

Opening Statement
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Domestic Policy Subcommittee
“The H-2B Guestworker Program and Improving the Department of Labor’s
Enforcement of the Rights of Guestworkers”
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Good morning and welcome.

This hearing – “The H-2B Guestworker Program and Improving the Department of Labor’s Enforcement of the Rights of Guestworkers” – continues an investigation that this Subcommittee began in 2007, evaluating the adequacy of labor law enforcement in New Orleans during the period following Hurricane Katrina.

During the course of our investigation and the two hearings we held on labor law enforcement in New Orleans, the Subcommittee discovered that H-2B visa holders, who are non-agricultural Guestworkers, have been exposed to egregious forms of abuse by sponsoring employers that brought them to the Gulf coast to assist with the cleanup. These abuses include wage theft, poor living conditions, and threatening actions which have amounted to human trafficking.

Unfortunately, it is clear that the abuse of guest workers continues today — in New Orleans and across the country. Today we will hear testimony from three Guestworkers – all of whom worked in different industries that the Department of Labor (DOL) allows to hire foreign Guestworkers. Take, for example, the case of one of our witnesses, Aby Karickathara Raju, who came to the United States from India to work for Signal

International LLC at a Gulf Coast Shipyard. Lured by false promises of permanent U.S. residency, Mr. Raju, along with hundreds of other Indian Guestworkers, paid tens of thousands of dollars to obtain this job with Signal, only to have their passports confiscated and find themselves forced into involuntary servitude, working for substandard wages and living in overcrowded, guarded labor camps.

Unfortunately, these cases of worker abuse have gone largely unprosecuted by the federal cop on the workplace beat. The Department of Labor did virtually nothing to protect these workers. The explanation has two components:

First, there are very limited legal protections in place for H-2B workers. Unlike H-2A guestworkers, H-2B guestworkers do not have access to legal services, protection from retaliation, or payment of transportation to the United States.

Second, the Department of Labor has utterly failed to enforce the rights of H-2B Guestworkers. The Department of Labor has interpreted the Immigration and Nationality Act and its implementing regulations to preclude DOL's authority to enforce the conditions of H-2B visa petitions in favor of the Department of Homeland Security's enforcement authority. At our hearing in June, 2007, when we questioned former DOL officials about why the abuse of Guestworkers in New Orleans has gone unchecked, we were told to ask the Department of Homeland Security. While that is debatable, DOL itself has acknowledged that it still maintains authority to oversee wage and hour laws which apply to Guestworkers. Based on this Subcommittee's scrutiny, advocacy by labor groups, as well as recent reports by the GAO, however, it is clear that DOL's Wage & Hour Division has failed to do even that.

There is a development in the law that requires mentioning as well. The previous administration passed a midnight regulation that weakens, instead of strengthens, protections for H-2B Guestworkers. The new regulation is also extremely harmful to US workers, because it makes it easier for employers to bring in Guestworkers for longer periods of time, increasing the risk that US workers will be overlooked for a cheaper, less-regulated labor source. Congressman Miller, Chairman of the Committee on

Education and Labor, and Congresswoman Zoe Lofgren, Chairwoman of the Immigration Subcommittee of Judiciary, have been working tirelessly on and will soon be introducing a new Bill that would increase protection for both H2-B Guestworkers and US workers. This Subcommittee supports and applauds those efforts. The current weak regulatory framework for the H-2B visa program cannot be allowed to stand.

The one silver lining to the previous Administration's midnight regulation is the delegation of authority by DHS to DOL to establish an enforcement process to investigate compliance with the H-2B requirements and to remedy violations uncovered as a result by imposing fines or debarment. Many questions remain about the nature of that delegation and how DOL's oversight and enforcement of the H-2B program will be carried out. But the acknowledgement by both DHS and DOL that DOL has clear authority to enforce the rights of H-2B Guestworkers gives this Subcommittee hope that the Department of Labor will finally commit to investigating and prosecuting H-2B sponsoring employers who are abusing the program and exploiting workers.

We had hoped to hear from Secretary of Labor Hilda Solis today on the Department of Labor's plans to improve such oversight. But the Department is still in the policy development stage and asked that it be allowed to testify at a later date once the Senate has confirmed the Assistant Secretary for the Employment Standards Administration and an Administrator of the Wage and Hour Division. We are hopeful that the Department will consider the testimony presented in today's hearing as they draw conclusions about what needs to be done with the H2-B program. This Subcommittee certainly intends to see that Secretary Solis' introductory remarks to the Department of Labor – that “there's a new Sherriff in town!” – will benefit the lives and working conditions of Guestworkers too.

Today, I hope we can better understand the problems faced by Guestworkers and how the Department of Labor has failed them in the past. We are lucky to have a very strong panel of labor advocates that can shed light on how to create a stronger Department of Labor that can fulfill its mission of protecting the rights of all workers.