

**STATEMENT OF
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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.