

Testimony of Mr. Saket Soni
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**The H-2B Guestworker Program and Improving the Department of
Labor's Enforcement of the Rights of Guestworkers**

Committee on Oversight and Government Reform
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Chairman Kucinich and Members of the Subcommittee, thank you for the opportunity to speak about how the exploitation of guestworkers continues to be a critical building block in the ongoing reconstruction of New Orleans and the Gulf Coast since Hurricanes Katrina and Rita; exploitation that has been directly enabled by the inadequate response of the United States Department of Labor, Wage and Hour Division ("DOL-WHD").

My name is Saket Soni. I am the executive director of the New Orleans Workers' Center for Racial Justice. Founded after Hurricane Katrina as immigrant workers were increasingly locked into exploitative workplace conditions while long-time African-American residents were locked out of the fair jobs and fair wages necessary to return and rebuild their communities, the New Orleans Workers' Center for Racial Justice is dedicated to organizing workers across race and industry to build the power and participation of workers and communities. We organize guestworkers, day laborers, and homeless residents to defend the dignity and rights in the post-Katrina landscape.

The Alliance of Guestworkers for Dignity, a grassroots project of the New Orleans Workers' Center for Racial Justice is the only membership organization in the United States comprised of H-2B guestworkers and former guestworkers. Our hundreds of guestworker members include some of the most vital workers in the post-Katrina Gulf Coast economy-- the housekeepers and front desk clerks in New Orleans' French Quarter, the welders and pipefitters of the Mississippi Gulf Coast, construction workers across the Southeast, and the strawberry and sugar cane harvesters of Louisiana. They come from countries around the globe, including Dominican Republic, Mexico, Peru, El Salvador, Brazil, Bolivia, and India. Although they come to the U.S. from different countries and work in different industries, Alliance members have joined together to advocate for fair treatment on the job and immigration policies in the U.S. and their home countries that allow foreign workers and families to enter the United States into dignified life and work, without being pitted against U.S. workers.

Facing severe labor exploitation in an utter vacuum of federal worker protections, these guestworkers have organized and exposed exploitation within the program. Since Hurricane

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Katrina, hundreds of our members have also brought four major lawsuits against employers who abuse is exemplary of the realities of the guestworker program.

In the three and a half years since Hurricane Katrina, the Alliance has been in regular contact with hundreds of guestworkers imported to New Orleans and the Gulf Coast supporting them to obtain federally mandated wages for each hour work as well as fighting more severe and criminal forms of severe labor exploitation including human trafficking, forced labor, racketeering, and fraud. Most recently, in April 2009, we conducted a survey of over 100 members of the Alliance from eight different countries regarding their knowledge of abuse within the program and their confidence in federal worker protection agencies, including the United States Department of Labor. My testimony is based on this data as well as my firsthand knowledge of the work of the Alliance in the past three years.

My remarks today will address extreme level of exploitation occurring within the current H-2B guestworker program in New Orleans and the Gulf Coast as well as the crisis of confidence facing the DOL-WHD as it attempts to begin responsibly enforcing federal protections for guestworkers. In my view, the DOL-WHD has failed to provide a reasonable level of resources to combat exploitation of H-2B guestworkers generally, and this has been exacerbated in the general under-resourcing of the DOL-WHD in this region, as has been well documented by this Committee and the General Accountability Office (GAO). Because of this failure, the DOL-WHD, through its New Orleans and Gulf Coast offices, has failed to intervene in employers' increasing manipulation of the structural imbalances of power in the program to create an underground economy of labor not subject to federal worker protection laws. This harms both exploited guestworkers and U.S. workers who demand jobs at standards mandated by federal law. When unregulated, employers manipulate the extreme levels of debt facing guestworkers, the bonding of their visa to one employer, and the deportation or fugitive status facing a guestworker who is separated from his employer even because of retaliatory firing. As I will describe here further, these imbalances of power are exacerbated by aggressive retaliation by employers, local law enforcement, and the U.S. Immigration and Customs Enforcement (ICE) agency. In the resulting lawlessness, the DOL-WHD is nowhere to be found, and worker protection laws are not enforced. In my closing, I will suggest critical changes necessary for the DOL-WHD to fulfill its responsibility to enforce guestworkers' rights to federal minimum wage and overtime as well as contract wages and other worker protection provisions of the guestworker program.

I would like to start by illustrating the severe exploitation that our members face, exposing the patterns of abuse and illuminating the structures of policy and practice that create the conditions for abuse. In the last three years, hundreds of our members have been engaged in defending themselves from employers and fighting to hold employers accountable. These are some of their stories.

Just after Katrina, major New Orleans hotel tycoon Patrick Quinn III imported guestworkers to work as housekeepers and front desk clerks in his luxury hotel chain, Decatur Hotels. At a time when hundreds of thousands of African American survivors of Hurricane Katrina were looking for work and when unemployment in the region was at an all-time high, Quinn convinced the

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Department of Labor that he could not find a single U.S. worker willing or able to work in his hotels. Quinn had a profitable contract with FEMA at the time, and hundreds of New Orleanians were living in his hotels on FEMA vouchers – unemployed and looking for work. If Quinn was searching for U.S. workers, he would only have had to knock on the doors of his own hotels. Instead, he hired a Baton Rouge recruiter to bring guestworkers on H-2B visas from Peru, the Dominican Republic, and Bolivia. Quinn's recruiters lured workers into the jobs by making false promises, and charged thousands of dollars in illegal visa fees. Deeply indebted workers were brought into a decimated city, subjected to horrific conditions, and told they could not ask for even the basic improvements – or they could be deported. These had been permanent jobs that paid \$12 -- \$14 an hour before Katrina; Quinn had the guestworkers working on a temporary basis, paying the guestworkers starting at just over \$6 an hour. In other words, *Quinn could not find a U.S. worker willing or able to do the work at the wage rate, and in the conditions, that Quinn was offering.* With the help of the New Orleans Workers' Center, the workers fought back, seeking first to negotiate with Quinn for the most basic improvements. When Quinn refused, workers brought a major civil lawsuit (Castellanos, et al. v. Decatur Hotels, civil action no. 2-06-4340, U.S. Dist. Ct., E.D. La., and no. 07-30942, U.S. Ct. of Appeals for Fifth Circuit).

Meanwhile, Louisiana real estate agent Matt Redd reinvented himself as a labor broker and went to Mexico shopping for workers. The Department of Labor certified his company, LA Labor, to bring guestworkers from Mexico. Redd recruited economically desperate workers, selling them promises of post-Katrina construction work in New Orleans. He packed our members into vans and brought them instead to a small town about four hours away called Westlake, Louisiana. He confiscated workers' passports to hold them in his employ and leased them out to car washes, garbage disposal companies, restaurants, and other small businesses across Lake Charles, Louisiana. When workers demanded the return of their passports, he repeatedly refused. Workers had to stage a public protest at great risk to their own safety, with help from residents and activists from the African American community in New Orleans, forcing the intervention of local police and news media, before they could get their passports back.

Agents for Mississippi shipyard Signal International, LLC recruited our members from India, promising them green cards, permanent residency. Welders and pipefitters were imported to the United States on H-2B visas after plunging their families up to \$20,000 in debt based on promises of greencards with family status. Signal and its agents then manipulated their indebtedness through fear and isolation, convincing them that they would face serious harm, restraint, and abuse of the legal process if they did not continue working for Signal. Furthermore, when they organized to collectively their rights, the trafficking ring again conspired with the involvement of armed private security in the forcible restraint and attempted deportation of the organizers while simultaneously quashing any resistance to the existing involuntary servitude and forced labor. One year after the attempted retaliatory deportations, workers courageously escaped from the labor camps. 250 workers reported Signal International, LLC and its agents to the Department of Justice, triggering a DOJ investigation into human trafficking that is still ongoing. Days after their escape, workers filed a major federal lawsuit (Kurian David, et al. v. Signal International, LLC, et al., civil action no.2-08-01220 U.S. Dist. Ct., E.D. La.) bringing claims of trafficking and racketeering against Signal International and its

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international recruitment chain. Workers then went on a Ghandian *satyagraha* truth pilgrimage from New Orleans to Washington, D.C. to expose the realities of the guestworker program and to demand that U.S. lawmakers search their souls about the terms on which they are willing to put migrant workers to work in the United States. When the Department of Justice continued to deny workers the legal protections Congress has mandated in the Trafficking Victims Protection Act for trafficking victims who come forward and cooperate with law enforcement, the workers launched a 29 day-long hunger strike, demanding that Signal be prosecuted and that they be granted “continued presence” in the United States. Instead of being rewarded for their courage in coming forward and reporting violations of federal law to U.S. authorities, workers were punished. Instead of immediate protections mandated by Congress for victims of severe forms of labor exploitation, they faced surveillance by Immigration and Customs Enforcement (ICE) while their debts and desperation continued to mount.

In Tennessee, while economic crisis engulfed families, a company called Cumberland Environmental Resource, Inc. defrauded the U.S. government to exploit foreign workers, excluded U.S. workers, and illegally attacked the fundamental right of all workers to organize. Cumberland submitted fraudulent applications to the U.S. government claiming that workers would be working for his company onsite in Brentwood, Tennessee. He claimed that he had these jobs and that he could not find U.S. workers to fill them. DOL certified Lang to bring workers on H-2B visas. When workers arrived, they learned that the jobs they had been promised did not exist. Workers languished for weeks, sometimes months, waiting for the work they were promised. They had plunged their families into debt to pay thousands of dollars in recruitment fees to Cumberland's agents. Some of the workers were forced to leave the deeds to their homes as collateral with recruiters, to guarantee that they would finish their contracts with Cumberland. Cumberland held the workers hostage to the hope of jobs that didn't exist, while their debts grew and their desperation rose. When Cumberland did provide jobs, the work was not in Nashville. Cumberland leased the workers out to other contractors across the South. Astonishingly, these included contractors working on local, state, and federal government worksites. Workers were employed on Maxwell Air force Base in Alabama, Camp Lejeune in North Carolina, Vanderbilt Hospital in Nashville, Veteran's Hospital in Nashville, and universities across the South. Cumberland violated the terms of the H-2B contract with the U.S. government and the workers. Workers finally asked to see their contracts. Cumberland refused. When workers asked for a meeting with the head of Cumberland, they were threatened with termination and deportation. Cumberland interrogated workers about their organizing efforts, and attempted to force workers to sign away their right to organize in closed-door meetings. When workers stood up for their dignity and rights and pressed for a meeting, Cumberland retaliated by firing them. The workers have filed complaints with the Department of Labor, asking that the Office of the Inspector General investigate Cumberland for fraud.

And earlier this week, our members from Brazil filed a major civil suit exposing Mississippi labor supply kingpins who Brian and David Knight. ([Aldomon Saucedo et al., v. Five Star Contractors LLC et al.](#), civil action no. 1-09cv 268HSO, U.S. Dist. Ct., S. D. Miss.). Their companies, Five Star and Knights Marine, manipulated the H-2B guestworker program and defrauded the U.S. government and vulnerable migrant workers to generate a large pool of easily exploitable workers for on-call labor at Gulf Coast shipyards. Lured by false promises, workers

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paid thousands of dollars in illegal recruitment fees to agents of the U.S. companies. Upon arrival in Mississippi, they were transported to a surveilled labor camp consisting of windowless portable metal buildings while they waited weeks to be leased out. They waited weeks without work as their debts grew and they became increasingly desperate for Five Star and Knights Marine to comply with their contractual promises to worker and the U.S. Government. Stripped of their dignity in the labor camp, workers fought back and to demand that the companies comply with their promises to them and the U.S. government. But Five Star and Knights Marine took advantage of the rules of the H-2B guestworker program—which renders guestworkers completely dependent on their sponsoring employer for legal status, employment, and housing—to further coerce and threaten the guestworkers. When worker Moises Santos submitted a petition on behalf of the workers, he faced illegal and retaliatory termination. Santos later filed claims with the National Labor Relations Board. In a watershed victory, Santos and won \$13,000.00 in back wages.

The stories of our members reveal a pattern of abuse – and illuminate the structure of exploitation. Workers arrive in debt. They are tied to one employer. Their legal status is tied to their visa. And there is no government agency regulating employers or responsible for holding employers accountable.

The result has been a human rights disaster.

Our organization recently conducted a survey of over 100 members of the Alliance of Guestworkers for Dignity from eight different countries regarding their knowledge of abuse within the program and their confidence in federal worker protection agencies, including the United States Department of Labor. The results clearly demonstrate the disastrous consequences of the guestworker program on workers – and warn that workers are experiencing a crisis of confidence in U.S. federal agencies whose job is ostensibly to intervene on behalf of workers to defend their labor rights. Workers are locked into exploitation, and are not willing to report the labor crimes of employers – because they have no basis for believing that the Department of Labor, the Department of Justice, and other federal authorities would help them. Recent scenarios, in fact, suggest that although exploitation is persistent, widespread, and well known, the federal government under the previous administration clearly punished workers for coming forward, rather than giving them the protection that they deserve.

The follow are key findings in our survey of guestworkers.¹

¹ Official survey data is on file with the New Orleans Workers' Center for Racial Justice.

Widespread Exploitation of Guestworkers in the Gulf Coast Is a Core Building Block of the Reconstruction of New Orleans and the Gulf Coast.

“We have seen many abuses of guestworkers—and they have been increasing. Now they are at their worst point.”

Edward Dahua, Peru, 40 years old.

Guestworkers surveyed unanimously confirmed what has been reported by Alliance members for the last three years—noncompliance with federal law is rampant within the unmonitored H-2B guestworker program in New Orleans and on the Gulf Coast since Hurricane Katrina. Furthermore, the federal government’s failure to enforce the law has drawn more unscrupulous employers to the program and emboldened those participating to commit more egregious violations of law. Increasingly, employer fraud and coercion rises to a criminal level of severe forms of labor exploitation, human trafficking, racketeering, and criminal fraud. As the quote from Mr. Dahua illustrates, guestworker participants themselves have experienced instances of abuse increasing in number and severity. Explained another way by Emilio Duran, a 32 year old guestworker from the Dominican Republic, “The fear is always going to exist, but because few people report problems, the employers every day are more abusive.” And workers were very clear that it was not just because of a few bad employers, it was because of the fundamental structure of the visa-- tying deeply indebted guest workers to one employer -- and guestworkers’ perceptions that U.S. government supports or at least acquiesces to unscrupulous employers.

Structural Inequality in the H-2B Guestworker Program Blocks Workers from Coming Forward.

“Guestworkers are afraid to report abuse. I’ve known people in Mississippi that have even been assaulted and didn’t report it because they were so afraid of losing everything—their job, their visa, everything. Guestworkers are really afraid of retaliation.”

Ignacio Zaragoza, Mexico, 39 years old.

As great as the crisis of exploitation itself is the crisis of confidence guestworkers have in the U.S. Government to intervene on their behalf. Over 100 workers surveyed in April 2009 reported across the board that they would not come forward to report abuse-- even when facing severe labor exploitation. Given the abject absence of government regulation of the H-2B program, government’s failure to resolve even the most extreme cases of labor violations in favor of workers, and the government’s inability to protect victim-witnesses during investigative processes, guestworkers are becoming increasingly unwilling to report even criminal activities of their employers. This is despite the fact that Congress has legislated and mandated that the federal government, including the DOL-WHD among other agencies, act on guestworkers’ behalf. Instead, our members who worked in the post- Katrina Gulf Coast clearly articulated that it is an unwritten benefit H-2B employers enjoy and rely on that guestworkers will not come forward to report abuse.

Although bad bosses exist, guestworkers and advocates are very clear the problem is not a few bad apples- the problem is the entire orchard is rotten. The structure of the visa outlines the elements of worker exploitation, creating the structure and incentivizing exploitative behavior on the part of employers. Guestworkers are clear that recruiters, subcontractors, employers, and even the local police have a stake in the economic system which turns guestworkers into exploitable and disposable machines to be used, abused, and cast aside through deportation when no longer wanted or needed.

Workers are also clear that the structure of the visa tying workers to one employer locks those power relationships in place. Many guestworkers that we surveyed are afraid that they will lose everything and be deported. They arrive with huge debts from recruitment, visa, and travel fees. If they are sent before they have an opportunity to earn the wages promised under their contracts, they will have to work their whole life to pay their debt.

Debts Incurred for Recruitment, Visa, Travel, and Extension Fees Block Guestworkers from Reporting Labor Violations.

“Guestworkers don’t report abuse because they are afraid that they will lose everything and be deported if they come forward. They have huge debts from fees to get the visa. If they go back, they might have to work their whole life to pay off these debts.”

Hemant Khuttan, India, 26 years old.

Guestworkers surveyed named crushing debts from recruitment, visa, travel, and extension fees as a main reason guestworkers do not come forward and report violations of federal law. Recruiting agents of U.S. employers regularly charge exorbitant fees to workers in their home countries, some of which are kicked back to U.S. based recruiters—in effect “selling” the job opportunity. Some workers also reported leaving deeds to their homes with recruiters as further “assurances” that they would finish the contract. Guestworkers borrow at high rates of interest, pledge land, and otherwise mortgage their futures on the promises of U.S. employers through their agents-- promises which are often false and generally unenforceable. Debts are often exacerbated when they arrive in the U.S. to find no work, or significantly less hours than promised in the contract. At the end of the contract period, recruiters and employers offer guestworkers a chance to extend their visa—again for thousands of dollars in fees. This increases the debt and starts the vicious cycle again.

Deep in debt and desperate to keep up with payments while also supporting families, guestworkers become a compliant workforce. They have no choice but to perform whatever type of work is provided, wherever it is offered, under any circumstances. We have seen guestworkers arrive under an H-2B visa for one employer only to be leased to construction sites and shipyards across the South, including universities, hospitals and military bases. Their jobs are switched among housekeeping, construction, etc. And guestworkers in virtual debt bondage acquiesce to any and all of this because the alternative is to return home without a lifetime of debt.

Guestworkers were also clear that employers manipulate their indebtedness, aware that the threat of retaliatory termination and sending them home is strong enough to keep most guestworkers from complaining. “Yes, we ought to report our problems to the U.S. government,” said Serman Morales, a 35 year old guestworker from Bolivia, “but the fear of losing everything is greater than our rights.”

Tying Guestworkers Employment to One Employer Blocks Them Reporting Labor Violations.

“The way it is structured now, we have to accept everything the employer says or become illegal.”

Victor Becerra, Peru, 48 years old.

Guestworkers lack the fundamental right to change jobs when they find themselves working for an employer who breaks the law. Their choices are to return to their home country deeply in debt and try to fight for their rights from there, attempting to cooperate with U.S. agencies often ill equipped to work with transnational workers or to remain working for the employer sponsoring their H-2B visa about whom they are complaining. Guestworkers know that this choice between two bad options leaves them vulnerable and powerless. “They should change the rules so that we can only work for one employer because this rule allows our employer to abuse us,” explained Oscar Bellido, a 50 year old guestworker from Peru. Many guestworkers implored that, at minimum, there be relief from this provision of the guestworker program in cases of illegal conduct by the employer. “We should be able to change employers when the employer is bad or abusive with us,” requested Franklin de Leon, a 34 year old guestworker from the Dominican Republic. “Otherwise, how can we protect ourselves from retaliation?”

Tying Guestworkers' Legal Status to Continued Employment Blocks Them from Reporting Labor Law Violations.

“Most guestworkers do not report abuses because they are afraid of going to jail or being deported.”

Ronivon Pereira da Luz, Brazil, 29 years old.

Finally, tying a guestworker's legal status to his continued employment facilitates unchecked retaliation and blocks guestworkers' participation in enforcing their legal rights. Workers from every country reported the same fears. Julio Sibrian, a 24 year old guestworker from El Salvador, succinctly summed up the reality for many guestworkers saying, “Most people don't report abuses because they are afraid of being deported.” He explained, “You come here to try to feed your family and give them a better life, and if you get deported, you have all this debt that you cannot pay.”

And while DOL-WHD has remained weak, ICE operates with a strong fist, often punching as directed by retaliatory employers. While Congress and the GAO have repeatedly confirmed that

DOL-WHD's enforcement activity in the Gulf Coast has been under-resourced and weak, guestworkers are clear that immigration enforcement is aggressive and often operates in the service of retaliatory employers. Alliance members have been detained by ICE and placed in removal proceedings at the behest of a temporary labor broker after he called immigration when they sought to meet with him and be hired pursuant to valid visas sponsored by his company. He invited them to lunch, called ICE, and ordered them detained. Other members have been surveilled by ICE even after coming forward and reporting themselves as victims of trafficking, turning over their names to the US Department of Justice and ICE. Furthermore guestworkers who believe themselves to be in-status have been detained at bus stations and other public places because their employers have lied about having filed for extensions of their visas to keep them employed and under their control.

Unchecked Retaliation by Employers Holds Guestworkers Captive to the System

“Guestworkers don't report abuses by their employer. People are afraid of the reaction of their employers. Like what happened with us-- our boss retaliated against us and sent guards to follow and threaten us in his truck. Guestworkers regularly suffer maltreatment and they stay quiet-- sometimes they even come back to work with the same company and suffer the humiliation again because they face so much economic desperation in their home countries.”

Alfredo Domínguez Lopez, Mexico, 31 years old

José Antonio Mendoza, a 29 year old guestworker from Mexico, makes the obvious point that, “People who bring workers to the U.S. should not have the right to threaten and retaliate against the workers, take their documents, or scare them.” Yet guestworkers we surveyed from around the world made this point again and again. Guestworkers emphasized that they did not report labor abuses because they feared retaliatory termination and deportation.

Some guestworkers also listed fear of detention by the police, exposing a Southern power structure where private security, local police, and immigration and customs enforcement too often work together in the service of employers. This fear is echoed by Alliance members who have seen employer and law enforcement cooperation firsthand. For example, in the Alliance's work, we have seen a U.S. based recruiter threaten workers based on the fact that he moonlights as a Mississippi police officer. Our members were confronted by a Mississippi police captain who arrived at a labor camp in uniform and explained the H-2B employment relationship to the workers as follows, “this man is your owner.” We've encountered Parish sheriffs in uniform who have been posted outside Louisiana labor camps used by shipyards to surveil travel in and out of the camps and meetings. We have fought the forced deportation of workers by a Mississippi shipyard who used hired armed private security to raid its own camp—purportedly at the advice of ICE. And guestworkers who have come forward and reported severe labor exploitation have uncovered covert ICE surveillance of their activities.

Recommendations for Improving the Department of Labor's Enforcement of the Rights of Guestworkers.

For all these reasons, DOL-WHD faces significant hurdles in encouraging workers to come forward, adequately investigating and resolving guestworker complaints, and in protecting victim-witnesses during an expeditious resolution of their complaint. As described herein, guestworkers experiences over the last three years have left them with the clear sense that deportation and not protection is the U.S. government's priority when it relates to immigrant workers—even those who have gone through the “legal channels” and are present in the U.S. on a valid employment-based visa defending federally protected labor rights. We therefore offer the following suggestions as a starting place for DOL-WHD policies that respond to and countermand the imbalances of power inherent in the program and begin to compensate for the vacuum in past enforcement.

Recommendations for Improving the Department of Labor's Enforcement of the Rights of Guestworkers.

My first recommendation is that the Congress and the DOL take seriously the expertise of workers arising from years of experience and often years of abuse as guestworkers. The DOL and indeed every federal agency has been deaf to the complaints, the testimonies, and the expertise of those directly experiencing the brutal everyday realities of the guestworker program. The recommendations of members of the Alliance of Guestworkers for Dignity should be the occasion for a real policy conversation. We ask that the DOL meet with our members in order to demonstrate that they are committed to listening to workers and creating policy that comes from experience. I would also like to reiterate the recommendations that come directly from the members of the Alliance to the Department of Labor as presented by the testimony on the first panel of my colleague Daniel Castellanos.

- DOL should ensure guestworkers who make complaints are not retaliated against by their employers. Guestworkers are at a high risk of retaliation because their visa is tied to one employer. If a guestworker is fired in retaliation and deported, DOL will not be able to finish the investigation and the rest of the guestworkers will be afraid to cooperate.
- DOL should prioritize enforcement of laws requiring repayment of illegal debts forced on guestworkers during initial recruitment and for extensions of the H-2B visa. The consequences of these extreme debts on families keeps many guestworkers from demanding their rights because they fear being deported back into debts they cannot repay
- DOL should assist the guestworkers in remaining in the United States with work authorization during the investigation and resolution of the complaint. Because guestworkers are tied to the employer sponsoring their H-2B visa, employers easily exploit them. Guestworkers facing exploitation should be able to leave an abusive employer and receive adequate protections from the government to remain and work legally in the United States during the investigation

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- DOL should hire and train special staff to respond to guestworker complaints. DOL should be the point of access for guestworkers who are paid illegal wages, trafficked, defrauded, and retaliated against by their employers. DOL-WHD staff should have the capacity and training to investigate and resolve complaints within its jurisdiction as well as screen and refer complaints exposing broader criminal actions by employers, including severe labor exploitation and fraud in foreign labor contracting. DOL should increase its language capacity to account for increasingly global recruitment of guestworkers.
- DOL should develop an outreach plan to inform guestworkers of the rights they have and the way to contact DOL. The plan should include mandatory postings by employers at worksites and labor camps where H-2B guestworkers work and live listing their rights and contact information for the DOL. DOL should also plan ahead to arrange for interpreters in languages spoken by guestworkers in their region.
- DOL should ensure cases of severe labor exploitation, including human trafficking, that come in to DOL as complaints about federal wage and hour violations are identified through screening and referred to trained investigators working in collaboration with the Department of Justice.
- When guestworkers make complaints, DOL should expedite its investigation and resolution. Because guestworkers are present in the United States on temporary contracts, complaints should be investigated and resolved while the guestworkers are still in the United States. Otherwise DOL may lose its witnesses and guestworkers who have returned home may never receive their unpaid wages.
- DOL should not grant visas to labor brokers. Without anyone checking to see if work is available, labor brokers lure vulnerable workers into debt with lies and false promises.
- DOL should prohibit employers, recruiters, lawyers, and others who abuse the program from bringing in guestworkers in the future.
- DOL should report annually on the number of complaints received by H-2B guestworkers, the way they are resolved, and the percentage of settlement funds that are distributed within six months and one year from the settlement.
- DOL should regularly consult with Guestworkers about its enforcement priorities to get firsthand experience on abuse within the program and obstacles to DOL-WHD's good faith enforcement attempts.
- DOL should revoke the December 2008 Bush Administration Midnight regulations. DOL should revoke the policy changes implemented clandestinely in the final days of the Bush administration that leave guestworkers even more vulnerable and exploitable than before and replace them with regulations that address the real problems guestworkers are facing

that I have described. I would also like to add the following recommendations for DOL and Congress.

Additional Recommendations for DOL.

- DOL should establish a special position reporting to the Administrator of the Wage and Hour division who screens, trains, and monitors criminal exploitation of workers including severe forms of labor exploitation, human trafficking, and criminal fraud. DOL should designate the authority to sign law enforcement certifications for T and U visa applications to this position.
- DOL should establish a special position reporting to Secretary of Labor Solis who is responsible for monitoring patterns of abuse of the guestworker program across the divisions of the Department of Labor and setting enforcement policies and priorities. This position should include liaisons in relevant subdivisions of the DOL including the Wage and Hour Division, Office of the Inspector General, the Employment and Training Administration, and the Officer of the Solicitor.
- DOL should establish a special position reporting to Secretary of Labor Solis who monitors enforcement of labor standards in the Gulf Coast. This administration's DOL remains responsible for the failure of the DOL in the face of epidemic wage theft, retaliation, and broader exploitation since Hurricane Katrina. Special planning, oversight, monitoring, and evaluation of these offices remains critical.
- DOL should prioritize complaints that involve retaliation and should be prepared to act swiftly, intervening where appropriate with DHS to seek deferred action, T visas, U visas, and other appropriate worker protections. This action is critical to ensure the enforcement of labor laws is appropriately balanced with DHS's immigration enforcement priorities. DOL should also pursue immediate injunctive and other immediate relief.
- DOL should train its staff on the rights guestworkers have to organize as protected by 8 C.F.R. § 214.2 (h)(17)(iii), Operating Instruction Operating Instruction 287.3a, (Revised 12/04/96; Added to INSERTS April 1999), redesignated as 33.14(h) of the SAFM) and the Nov. 23, 2003 USDOL Memorandum of Understanding.
- DOL should be aggressive in seeking available penalties against employers who willfully break the law, including liquidated damages.
- The Department should immediately end its non-enforcement policy related to point-of-hire, travel, visa, and recruitment costs which bring the guestworkers wages below the minimum wage. These costs are often imposed pre-employment and at the time H-2B extensions are sought.

- DOL should improve its response to FOIA requests related to applications for guestworkers as well as enforcement actions against employers violating the law. Such information should be easily accessible to U.S. workers, foreign workers, advocates, and the general public.

Conclusion

The effect of DOL-WHD's failure to enforce federal worker protection laws for guestworkers in the Gulf Coast has caused the suffering of individual guestworkers and their families as courageously presented by the first panel here today. As this Subcommittee has heard, in addition to not being paid federally protected wages, many workers suffered serious retaliation by employers, local law enforcement, and ICE when they tried to complain. The greater legacy, as our recent survey shows, is this: the only laws applicable to guestworkers in New Orleans and the Gulf Coast are the laws of power. In such a regime, the outcome is clear, and guestworkers have stopped reporting abuse and focused on mere physical and economic survival for themselves and their families. That lesson, as learned by guestworkers and their employers, has been carried throughout the United States as these workers are transferred to new guestworker jobs in Nashville, Tennessee and across the United States.

The Alliance therefore commends this Subcommittee for this hearing. A national response is needed to create a national policy ensuring enforcement of labor laws protecting guestworkers that in turn also improves the working conditions for all workers in the U.S., to strengthen the New Orleans and Gulf Coast Offices, and to change the practices of employers in the region. DOL-WHD offices should receive increased funding based on the population of guestworkers in their area. We further urge the Subcommittee to ensure that special resources are directed to DOL-WHD regions affected by Hurricanes Katrina and Rita and reiterate our past recommendations that future federal disaster responses with increased funding for federal contracting should 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.

The New Orleans Workers' Center for Racial Justice and the Alliance of Guestworkers for Dignity are committed to working with this Subcommittee and with the DOL-WHD to follow up on our recommendations and help develop rational policies that will result in enhanced labor protections and restore workers' confidence in the U.S. government.

Thank you for the opportunity to present this testimony to the Subcommittee. I look forward to your questions.