

## **New Orleans Workers' Center for Racial Justice**

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Testimony of Mr. Daniel Angel Castellanos Contreras  
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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  
Domestic Policy Subcommittee  
Thursday, April 23, 2009, 10 a.m., Rayburn HOB 2154

My name is Daniel Castellanos. I am from Peru. I am 37 years old. I am the husband of a woman who I love, and the father of two beautiful children who wait for me at home in Lima. I am a licensed engineer and the owner of a small business, but when a political and economic storm swept my country, Peru was engulfed in joblessness. My business collapsed, like thousands of others, and I found myself unable to provide for my children. I was faced with an impossible choice for a husband and a father: to live with the family I love, or to provide for them. I was forced to leave Peru in search of work. And so, in December 2005, I became one of the first guestworkers to arrive in New Orleans in the aftermath of Hurricane Katrina.

I am here today as an organizer with the Alliance of Guestworkers for Dignity, a grassroots project of the New Orleans Workers' Center for Racial Justice. As an organizer of guestworkers across the Gulf Coast, I have met with over 1,000 guestworkers from 10 countries, who have worked across the major industries of New Orleans and the Gulf Coast. I also speak on behalf of hundreds of guestworkers from Peru, Bolivia, and the Dominican Republic who were imported in the aftermath of Hurricane Katrina to work for Decatur Hotels L.L.C., a luxury hotel chain in New Orleans. And I speak on behalf of the hundreds of guestworkers from around the world with whom I have had direct and constant contact as an organizer – workers who have spoken out courageously against severe forms of labor exploitation within the U.S. guestworker program.

I am especially proud to be testifying in this Congressional hearing because I know firsthand what it took for us, as guestworkers, to be sitting here in front of you today. It is not easy for guestworkers to speak out and testify on their conditions in the United States. Aby Raju escaped from a surveilled labor camp, and then marched from New Orleans to Washington D.C. in the spirit of Mahatma Gandhi to expose the realities of the H-2B visa. When Miguel Angel Jovel Lopez spoke out against his exploitative workplace conditions, his employer fired him and threatened to deport him into virtual debt servitude. Miguel and his colleagues then went on strike to ensure that his employer follow U.S. labor law. We sit here today to testify with the hope that workers who come after us will not have to travel as far as we did far to seek justice.

We have already written to the Department of Labor about our concerns, and we join this Subcommittee in urging the Department of Labor to work to make sure the laws of the United States are enforced to protect H-2B guestworkers, who are made especially vulnerable by the imbalance of power between workers and employers in the rules of the program.

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My own experience as a guestworker began in late 2005, when I read an advertisement in the local newspaper in Lima, Peru that sought workers for the reconstruction of New Orleans. When I arrived at the recruiters' offices, there were already hundreds of others there, who read the same advertisement and saw in it the salvation of their families. The recruitment agency, called InterJobs, informed us that they needed construction workers. They promised us the world. They would pay \$10.00 to \$15.00 per hour, with 60 hours of guaranteed work per week. They would provide luxury housing with televisions and telephones in every room. They promised free food and transportation to and from work each day. It was a good offer. But it came with a price tag. We would ultimately have to pay approximately \$4000 each for the contract to work in the United States.

For Peruvian workers, this was an extraordinary cost-- representing years of savings -- but were desperate to solve our economic problems, and had no other options.

For the recruiters, it was a goldmine -- a market among economically desperate Peruvian workers. About 800 Peruvians paid recruiters the initial application fee of \$500.00. Only eighty of us received visas. So InterJobs, the recruitment agency, pocketed \$40,000.00 just for initial application fees.

We plunged our families into debt for the visas. I was one of the "lucky" applicants -- my visa was approved. So after the initial \$500.00, I had to pay \$1,500.00 more for the job contract. Then I paid an additional approximately \$1,400.00 for my plane ticket. The U.S. embassy also charged me \$110.00 for the interview. I also was obligated to pay for a series of vaccinations and medical exams which brought me to a total cost of over \$4,000.00. I borrowed at a high interest from a bank, and sold household items in order to pay the fees. It was huge investment for my family. But recruiters promised us we would recuperate the money very quickly once we came to the United States.

With my visa in hand, I left Lima for New Orleans. Despite the burden of an overwhelming debt, I arrived in New Orleans filled with dream of being able to dig my family out of their desperate circumstances.

In New Orleans, I found that I had arrived into a nightmare. The promises that the recruiters had made to us were false. I had been told I would be working construction -- helping to rebuild New Orleans. Instead, I found myself working for Patrick Quinn III, owner of a local luxury hotel chain called Decatur Hotels L.L.C. Quinn put us to work doing maintenance and housekeeping in his hotels. We had been promised \$10.00 to \$15.00 per hour. Instead we were earning \$6.02 to \$7.79 per hour. The guarantee of 60 hours per week became an average of only 20 to 30 hours per week--sometimes less. With so little work at such low pay it was impossible even to cover our expenses in New Orleans, let alone to pay off the debt we incurred to come to work and save money to send home.

Our families did not understand why we weren't sending money home. Out of love and shame we could not bear to tell them the reality we faced. The promises made to us had been lies. Instead of luxury housing, we were installed at a semi-destroyed, rat infested hotel with as many

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as eight people per room. Rather than provide transportation to work, Decatur often expected us to walk 45 minute everyday through destroyed areas of the city each day. At that time there was no public transportation. We were provided with food – but only for the first month. Later we learned that Decatur had been feeding us free food it had picked up from FEMA.

The other 300 guestworkers from Peru, Bolivia and the Dominican Republic had also plunged their families into debt to come. Our dreams were in pieces at our feet. The pressure from our families was unbearable – especially when we received news that our children had fallen sick or that someone from the bank had come by to make threats about our loan payments.

We were not in a position to change employers – the H-2B visa did not allow us to work for a company other than Decatur Hotels L.L.C. We tried to have a good-faith dialogue with our boss, Patrick Quinn. We asked him to make good on his promises to us. But he had no interest in changing our situation. After countless attempts at negotiation, Quinn refused to make even the most basic concessions to the workers. So, on August 17th, 2006 – close to the second anniversary of Hurricane Katrina – almost one hundred guestworkers filed a federal lawsuit against Decatur Hotels in New Orleans.

Decatur wasted no time in retaliating. As the lead plaintiff in the case and one of the main leaders in our campaign, I was fired immediately after we filed the lawsuit. Decatur claimed the firing had to do with job performance – but we all knew that this was another lie. It was clear Decatur fired me because I organized my coworkers to protest Decatur's treatment of us. He retaliated to make an example out of me and to intimidate the other workers into dropping out of our campaign and our lawsuit. It didn't work. The workers held strong against Decatur. We filed a charge with the National Labor Relations Board and added Fair Labor Standards Act retaliation claims to our lawsuit. Eventually Decatur was forced to reinstate me.

At that same time, we began to meet hundreds of other guestworkers across the post-Katrina Gulf Coast. They worked in restaurants, factories and shipyards, and they came from different countries. But all of us shared the common experiences of deep debt, broken promises and bondage to one company.

On January 21st 2007, we convened the first ever assembly of H-2B guestworkers in the United States. They were from countries all over the world working in industries and workplaces across Louisiana. We brought together hotel workers from New Orleans, welders and pipefitters from the shipyards of Houma, factory workers from Ponchatoula, housekeepers from La Place, and many others. At this historic meeting, we founded the Alliance of Guestworkers for Dignity, a guestworker-led membership body rooted in our belief that we who have lived the reality of the H-2B visa are the true experts on the guestworker program. Our voices need to shape public debate to create labor and migration policy that protects all workers.

I would like to share some of their stories with you now, to give you a glimpse of the reality of guestworkers.

Fernando Rivera came from Mexico, like I did, in search of work to feed his family. His boss, Matt Redd of LA Labor, broke all of his promises to the workers. He held Fernando and his co-

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workers in squalid conditions and leased them out for a profit to businesses in Lake Charles, Louisiana. Fernando wanted to leave his employer, but he was in debt – he had paid Redd's recruiters for the opportunity to work. And Redd confiscated the workers' passports, so that they could not leave, coercing them to continue to working for him.

David Arredondo is a welder from Bolivia who was recruited by Elizabeth Rassmuseen to work for a company called Five Star Contractors, LLC, only to be smuggled away by another recruitment agent and told not to work for Five Star. David and four of his brave coworkers decided they wanted to do the right thing – they decided to seek out the owner of Five Star, so that they could work for him at the promised worksite. When workers found the address of Five Star, they rang the doorbell. Brian Knight, the owner, invited the workers in, and offered them lunch. While they were eating, Brian Knight called immigration. Immigration and Customs Enforcement (ICE) agents quickly arrived and handcuffed David and the others, putting them in removal proceedings.

Guillermo Reyes Sanchez, a welder with over 30 years of welding experience, came on an H-2B visa from Veracruz, Mexico. Guillermo and his coworkers were promised work by a local labor broker called Black Hawk. But the work never materialized, and Guillermo languished in a crowded trailer with 30 others, uncertain of the future. Finally, the workers escaped Black Hawk's surveilled apartments. However, Black Hawk soon found them and arrived accompanied by Captain George Tillman of the Pascagoula Police Department and an additional uniformed officer. Captain Tillman told the workers that Black Hawk was "their owner." Captain Tillman ordered the workers to return with him back to Black Hawk's apartments. Otherwise, he told the workers, he would call immigration, who would come vans, pick them up, detain them for two months in jail and deport them. The workers escaped the control of Tillman and Black Hawk with the assistance and protection of local advocates.

These are just a few of experiences of our members as H-2B guestworkers in the Gulf Coast region. Despite the position of powerlessness that we find ourselves in as guestworkers in the U.S., we refuse to be silenced. We continue to publicly expose the realities of the guestworker program and to defend the rights of guestworkers. We have confronted recruiters, subcontractors, and the police -- the white power structure of the racist South. We have conducted citizens' arrests, triggered federal investigations, filed litigation, and freed guestworkers from conditions of involuntary servitude in labor camps and plantations. Our members have traveled on foot to Washington, DC and held hunger strikes to expose members of Congress and the U.S. Department of Justice to the exploitative realities of the H-2B program.

These stories of our members reveal patterns of abuse and illuminate a structure of exploitation. Employers are able to exert an extraordinary level of control over guestworkers – control that rises to the level of severe labor exploitation and abject coercion. The following are the fundamental ingredients of guestworker exploitation:

- **The Recruitment Industry Thrives on Guestworker Debts and Fraudulent Promises.** The growing crisis of joblessness in our home countries has turned recruitment into a bonanza industry, often with direct kickbacks to U.S. recruiters. Recruiters, acting as agents of U.S. employers, sell H-2B visas in the open market, and desperate workers

plunge their families into debt in order to work. Our members have paid anywhere between \$1,000 and \$20,000 to work on H-2B visas.

This means workers enter the U.S. under the pressure of debilitating debt. Members regularly spend the first three to six months of their ten month visa simply working to make up their debt. Others never manage to work it off—even by the end of their temporary visa. Workers are, in effect, indentured servants, working off their debt. Not only that, but workers who enter with the burden of debt cannot speak out against abuse. They risk being fired, and forced to return home to a state of virtual debt servitude.

Employers also control workers and keep them further indebted through promises of visa extensions. Workers have no ability to apply for their own visa extensions and employers and recruiting agents take advantage of this to squeeze more money out of workers and keep them from organizing. Workers are often given visas for as little as three months but told that they will get an extension; however this extension is held over workers' heads as blackmail-- if they do not bend to the will of the boss, they will be sent home, usually still in debt. Workers have to pay a second recruiting fee to receive these extensions which forces workers into in a vicious cycle of debt in order for them to maintain their employment and legal status.

- **Guestworkers Are Treated Like the Property of the Sponsoring Employer Because They Cannot Work for Anyone Else.** Guestworkers can only work for one employer. Because their visa is tied to the sponsoring employer, employers have total economic power over their H-2B workers. Workers cannot negotiate better wages and conditions, because if they were fired, they cannot legally work for anyone else. Workers have no leverage and therefore are in no position to negotiate with employers.
- **Because Guestworkers' Immigration Status Is Tied to Their Employment, Guestworkers Face Deportation or Fugitive Status Even in Retaliatory Firings.** The legal status of H-2B workers is tied to their employment. If they are not working for the sponsoring employer, they lose their legal status in the U.S. Workers escaping dangerous or abusive situations often face the choice of returning home or become undocumented. They are subjected to deportation and risk being barred from returning to the U.S. Employers control guestworkers' immigration status and therefore have the power to deport or threaten to deport guestworkers for any reason they please. This power relationship fundamentally violates the guestworkers' right to negotiate the terms and conditions of his or her labor.
- **Guestworkers Have Nowhere To Turn When They Are Abused.** There is no agency that actively oversees and enforces the few regulations that protect guestworkers. It is up to us, the guestworkers, to fight to get agencies to take an interest in the legal violations committed by their employers. The vast majority of H-2B workers are too isolated and too afraid of retaliation to report abusive employers to U.S. authorities. When our members have come forward, they have been ignored by U.S. authorities – or worse, punished by the very authorities that are supposed to protect them.

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As you can see, the compounded impact of debt, being tied to one employer, the fear of deportation, and the inability to hold employers accountable is clear: guestworkers are rendered utterly powerless.

The abuse I have detailed is pervasive. The names of workers and companies change, but the problems will remain unless the program is fundamentally changed. In a recent survey of over one hundred of our members, we asked if they thought that abuse and severe labor exploitation was common under the H-2B program. All one hundred said they believed it was. We asked if they or other guestworkers would report severe labor exploitation to the U.S. authorities. Overwhelmingly they said no. For the reasons I have listed above, guestworkers reported being too afraid and facing risks that were too high.

We also asked the workers what they wanted us to say to Congress and to the Department of Labor. These are their recommendations:

- 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.
- 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.

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- 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, which I have described. At a time of global economic despair, we need Congress to lead the way in enacting sound policies that do not undermine the labor rights of temporary workers or of U.S. workers. The DOL should strengthen and enforce its positions making employers responsible for their costs in using the program, that strengthen workers' right to organize, and that include real enforcement mechanisms. Instead of undermining core labor rights—like the Fair Labor Standards Act-- the DOL should eliminate obstacles to the right to organize—complementing protections included in the Employee Free Choice Act-- for all workers in the U.S. regardless of their immigration status. These protections block employers from exploiting workers who can't fight back because of debt and exclusion from legal protections and enforcement mechanisms—they are necessary to protect both U.S. and foreign workers.

Thank you for the opportunity to testify before the Subcommittee on behalf of myself and the membership of the Alliance of Guestworkers for Dignity. I welcome your questions.