective, again I have to say that what we do is fight for folks not having to tolerate it at all.

Mr. KUCINICH. Right.

Ms. RUCKELSHAUS, given your work on labor issues nationally, do you feel the trends within the Department of Labor exhibited in New Orleans are unique to the Gulf Coast?

Ms. RUCKELSHAUS. No, they are not. As I mentioned in my written testimony, New Orleans is an important microcosm, and it clearly a very recent and extreme example of the impacts of the lack of a public enforcer, but Department of Labor is weak all over the country.

I think one thing that is worth enforcing is that, because there is no State law that protects fair pay in Louisiana, Mississippi, and Alabama, there is no other option except for DOL for those States, so it is a bad situation there because there are two other States that have that also, but the Gulf Coast States are particularly hard hit.

Mr. KUCINICH. So in those States what do workers stand to gain from a more aggressive enforcement model, let's say, in those States, you know, like investigations that are part of the DOL?

Ms. RUCKELSHAUS. Then there might really be a wage floor. Maybe the minimum wage will mean something. Maybe there will, in fact, be overtime for more than 40 hours in a week.

I think without the Department of Labor's presence there, low-wage worker cases are really difficult to take. Southern Poverty Law Center can't do everything. Ms. Washington can't do everything. We need the public enforcer out there, and employers need to know they are there, because otherwise they are just going to continue to violate the law.

Mr. KUCINICH. I think the point that you make about there not being State enforcement in these particular areas makes it all the more imperative that this subcommittee focuses on the Federal enforcement, which is the only game in town at this point.

Ms. RUCKELSHAUS. Right.

Mr. KUCINICH. So that is why your testimony and Ms. Washington's testimony and participation is so important.

I am going to now go to my colleague for a final set of questions here.

Ms. WATSON. Before the hurricane, did the State have its Department of Labor and its own labor standards and laws?

Ms. RUCKELSHAUS. No. There is a State agency that looks at payday laws. If you don't get paid on time in Louisiana that is against the law. But there is no State Minimum Wage Act in Louisiana, so there is no requirement—

Ms. WATSON. Well, I am not necessarily looking at the wages, but, I mean, the standard circulations, licensing, etc., is there any State agency that does that?

Ms. RUCKELSHAUS. If there is a law on the books in Louisiana or Mississippi that requires licensing, there would be a public agency to enforce that, but there aren't any for labor standards that we have been talking about today.

Ms. WATSON. Ms. Washington, do you know if there is a Department of Labor, State Labor? I see somebody nodding his head in the back. If you would like to come up to the mic—Mr. Chairman,

I would like to call the gentleman who is nodding his head as somebody who might have this, because I am trying to get my mind around just where we put our efforts.

Mr. KUCINICH. Who are you, madam?

Ms. WATSON. Yes. And I wanted to know if there are any set standards at the State level and, if so, what department they would be in and how we could go after them, because——

Mr. KUCINICH. If the gentlelady will yield, if there is anybody here who could answer that question we would like them to come up to the table and be sworn. That is fine.

Ms. RUCKELSHAUS. I do know that there are no——

Mr. KUCINICH. Would you like to answer the question?

Ms. RUCKELSHAUS. There is no State agency that is in charge of enforcing labor standards, the workplace conditions that we have been talking about today.

Ms. WATSON. Because I have been watching the whole sort of aftermath of Katrina. In fact, we had the mayor out to Los Angeles. Of course, we had the Governor here and the mayor here, too. I understand the Governor is not running again. There was so much frustration, because going up the ladder was unclear and the bureaucracy was overbearing, and we saw that we argued, some of us, to keep FEMA out of this big, huge umbrella group called Homeland Security with 750,000 people transferred over to this big umbrella and all these agencies underneath. And at a time of crisis to unravel that was impossible. Therefore, we lost too many people and too much property and too much security among civil society.

So I see some places, and that is why I mentioned again to the Chair that I think we ought to come and we ought to raise these questions, and then when we come back maybe we can carry a piece of legislation that every single 1 of the 50 States must have a department that deals with these labor issues, because, you know, we are talking about people's jobs, people's welfare, their incomes. It just wiped out a whole segment in the Gulf.

So I see a lot of things wrong, and I think we need to come and raise these questions and come back here and see what kind of Federal policies we need to have.

Now, let me just ask one more question now, Mr. Chair.

This is to Ms. Washington. Do you sense that there is some kind of retaliation going on in whatever Department of Labor that exists in Louisiana, and do you see discrimination among the workers? What is your experience?

Ms. WASHINGTON. I can speak only anecdotally. I think anecdotally employees have been treated miserably equally, and be it because they have not been able to get back as quickly as they want to and/or because when they get back they find out, wow, we are getting treated really horribly, just like the folks who have been here for the past year doing the same doorman, sheet-changing position, you know. That is just difficult for me as an advocate who I would like to say prior to Hurricane Katrina and in those years where I represented employers for years prior to Hurricane Katrina, when we had a Department of Labor with investigators that just, you know, really hit us, and, you know, it is just nothing now. It is the wild, wild west.

Ms. WATSON. Well, I see the red light is on. I do have to leave, Mr. Chairman. But in my closing remarks, we have a lot of work to do along these lines, because the impact goes right to the individual American who was damaged in more ways, and we have a whole city that is hurting. New Orleans is not the only one. We went all along the Gulf Coast when we were down there, and it is town after town after town in Mississippi, Texas, and so on.

Then I saw the shabby response. I mean, it was embarrassing with the world view, and was inept with the local view, and you say now here the United States of America, and we think we can institute democracy around the globe and fight everyone's battle, and we can't even tend to the problems right here in this country.

I tend to want to make a difference in that way. I am sitting with the chairman who has the greatest sensitivity to the needs of all Americans and non-Americans and is out there on the campaign trail running for President. I would hope I would see in my day a Dennis Kucinich, because he really has a people's interest at heart. So I think what we need to do as a panel here is take in all this input and then go down there and go through the Department and go to the State and see what is lacking and put an infrastructure in place so that the system can move automatically should we have this kind of tragedy again—and we will.

So thank you very much to the witnesses. I appreciate your patience in staying here. It is after 5 now.

I thank you, Mr. Chairman.

Mr. KUCINICH. I am appreciative of the gentlelady's kind remarks and I want to once again, on behalf of the subcommittee, thank Ms. Washington and Ms. Ruckelshaus not only for participating in this panel, but for your dedication to the plight of workers who are all too often easy to ignore because they don't have the basic economic power that puts them in a position to be able to insist on their rights. This is not a small matter that you are here as their voice today.

We, of course, want to thank the participants in all three panels, those who are from the community groups representing the New Orleans' workers and their attorneys, and Mr. DeCamp and his associates from the Department of Labor.

This has been a hearing of the Domestic Policy Subcommittee of the Government Reform and Oversight Committee. The title of today's hearings has been Adequacy of Labor Law Enforcement in New Orleans. I am Congressman Dennis Kucinich, Chair of the committee, here with my colleague, Ms. Watson of California. We want to thank all of you for participating.

This committee stands adjourned.

[Whereupon, at 5:05 p.m., the subcommittee was adjourned.]

[The prepared statement of Hon. Elijah E. Cummings and additional information submitted for the hearing record follow:]

**CONGRESSMAN ELIJAH E. CUMMINGS OF MARYLAND
OPENING STATEMENT**

**“THE ADEQUACY OF LABOR LAW ENFORCEMENT
IN NEW ORLEANS”**

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
DOMESTIC POLICY SUBCOMMITTEE**

TUESDAY, JUNE 26, 2007

Mr. Chairman,

Thank you for holding this vitally important hearing to examine the adequacy of labor law enforcement in New Orleans in the aftermath of Hurricane Katrina.

As you know, I have been an outspoken critic of the way this Administration has mismanaged Hurricane Katrina and its resulting aftermath. Anyone who has traveled to New Orleans' Ninth Ward, as I have, will tell you about the overwhelming devastation. Whole city blocks were flattened, with their rooftops smashed to the ground.

This natural disaster—which we predicted—needlessly killed 1,577 Americans and displaced 1.5 million. Even now, almost two years after the tragedy, many of the victims remain displaced or homeless.

I have asked President Bush how, in good faith, he could spend billions of dollars to export Democracy abroad when people in this country still have no place to call home.

I told the President in 2005 that God would not be pleased with his response to Hurricane Katrina, and I stand by those words today.

This Subcommittee's investigation into the implementation of labor laws reveals more of the same.

As you know, Mr. Chairman, immediately following Hurricane Katrina, this Administration was unable to get an adequate amount of buses to transport people out harms way, nor was it able to send in the critical medical care that was needed to save lives.

We all can call up the horrific images of American suffering in substandard conditions of the Louisiana Superdome.

This Administration was asleep at the wheel, yet we know that President Bush was quick to repeal labor laws in Katrina's aftermath.

The President asserted that because of the state of national emergency, the enforcement of labor laws would impose an undue burden on reconstruction efforts.

He also shelved federal provisions that require that minority- and women-owned businesses have a seat at the table with federal procurement projects.

Mr. Chairman, I understand the urgency with which we needed to rebuild New Orleans; however, I am not convinced that we needed to do away with labor laws and affirmative action to do it.

Many of my colleagues in Congress agreed—and the President reversed his position at our urging.

But we know from the first-person testimony we will hear today, and from the Subcommittee's investigation, that labor laws are not being enforced in New Orleans as they should.

Further, only 1.5 percent of the \$1.6 billion in Hurricane-related contracts awarded by the federal government have gone to minority-owned businesses.

I welcome the opportunity to examine what is going wrong in New Orleans, and what we can do to fix it.

I look forward to the testimonies of today's witnesses and I yield back the remainder of my time.

ELIJAH E. CUMMINGS
Member of Congress

Wage and Hour Division
Gulf Coast Outreach Efforts
U.S. Department of Labor

In its report, Interfaith Worker Justice suggests that WHD is “waiting in an office for workers to come forward,” *i.e.*, taking only complaint cases, and waiting in the Hebert Federal Building for those complaints. The following is a brief description of some of the out-of-office outreach activities sponsored by WHD’s offices in the Gulf Coast region:

Weekly Events

Between February 2006 and August 2006, bilingual WHD investigators attended meals twice each week at the Good News Camp in City Park in New Orleans.

Since August 2006, bilingual WHD investigators have attended meals weekly at Lantern Light Ministries, located at St. Joseph’s Catholic Church in Mid-City New Orleans.

Other Outreach

WHD and the entities with which it has worked have distributed thousands of Recordkeepers, fact sheets, Handy Reference Guides, and other WHD materials (in English and Spanish) to affected workers in the Gulf Coast region, and have left these and similar materials at dozens of locations where affected workers are likely to visit. WHD personnel have also attended numerous community meetings.

WHD has made a conscious effort to identify opportunities and creative methods to reach out to the employee community in the Gulf Coast region, and has expended hundreds of outreach hours to educate workers about their rights under the FLSA. Below are examples – as should be clear from the response to the following question, the list is by no means exhaustive – of WHD’s outreach efforts:

- WHD mobilized its call center to respond to affected individuals.
- WHD Staff in Houston and Dallas provided outreach to employees and employers at community-sponsored job fairs where many of the evacuees had been relocated.
- WHD developed guidance on last paychecks, overtime, volunteer activities, and other Fair Labor Standards Act (FLSA) matters for distribution to hurricane evacuees and posted the information on its website.
- In October 2005, WHD staff in Dallas taped an interview with *Univision* to educate all Spanish-speaking workers on methods to ensure they were properly

compensated when they sought work in the affected areas. This interview also focused on the remedies available to workers if they were not paid for all the hours they worked.

- In December 2005, WHD staff in New Orleans visited each of the joint Federal Emergency Management Agency (FEMA)/Small Business Administration (SBA) Disaster Relief Centers in the New Orleans area to meet with site managers, to explain the assistance that WHD can provide, and to leave WHD publications in Spanish and English for distribution to individuals who visited the sites.
- WHD developed and disseminated a public service announcement in English and Spanish to increase awareness of the labor laws enforced by WHD. The two Spanish language radio stations in the New Orleans metropolitan area first ran the announcement, which ultimately led to WHD's participation in six community radio call-in programs over the course of the past year. These radio shows allowed WHD staff to respond directly to callers' questions on compliance. The success of the call-in programs – *La Fabulosa* and a similar community call-in program hosted by KGLA radio – have, in turn, provided opportunities for additional outreach in the New Orleans Hispanic community.
- In Mississippi, WHD also obtained commitments from local radio stations to run the public service announcement.
- The City of New Orleans agreed to include a link to WHD's Web site to provide information to those accessing the City's home page.
- WHD staff in New Orleans met with representatives of the Catholic Legal Immigration Network and the Workplace Justice Clinic of the Loyola University School of Law to discuss WHD's outreach efforts in the area, as well as opportunities for collaborative outreach efforts.
- WHD staff in New Orleans met with representatives of the Hispanic Apostolate and Catholic Charities to discuss WHD's outreach efforts in the area, as well as opportunities for collaborative outreach efforts.
- WHD staff in New Orleans met with the publisher and editor-in-chief of *Jambalaya*, the Spanish language newspaper and discussed how best to provide information to Spanish-speaking workers.
- WHD staff in Gulfport met with representatives of the Mississippi Immigrant Rights Alliance to discuss WHD's outreach efforts in the area, as well as to identify opportunities for collaborative efforts.
- WHD and Solicitor's Office staff met with the director of the Loyola Law School Workplace Justice Clinic to discuss opportunities to provide outreach and assistance to the workers of New Orleans. As a result of this meeting, the Solicitor's Office and WHD have participated in a number of events with, or at

the request of, the director of the Clinic. In addition, WHD has referred cases outside of its statutory authority to the Clinic, and the Clinic has referred several cases to WHD.

- WHD staff in New Orleans met with the General Counsel for the Honduran Consulate, who agreed to assist in WHD's outreach activities by providing workers that contact the Consulate with the one-page informational flyer regarding the Good News Camp. She also indicated that she would provide our office with a list of locations where workers send money home so that the flyers can be placed in those locations.
- WHD also promoted its availability through the media by issuing press releases – including Spanish-language press releases – on its office locations and presence at key outreach events.
- WHD's New Orleans staff met with the staff of St. Jerome Church of Kenner, Louisiana. St. Jerome's celebrates Sunday mass in Spanish and agreed to publicize upcoming WHD outreach events by announcing them at Sunday church services. In addition, WHD staff explained to church staff the issues for which WHD has responsibility, and provided contact information for future use by workers with wage issues.
- WHD's New Orleans office hosted an outreach event for Hispanic workers in the New Orleans area. Staff of the Mexican Consulate in Houston was present to participate, as was the Consul General of Honduras and members of the Catholic Immigration Network, Inc. The event was publicized by the two Spanish-language radio stations as well as the local FOX television station.
- WHD's New Orleans office conducted a seminar to educate the prime contractors working on contracts to rebuild New Orleans. Attendees included a number of prime contractors awarded contracts by FEMA and the U.S. Army Corps of Engineers (Corps), as well as some of the Corps contract administration staff. It is estimated that the contractors present had a total of approximately 1,350 subcontractors working on their contracts. The presentation, which addressed the FLSA, the Service Contract Act (SCA), the Davis-Bacon Act (DBA), and the Contract Work Hours Safety Standards Act (CWHSSA), lasted three hours, including a question and answer session. Those attending agreed that the session was extremely valuable.
- The Department reached out to the League of United Latin American Citizens (LULAC), seeking its assistance in the Department's outreach efforts on the Gulf Coast. LULAC agreed to distribute approximately 15,000 pieces of WHD literature to affected individuals on the Gulf Coast through LULAC's Gulf Coast Initiative.
- In February 2006, WHD staff in New Orleans attended a job fair jointly sponsored by the Hispanic Apostolate and a McDonald's Restaurant. Handy

Reference Guides in both Spanish and English were provided for distribution to job fair participants.

- In March 2006, WHD staffed a compliance assistance outreach booth at a Mexican Consulate-sponsored event in Gulfport, Mississippi. Approximately 400 people attended during the two day weekend event. WHD staff distributed publications, answered questions, and screened complaints.
- In March 2006, WHD staff detailed to the Mississippi Gulf Coast contacted and provided informational material to a number of contractors in the area, including the two largest contractors involved in renovations to the hotels and casinos.
- In March 2006, WHD staff in Atlanta provided publications and answered questions during the Katrina Aid Today training session held in Atlanta, Georgia. Katrina Aid Today is a consortium of 10 social service and voluntary organizations that provides specially trained managers to help families identify sources of support, develop personal recovery plans, acquire access to services, and take appropriate actions to rebuild their lives. In addition, WHD staff conducted a presentation to the group explaining the FLSA, SCA, and DBA.
- In March 2006, an investigator and a manager detailed to the Mississippi Gulf Coast spoke to approximately 180 subcontractors of a major SCA contractor for debris removal in Mississippi. They were advised of the requirements of the SCA and CWHSSA with respect to payment of the prevailing wage; overtime; recordkeeping; and child labor.
- In March 2006, the New Orleans District Director attended an outreach event sponsored by the Hispanic Apostolate. In attendance were 17 pastors of churches in the New Orleans area with large Hispanic congregations.
- The Birmingham District Director conducted a brief FLSA compliance assistance overview to participants of the Katrina Aid Today educational classes at Pearl River Community College in Hattiesburg, Mississippi. He also gave out Handy Reference Guides and *YouthRules!* pocket guides. There were approximately 63 people in attendance.
- In March 2006, WHD staff in New Orleans participated in a forum sponsored by the Loyola Law School Workplace Justice Clinic. The program provided information to the general public on post-Katrina rights.
- In April 2006, National and New Orleans District WHD staff attended a board meeting of Interfaith Worker Justice in New Orleans. In attendance were approximately 30 representatives of various faith-based and community advocacy groups. Over the course of an hour-plus question and answer session, WHD shared with the group a description of its efforts on the Gulf Coast.

- In April 2006, the New Orleans District Office provided compliance assistance to employees and employers attending a job fair sponsored by Employ America. Technical assistance and literature was provided to potential employees and to employers participating in the job fair.
- In April 2006, the New Orleans District Director participated in a workers' rights seminar held at Southeastern Louisiana University in Hammond, Louisiana. Approximately 27 organizations participated in the seminar, including organizations from New Orleans and the Mississippi Gulf Coast. Some of the organizations participating were ACORN, AFL-CIO, Catholic Charities, Interfaith Worker Justice, Laborers International Union of North America, Loyola Law Clinic, Mississippi Immigrants Rights Alliance, Service Employees International Union, Southern Poverty Law Center and National Immigrant Law Center. The District Director outlined the laws that WHD enforces and advised the audience of WHD's activities since Katrina. In addition, WHD distributed the flyer detailing its outreach events at Good News Camp.
- In April 2006, staff from the Gulf Coast District Office gave a speech to a group of Hispanic workers at Our Lady of Fatima Catholic Church in Biloxi. The speech covered FLSA, child labor, and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). The audience count was 135, with the event affecting approximately 200 employees.
- Solicitor's Office and WHD staff attended a Loyola Law School Workplace Justice Clinic class in April 2006. After a brief discussion of the litigation program and WHD enforcement, a question and answer period followed. The students asked questions on various aspects of the law and RSOL procedures. The students also had questions concerning complaints the law clinic received on "blue roof" contractors.
- In May 2006, WHD staff in Gulfport spoke to approximately 30 representatives of a construction company. The minimum wage and overtime requirements of the FLSA were covered, as were the issues associated with "independent contractors" and "joint employment." Special emphasis was placed on the child labor requirements to coincide with the approach of the upcoming school vacation period.
- In May 2006, WHD staff in New Orleans met with an organizer for the New Orleans Worker Justice Coalition, an organization made up of community groups advocating for immigrant/day laborers rights. The organizer regularly visits the many sites in New Orleans where day laborers gather in hopes of obtaining employment. He agreed to distribute WHD Recordkeepers and flyers indicating WHD's presence at the Good News Camp.
- In May 2006, bilingual WHD investigators attended a Mobile Mexican Consulate held in Baton Rouge, Louisiana on a Saturday. The event was held at the Catholic Deaf Center. WHD set a table with general information about FLSA.

The Handy Reference Guide, WHD general information fact sheets, and construction industry fact sheets were also provided, as were the Good News Camp flyers with the New Orleans District Office phone number. All written material provided was available in both Spanish and English.

- In June 2006, WHD staff in the Gulf Coast conducted a presentation at a compliance assistance seminar in Gulfport, Mississippi. The seminar, which was hosted by the Office of Federal Contract Compliance Programs (OFCCP), was for construction contractors operating in the Gulf Coast area and focused on DBA and SCA. Sixteen contractors attended, affecting approximately 1,525 employees.
- In June 2006, the New Orleans District Director was interviewed on local radio station WIST AM by the host of the *Shane Warren Morning Show*. Mr. Warren asked questions about whether or not undocumented workers are entitled to the protections of the laws that WHD enforces. The District Director took the opportunity to explain to the listening audience about the protections provided by the various laws that the agency enforces and the limitations in terms of coverage for employers. WHD's outreach activities at the Good News Camp was announced, and the contact information for the New Orleans office was provided. The interview lasted approximately 15 minutes.
- In June 2006, the New Orleans District Office, with the cooperation of the U.S. Army Corps of Engineers, sponsored a seminar for prime contractors and subcontractors working in the New Orleans area in Katrina recovery efforts. The Southwest Regional Wage Specialist provided training in SCA, DBA, and CWHSSA and the New Orleans District Director provided training in FLSA principles, including hours worked, independent contractors, regular rate and recordkeeping. The seminar was held at the New Orleans headquarters of the Corps. Approximately 50 persons were in attendance, representing various levels of the multi-tiered subcontractor system.
- In July 2006, the New Orleans District Director met the lead pastor and the manager of Light City. Light City, a group of local ministers of varied faiths, races, and cultures, is the recipient of the Good News Camp's tents, equipment, and donated items (the Camp ceased operations on August 1, 2006). Light City is located near the Ninth Ward, an area of the city that experienced extremely heavy damage and is expected to experience a high volume of construction activity.
- On a Sunday in August 2006, bilingual investigators participated in an outreach event sponsored by the Office of the Hispanic Apostolate of the Archdiocese of New Orleans. The purpose of the event was to provide information to workers about their rights and about various services in the New Orleans area. The event, which was held at St. Joseph's Church in New Orleans was widely publicized, and was a great success, with approximately 300 workers attending. The investigators took information from workers who indicated issues with their wages. WHD literature in both Spanish and English was provided to the

attendees. Other organizations that participated included OSHA, the Mexican Consulate, the Salvation Army, the Red Cross, Catholic Charities, the New Orleans Health Department and FEMA.

- WHD is working with the Executive Director of the Hispanic Apostolate of the Archdiocese of New Orleans and with the pastor of a large Spanish Ministry in New Orleans to identify an appropriate venue to provide outreach to the Hispanic population in the New Orleans area.
- In September 2006, staff in Gulfport provided compliance assistance materials to a Home Depot located in Biloxi as a means to educate small contractors who purchase materials from the Home Depot store.
- In September 2006, staff in Gulfport provided compliance assistance publications to a Catholic shelter in Biloxi, which agreed to pass the information out, and make copies to pass out as needed.
- In September 2006, staff in Gulfport gave an FLSA presentation to the Gulf Coast Business Technology Center. The audience included a variety of employers from the Mississippi Gulf Coast area. Representatives of 49 employers attended the presentation, affecting approximately 7,500 employees.
- In October 2006, staff in Gulfport attended a meeting of the Mississippi Associated Builders and Contractors. WHD's speech focused on joint employment issues under the FLSA. Representatives of 44 employers were present, affecting approximately 4,500 employees.
- In December 2006, staff in Gulfport provided compliance assistance to the Workforce Investment Network, an Employment Training Administration funded One-Stop center operated by the Mississippi Department of Employment Security.
- In December 2006, staff in Gulfport posted compliance assistance information and spoke with a number of day laborers at a day laborer site in Gulfport.
- In December 2006, staff in Gulfport met with the contracting officer for the Naval Facilities Engineering Command at the Naval Construction Battalion Center in Gulfport to discuss opportunities to provide compliance assistance.
- In January 2007, staff in New Orleans made contact with management of local home improvement stores (Lowe's and Home Depot). Local and migrant day workers often meet at such establishments and this outreach effort is being made to have flyers (regarding WHD's presence at the Lantern Light Ministry) distributed to these workers.

- In January 2007, staff in Gulfport made an FLSA presentation to employers at the Gulf Coast Business Technology Center in Biloxi, MS. Representatives of employers employing approximately 650 employees were in attendance.
- In January 2007, staff in Gulfport staffed an informational booth at a job fair sponsored by the WIN Center of Pascagoula in Hancock County, MS..
- In January 2007, staff in New Orleans contacted the Executive Director of the Hispanic Apostolate, who agreed to distribute the flyers announcing WHD's presence at the Lantern Light Ministry each week. The flyers in Spanish on one side and English on the other will be distributed at meetings attended by the Executive Director and at masses conducting services in Spanish.
- In January 2007, staff from the Jackson office met with representatives of the Mississippi Immigrants Rights Alliance to distribute AWARE Recordkeeper Booklets and AWARE Resource Manuals. The visit also included AWARE training.
- In February 2007, staff in New Orleans met with the Louisiana State Building and Construction Trades Council to advise the members of WHD's new location and contact information. Members were also encouraged to contact WHD to arrange compliance assistance to be delivered at members' monthly meetings.
- In February 2007, staff in New Orleans conducted a telephone interview with a reporter from the Jambalaya Newspaper, a local semi-monthly publication printed in English and Spanish. The interview covered primary areas of responsibility for WHD, including expanded assistance to employees at the Lantern Light Ministry.
- In February 2007, staff in Gulfport gave an FLSA presentation to Jackson County Chamber of Commerce members in Pascagoula, MS. The event was held at the WIN Job Center and there were 36 attendees, potentially affecting over 10,000 employees.
- In April 2007, staff in Mobile staffed a booth at the Associated General Contractors' Construction Safety Workshop.
- In March 2007, staff from Jackson and Gulfport met with representatives of the Biloxi Boat People SOS Office in Biloxi, MS. SOS is an advocacy group for Vietnamese workers in the Gulf Coast area. They were provided FLSA fact sheets in English and Vietnamese and were advised of the Gulfport office's contact information and the complaint intake process.
- In March 2007, staff in Gulfport met with representatives of the Central Bible Church, a nondenominational church with a predominantly Hispanic congregation. FLSA compliance information was provided and the church agreed to distribute the information at weekly services.

- In March 2007, staff in New Orleans erected two weather-proof display holders, which were filled with copies of the bilingual invitation poster to the weekly Lantern Light gathering. The holders are adjacent to a home improvement store, at a locally-owned truck stop and a mobile “meals on wheels” restaurant. Both are sites where day laborers gather and both have welcomed the day laborers.
- In March 2007, staff in New Orleans visited Hope House and spoke with its Day Laborer Project Coordinator. Hope House is a neighborhood-based non-profit organization that assists low income citizens with housing, food, rent, utilities, clothing, and adult education. Since Katrina the organization has assisted the day laborer population with wage issues, housing issues, and legal issues. The Coordinator agreed to accompany WHD investigators to day laborer sites. In addition, the Coordinator agreed to distribute WHD Recordkeepers so that workers can keep up with their hours and employer information, as well as the flyers announcing WHD’s presence at the Lantern Light Ministry.
- In March 2007, staff in Gulfport distributed compliance assistance materials to four Hispanic grocery stores, to be placed in their windows. These grocery stores are frequented by day laborers and Hispanic workers.
- In March 2007, the Day Laborer Project Coordinator for Hope House accompanied a bilingual Investigator to several of the identified sites throughout New Orleans where day laborers gather in hopes of gaining employment by area contractors.
- In March 2007, staff in Gulfport gave a presentation on DBRA/CWHSSA and FLSA requirements at a pre-construction seminar for contractors and contract personnel at Keesler AFB. Twenty-five people attended, representing approximately 350 employees.
- In May 2007, staff in New Orleans met with the Consul General of Honduras. During the visit, various methods of outreach were explored. WHD provided the Consul General with WHD literature in Spanish, to be provided to her constituents. The Consul General will be working on getting the two Spanish language radio stations in the New Orleans area to provide air time for one of our Spanish speakers to participate in a community call-in program with the Consul General.
- In May 2007, staff in Gulfport conducted an FLSA/SCA/DBRA presentation at the 2007 OFCCP compliance assistance seminar in Gulfport, Mississippi. The seminar included several employers involved the Katrina rebuilding process. Seventeen employers attended, affecting approximately 6900 employees.
- In May 2007, staff in Gulfport visited four Hispanic retail stores and one Catholic church with a predominantly Hispanic congregation. They provided these establishments with the FLSA Handy Reference Guide (Sp), AWARE Recordkeeper, Youth Rules Bookmarker and Quick Guide to Teen workers in

Construction, FLSA Basic Information Factsheet (Eng/Sp), Wage Hour Spanish Fact Sheets 1 and 43, and FLSA MW poster in Spanish. They also visited a pick-up point for “day laborers” and provided them with the same publications. These establishments were very receptive to the information and assistance being provided to the Hispanic community and agreed to get the “word” out to those who required our assistance.

- In June 2007, the Department of Labor sponsored an Employer Forum on the campus of the University of New Orleans - Lindy Boggs International Conference Center. The forum was called “Do It Right the First Time – Compliance, The *EASY* Way.” A total of 179 employers attended. DOL agencies including WHD, EBSA, OSHA, OFCCP, VETS, WB, and OWCP participated. The plenary overview session was followed by specific agency break-out meetings in which the employers were given the opportunity to attend two 1-½ hour workshops to hear detailed presentations from the agencies of their choice. WHD presented concurrent workshops on government contracts and FLSA. Each agency also staffed compliance assistance booths during the event which permitted the employers to gather more information and technical assistance.