

# Interfaith Worker Justice



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**Testimony of Ted Smukler  
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before the  
Domestic Policy Subcommittee  
House Committee on Oversight and Government Reform  
U.S. House of Representatives  
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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.