

**Testimony of Jennifer J. Rosenbaum
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before the
Domestic Policy Subcommittee on Oversight and Government Reform
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“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.

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.

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.

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 bunkbeds 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 are 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 checkstubs. 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.

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

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.

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 employers routinely under-reporting hours. A settlement based upon those employer records would dramatically undercompensate 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.