

IMMIGRANT LABOR EXPLOITATION AND RESISTANCE IN THE POST-
KATRINA DEEP SOUTH: SUCCESS THROUGH
LEGAL ADVOCACY

By

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To the Faculty of Washington State University:

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Abstract

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This work examines the labor conditions experienced by a primarily Latina/o immigrant labor force following the massive devastation in the Deep-South in the wake of Hurricanes Katrina and Rita. I argue that immigrant workers have been targeted as an exploitable workforce by the state, multinational corporations, and contractors to perform the difficult and dangerous work of clean-up and rebuilding in the affected region. The recruitment of large numbers of primarily Latino men to the Deep South has resulted in a demographic shift throughout the entire South. The movement of immigrant men has initiated an increase in the number of immigrant women entering the work force in the Middle South, creating diasporas in immigrant communities. An investigation of legal advocacy by the Southern Poverty Law Center exposes the extreme conditions and practices of labor exploitation employed by corporations and contractors in the rebuilding of the hurricane-affected regions. Also discussed are the impacts to the labor force throughout the entire South, with particular attention to legal advocacy needs of immigrant women. The legal advocacy of the Southern Poverty Law Center serves as a model in the protection of the human, civil, and labor rights of immigrant workers.

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Dedication

This work is dedicated the thousands of immigrant laborers who made great sacrifices and suffered great injustices in the rebuilding the South following the Hurricane Katrina. It is further dedicated those who have dedicated themselves to the securing of the human, civil, and labor rights of these workers, with particular acknowledgment to the Southern Poverty Law Center.

CHAPTER ONE

INTRODUCTION

Statement of the Problem

Hurricane Katrina, one of the deadliest and most destructive hurricanes in U.S. history, struck land on August 29, 2005, causing massive devastation in the states of Louisiana, Mississippi, and Alabama. Less than a month later, Hurricane Rita hit the same area, magnifying the damage to infrastructure, buildings, and services needed for basic survival. The destruction was substantial: "massive in scale and scope: more than 1,000 confirmed dead and an estimated 3,000 missing; approximately 300,000 homes rendered uninhabitable; a major metropolitan area left nearly lifeless" (Oxfam America 3).

Now, four years post-Hurricanes Katrina and Rita, significant recovery efforts continue. Large-scale reconstruction and attempts at revitalization of economies in the region have served as a catalyst for changes in the demographic landscape of the affected states. Mainstream media coverage and academic attention to the injustices experienced by survivors of the hurricanes are continuing to expose evidence of racial and class oppressions. However, there is an omission in much of the scholarship to date in the examination of these oppressions. I refer here to the lack of attention paid to the primary work force used in the reconstruction of impacted regions, specifically large immigrant populations consisting of both H-2B guest workers and undocumented laborers. This work force is made up of primarily Latina/o women and men who have been lured to the Deep South by unscrupulous labor recruiters in order to fill the demand for low wage exploitable labor. In addition to labor needed for construction and clean-up, the call for

service employees is high. In areas where tourism depends upon the resurgence of the economy, particularly in New Orleans, there is a great demand for low wage earning service workers. The struggles and abuses of these highly marginalized populations brought or moving to the area are often received with attempts at erasure or with open anti-immigrant hostility.

The nation-state is facilitating and encouraging the use of immigrant labor as an exploitable and disposable workforce to fill these vast labor demands. These acts consistent with an established historical pattern in the United States. An assessment of actions taken by the nation-state in the affected areas after the hurricanes clearly exposes these tactics. The strategies of targeting laborers recruited for cleanup and rebuilding include action by powerful institutions including the Department of Homeland Security, the Bush Administration, the Federal Emergency Management Administration, and state and federal Occupational Safety and Health Organizations. Benefactors who have been contracted by these institutions, namely large transnational corporations, have made enormous profits from the institutionally sanctioned labor exploitation that has become commonplace in the region

Reports of labor exploitation and abuses numbering in the hundreds have surfaced since the beginning of post-hurricane reconstruction (Chandler and Susman). With only a few immigrant rights advocacy organizations in the region, pervasive labor exploitation in rebuilding process has become a critical issue, and new organizations, ranging from human rights groups, legal aide agencies and religious-based organizations have emerged in response, proving to be crucial for the protection and well-being of immigrant laborers working in the hurricane-affected states. Nevertheless, abuses are continuing to occur, not

only causing harm to individual workers, but creating hostility between a native-born groups and immigrants.

Project Description

This project seeks to represent and examine the ongoing human and civil rights abuses faced by newly arrived immigrant groups recruited by labor brokers and contractors to the Deep South. In this examination I argue that the rebuilding of the Deep South has led to state-sponsored exploitation of immigrant workers. I contend that this influx of a new immigrant labor force has initiated a change in the racial and ethnic demographics of the Deep South, creating a heightened climate of racial tensions between native born African Americans and whites against newly arrived immigrant populations from Mexico, Central America, and from various regions of the United States. Divisive and anti-immigrant rhetoric used to describe labor conditions to competing job-seeking disenfranchised groups in the Deep South must be understood as a strategy by the federal government and multinational corporations to recruit a super-exploitable labor force and to create antagonism between groups, thereby diminishing attempts at coalition-building.

Post-hurricane reconstruction and tourism is not only greatly influencing migration and demographic patterns in the Deep South, but is also calling attention to legal, civil, and human rights needs of disenfranchised immigrant populations. This circumstance demands a critical analysis by scholars and requires an application of an interdisciplinary theoretical approach, and my investigation uses theories of immigration and migration, transnational labor, labor markets, racialization and citizenship, an examination of global financial institutions and the impact of global capitalism. The final

analysis makes use of Critical Race Theory as an overarching tool for understanding the implications of this project.

Research Statement

Current scholarship that focuses on the racial and class inequities in the Deep South post-Katrina lacks a full analysis with regard to the changing demographics initiated by the large influx of newly arrived immigrant labors of both documented and undocumented status recruited for low wage super exploitive labor. Additionally, the complexity of racial tensions between disenfranchised groups in the Deep South, post-Katrina and the resulting barriers to coalition building requires examination. This project seeks to address the gap in the scholarship. In order to fully engage this gap, several factors must be considered.

The analysis begins with an understanding of the demographic make-up of the Deep South prior to the hurricanes and the vast change in the demographic of the labor force as a result of the clean-up and rebuilding. This examination includes inquiry into census data with regard to immigrant populations residing in the Deep South prior to Katrina and Rita, as well as the primary sites of labor for the populations considered. This investigation requires the interrogation of the ways in which the nation-state assists in the creation and sanctioning of corrupt rebuilding and construction practices, and how these factors coalesced into a strategy to target low wage immigrant workers. Furthermore, a inquiry into how this process is employed to create a sense of horizontal competition between communities of color, in this case a conflict primarily focused on driving a wedge between poor and working class Black and African-American populations and newly arrived immigrants of predominantly Latina/o origins. This strategy has been

somewhat, although not completely, successful in preventing the organized resistance of multiple communities of color and allies. Examination of the convergence of the aforementioned institutions reveals these actions are part of a established historical pattern that has a specific context in which the Global North has strategically impoverished and exploited the Global South, all the while working to prevent the creation of coalition building.

The focus of inquiry then moves to the nature of the human and civil rights abuses faced by this newly recruited immigrant labor work force. Results of this inquiry expose the labor abuses, physical abuses and risks endured by the labor force, as well as the impact on immigrant status workers in a multitude of ways. Furthermore, an exploration of the history of immigration patterns (primarily focused on Mexico), and government sponsored labor contacts (namely guest worker programs) are provided.

Finally, through a lens of Critical Race Theory and Critical Race Feminism, the successes of legal advocacy and active litigation exposes ways in which laborers are resisting the labor exploitations and abuses suffered by thousands of workers recruited to the region. The focus on the region is broadened here to expose not only the deplorable labor conditions for workers in the Deep South, but also the impacts that Katrina has had on the entire South and in the creation of diasporas within these immigrant populations. Implications of the study are examined through this final framework.

Methodology

The research for this project will focus on regions of the Deep South affected by Hurricanes Katrina and Rita in the states of Louisiana, Mississippi, and Alabama, as well as sites in the middle South in which the ripples of labor shifts to the Southern-most

states have created diasporas and labor demographic shifts. The primary sites of inquiry will focus on the legal and advocacy work litigated by the Southern Poverty Law Center (SPLC) and the ways in which this agency has responded to the human and civil rights abuses of immigrant laborers post-Katrina.

Primary research for this project will focus on an archival analysis of court records and litigation taken on behalf of immigrant laborers in the Deep South. The records to be examined include an in-depth study of three lawsuits brought by the SPLC that primarily concern Latino laborers in the Deep South, and a brief examination of several cases involving labor abuses to Latina workers in the Middle South. Additionally, information from personal interviews with two SPLC attorneys, Mary Bauer and Mónica Ramírez will be included. These interviews were conducted by the primary investigator and took place at the SPLC's Immigrant Justice Project in Atlanta, Georgia, and are employed here to augment the archival research used for analysis in this project.

The three cases which are examined in-depth are as follows: *Navarrete-Cruz v. LVI Environmental Services of New Orleans, Inc. et al.*; *Daviel Castellanos-Contreras, et al. v. Decatur Hotels, LLC et al.*; and *Rodrigues v. Belfor USA Group Inc.* Sources examined include numerous court documents filed with United States District Court for the Eastern District of Louisiana, New Orleans Division. These documents include complaints filed by the SPLC in representation of the plaintiffs, court judgments, as well as testimony in the form of affidavits. The cases examined address issues of labor exploitation, wage theft, and violations of fair labor standards.

Chapter Summaries

Chapter One:

Chapter one offers an examination of shifting demographics of the region. This examination begins with an investigation of pre-Katrina demographics, the locations of populations of immigrant laborers, and the primary labor industries which sought recruitment. The chapter proceeds with an investigation of post-Katrina demographics in the Deep South post-Katrina. This investigation includes an appraisal of the current challenges of rebuilding and the effects of disaster capitalism and privatization, including the impact of FEMA grants to multinational corporations. Chapter one concludes with an analysis of the effects of macro forces that facilitate labor exploitation, including the role of the state and the impact of the Global North on the Global South in the production of a transnational workforce.

Chapter Two:

Chapter two provides a focus on the role of immigrant labor in the rebuilding and construction industry in the Deep South. This examination includes an in-depth look at the working conditions and labor exploitation experienced by immigrant workers recruited to the region for work in the industry. Information gleaned from the court documents filed by the SPLC for the *Navarrete-Cruz v. LVI Environmental Services of New Orleans, Inc. et al.*, and *Rodrigues v. Belfor USA Group Inc.*, are examined and discussed in this chapter.

The *Navarrete-Cruz v. LVI Environmental Services of New Orleans, Inc. et al.* case concerns wage theft on the part of the contractor and subcontractors. The plaintiffs in the case are immigrant laborers employed to remove debris and clean public

elementary and high schools in the New Orleans area. In the *Rodrigues v. Belfor USA Group Inc.* case allegations include wage theft for overtime labor provided by immigrant workers in numerous reconstruction projects. The Belfor USA Group Inc. was alleged to have used the subcontracting system as a vehicle in which to engage in these wage abuses.

In addition, this chapter will examine the contracting and subcontracting system that has played a major role in the facilitation of extreme labor exploitation. Laborers employed as guest workers as well as undocumented workers are included in this analysis, although undocumented workers are the primary focus. A theoretical framework that makes use of theories of immigration, and migration, transnational labor, labor markets and racialization, as well as an examination of global financial institutions and the impact of global capitalism is applied here as a method by which to analyze these court records.

Chapter Three:

This chapter centers on the labor of H-2B guest workers in the hotel industry. Highlighted here will be the labor of immigrant men and women in the region who were recruited to the area to provide service work in the hotel industry in New Orleans as part of revitalization of the tourist economy in the city. Court documents filed by the SPLC for *Daviel Castellanos-Contreras, et al. v. Decatur Hotels, LLC et al.* are examined as primary research in order to provide accounts of the experiences of labor exploitation and civil and human rights abuses of immigrant labors. The *Daviel Castellanos-Contreras, et al. v. Decatur Hotels, LLC et al.* case was brought on behalf of H-2B guest workers recruited primarily from Central America by labor recruiters employed by Decatur Hotels

to provide service work as housekeepers, guest services, maintenance, and other necessary support functions for the hotel chain. The corporation was charged with violation of the Fair Labor Standards Act when it failed to provide reimbursement the guest workers for the excessive cost of travel, visa, and recruitment fees paid by the laborers, which had a significantly negative impact on income for laborers.

Once again a theoretical framework that makes use of theories of immigration, and migration, transnational labor, labor markets and racialization, as well as an examination of global financial institutions and the impact of global capitalism is applied here as a method by which to analyze these court records.

Chapter Four:

This chapter examines the actions taken on behalf of immigrant women workers by legal advocates in the south. For example, Esperanza: The Immigrant Women's Justice Initiative is the first project in the country to be solely devoted to the addressing the legal issues facing immigrant women in the U.S. The chapter examines the shift in the labor demographic in the middle South, resulting from the massive migration of male laborers to the Deep South and the rise in immigrant women entering the workforce, particularly in the agricultural industry. Ramírez, indicates that the most common and severe labor abuse facing immigrant women entering the agricultural and other industries in the Middle South to fill the unmet labor needs is that of sexual harassment. An in-depth interview conducted with Ramírez provides one of the primary sources of information for this chapter. In addition, in order to document the significance of this labor abuse, several court cases, some filed by SPLC and are examined. Finally an in-

depth interview with Bauer provides further insights into the litigation initiated by the SPLC.

Immigrant women workers are perhaps the most vulnerable labor force in the U.S. The growth in demand for immigrant laborers by national and transnational corporations and industries in the U.S. is motivated by the vulnerability of a super exploitable labor force as a vehicle by which to drive down labor costs and increase profits. The intersections of race, class, gender, and sexuality are clearly demonstrated by the current legal issues facing immigrant women laborers. The analysis of the information documented in this chapter is conducted through use of a Critical Race Feminist perspective.

Conclusion:

This chapter will conclude the project by examining the implications of the research. A final analysis of the work is examined through a lens of Critical Race Theory. An examination of the successes that have been achieved through the actions of the SPLC and the implications for immigrant justice and successful legal advocacy are discussed.

CHAPTER TWO

DEMOGRAPHIC SHIFTS

Introduction:

The South has historically operated as a space of exceptionalism within a national framework. As such, it has functioned as a historical and contemporary site onto which problematic aspects of national society, particularly those linked to race and racism, can be fixed. In the face of this discourse...a critical examination of Latino migration has the opportunity to challenge unproblematic claims about southern distinctiveness and join a small but growing collection of scholarship that situates the South within not only a national but also a global or transnational context. (Winders 686)

This chapter provides support to Winders' claim regarding the misconceptions of the South as a space of "exceptionalism." Through an examination of the shifting demographics of immigration and migration of Latino populations to the southern region of the U.S., southern exceptionalism is clearly revealed as myth and fallacy. The growth of Latino communities in the southern region of the U.S. over the last two decades rather indicates a continuation of an established historical pattern of the low wage labor demands of capitalism and the exploitation of the Global South. Additionally, the perception of the U.S. south as a "fixed" space in terms of race and racism, a space traditionally defined in terms of a black/white dichotomy, is challenged by evidence of a much more dynamic process of racial politics in operation throughout the region.

The chapter begins with an examination of the growth of Latino populations in the region at large, including the states of the Southeast and the Deep South, prior to Hurricanes Katrina and Rita. The focus then moves to a closer examination of the Deep South, a reference used here to designate the particular region which includes the states of Mississippi, Alabama, and Louisiana. The exploration of the pre-Katrina south includes an examination of the primary sites of industry and labor in the region at large prior to the disaster. The pre-Katrina discussion offers an examination of nation-state factors that impact immigration and concludes with a look at ways in which preexisting communities in the region respond to the growth of Latino communities.

The focus of the chapter then progresses to examine post-Katrina demographic shifts in the Deep South. This investigation includes a discussion of demographic changes, primarily in the states of Mississippi, Alabama, and Louisiana; the states hit hardest by the hurricanes and experiencing the most growth due to labor demands. Also addressed here are the primary sites of industry and labor in the post-Katrina Deep South. The chapter, again, offers an examination of nation-state actions which have impacted immigration, this time with a particular focus on the Deep South, and concludes with a look at responses of preexisting and newly formed communities in the larger region and the Deep South.

Part 1: Pre-Katrina

Pre-Katrina Immigrant Demographics and Labor Industries:

Although the bulk of scholarship regarding immigration of Latino populations in the south as a region places the timeframe in the 1950s, the Deep South actually began to experience large immigration into the region in 1910-1920, as many immigrants came

escaping the violence of the Mexican Revolution. These populations of immigrants, primarily from Mexico, arrived mainly in New Orleans and the Mississippi Delta (Weise). Over the next few decades many Latino immigrants made migrations to the middle south for labor in agricultural and other industries, significantly depleting the population in Louisiana and Mississippi. In the last two decades, beginning with the 1980s, this growth has expanded significantly, as recorded by the U.S. Census and documented by numerous scholars (Rothenberg; Mohl; and Murphy). Winders has noted that during the 1990s the "Hispanic population in many southern states increased by more than 300percent."

Prior to Hurricanes Katrina and Rita, demographic changes were experienced most heavily in the southern states of Georgia, North Carolina, Arkansas, Tennessee, and Alabama, and to a lesser degree in Kentucky, Mississippi, and Louisiana (Drever; Torres; Popke and Hapke; Mohl; LeDuff ; Kandel and Parrado). These demographic shifts were precipitated by the continuing process of U.S. capitalism and corporate-driven low wage labor demands, as well as the impacts of international trade agreements, primarily the North American Free Trade Agreement (NAFTA) (Winders 687). Mohl observes:

Until the 1990's most Mexican border crossers had been attracted by agricultural and manufacturing jobs in California and the southwestern states. But the global economic inequities now so apparent in Mexico and Central America have turned the American South into a new immigration destination. ("Latinization" 248)

The transition in the U.S. south of a low wage exploitable labor force made up of primarily native born white and African American poor and working class to foreign born

poor and working class Latino immigrants can clearly be demonstrated in the recent history of worker demographic shifts in the South. The significant growth in migration of Mexican American farm workers to the southeast in the 1950s came from the Southwest, mainly Texas. Rothenberg has documented shifts occurring in the labor force in the Deep South, including Florida in 1960s through the 1970s. The author has further examined the growth of Latino migrants to the East Coast in the 1980s and 1990s and estimates that currently approximately "70 percent of Latino farmworkers in the Southeast are undocumented immigrants" (Rothenberg 181-182).

In the 1980s agricultural labor demands began to increase the desire for Latino workers to the south. Studstill and Neito-Studstill note that in south Georgia the growth in the Latino workforce was spurred by large and diverse agricultural and meat processing needs, including the production of "peaches, peanuts, pigs, pecans chicken, cattle, Vidalia onions, Moultrie tomatoes, and Tifton pickles" (69). Gale, Andreatta, and Freeman further document the presence of a large Latino labor force in North Carolina, where laborers have been employed primarily in tobacco and poultry processing industries. In 1996, North Carolina "ranked eighth in the nation" for farming income and "ranked fifth" in the U.S. for total number of migrant farmworkers, "more than 90 percent" which were identified as Latino (93). Latino laborers began to be employed as farmworkers in northern Alabama in the 1990s for picking and packing "tomatoes, peaches strawberries, potatoes, cucumbers, and watermelons" (Mohl "Latinization" 254).

In the early 1990s, Arkansas, Georgia, and southern Alabama began to recruit Latino laborers to replant timberland. The downsizing of the timber industry in the Pacific Northwest provided opportunities for growth of timber production in southeastern

states. As a result, immigrant workers were sought for logging, mill work, the timber replanting and herbicide treatment labor. In North Carolina's southern woodlands, laborers were also hired to harvest "nontimber forest products, such as evergreen foliage and other floral greens" (Mohl "Globalization" 44; Emery, Ginger, and Chamberlain 69).

In addition to agricultural labor needs, the growth of industry, particularly meat processing in the south, has created a considerable demand for a large exploitable labor force. Beginning in the late 1970s, Gainesville, Georgia, was known as the "Poultry Capital of the World." During the 1970s a small number of laborers in the industry were Latino. The industry, however, began to undergo a significant transition in the labor force in the mid 1980s at "the height of the economic crisis in Mexico" (Guthey 61). The city of Gainesville experienced a 98percent increase in the Latino population in the decade of 1980-1990, coinciding with increased demand for low wage labor in poultry processing plants (61). Other scholars have noted similar growth in the numbers of Latino immigrants employed as poultry workers during the last two decades, in the southern states of Tennessee, North Carolina, Alabama, Arkansas, and Mississippi (Drever; Torres, Popke, and Hapke; Mohl; LeDuff; Kandel and Parrado). As noted by numerous scholars, the industry continues to employ a large immigrant work force (Guthey 61-63).

As Latino immigrant workers become increasingly targeted as primary sources of cheap labor, the market for labor exploitation in the south continued to diversify. Engstrom claims the impact of a growing Latino work force in the poultry industry spilled over into the carpet mills of Dalton, Georgia (50). The author observes that the increasing demand for labor in the carpet industry of Dalton in the late 1970s necessitated numerous shifts in the targeted labor force. Engstrom notes that the growing Latino labor

force recruited to the area for work in the poultry industry during the late 1970s began to look to and be targeted by the carpet mill industry. The author further notes that Dalton experienced significant growth in the population of Latino laborers in the mid 1980s when migrants moved from Texas following the end of "the state's construction boom" and further claims that "the pace of Mexican migration to Dalton appears to have picked up considerably in the 1990s" (Engstrom 48-49).

In addition to the recruitment of immigrant labor to the south for agricultural work, poultry processing and carpet production, industries including meat packing, garment, hosiery, furniture making, plastics manufacturing and textile production were also sites in which immigrant labor was heavily recruited and relied upon. Race tracks and horse farms in Kentucky and Louisiana sought out immigrant labor for low wage employment. In New Orleans in the late 1990s, the labor force at horse racetracks "where the horses are stabled and the grunt work is done" has undergone a transition from "white and African-American workers who for more than a century" were employed as groomers and "hotwalkers," to a primarily Latino labor force (Peter). Latino labor recruitment to Louisiana has been documented as well, for work in the onshore oil industry. In Morgan City, Louisiana, an immigrant labor force of primarily Latino workers have been employed for "skilled craftsmen work as welders, fitters, and carpenters in local shipyards" (Mohl "Globalization" 42-44).

Although the majority of industries involved in the recruitment and employment of Latino laborers to the south during the 1970-1990s targeted men, it should not be assumed that Latina women have not been a part of this work force. Latina women have also been targeted and present in the south since the 1910-1920s; however, their presence

has been less visible (Weise). Latina workers have served to fill the need for low wage labor in agricultural and industrial labor in the last two decades (prior to Hurricane Katrina) but in fewer numbers than Latino men. Latina women have also been sought after for labor in the hotel and domestic sector (Mohl "Globalization" 33). In addition, Latina women have been the target of the thriving seafood industry along the southeastern coast.

A prime example of such recruitment is demonstrated by a study of the crab processing industry in Eastern Carolina (Selby, Dixon, and Hapke). This study reveals a similar progressive pattern of labor force shifts precipitated by the search for low wage workers. An industry that was once the source of labor for poor and working class women began with a racial demographic that consisted of primarily white women. The progressive shift of the crab processing industry to a labor force made of predominantly Black women has been documented by scholars, including Griffith (qtd. in Selby et al.). The crab processing industry has seen a shift to a low wage Latina labor force over the two last decades. This labor force of Latina women, "most from Sinaloa, Mexico," were recruited to east Carolina as H-2B workers beginning in the late 1980s. The population of Latina women laborers grew quickly, so that "by 1993 75percent of the crab pickers in eastern Carolina were Mexican women" (Selby et al. 237-238). These laborers were strategically recruited from the Mexican state of Sinaloa, known for its fish and seafood processing and export industry. This labor force of Latina women then came to Eastern Carolina having already been exposed and frequently already trained for labor in the industry. In fact, according to information gleaned from interviews with crab house owners in Sinaloa, Mexico, the owners themselves often acted as labor "recruiters and

contractors for the U.S. crab houses," and are financially compensated for the women they recruit (Selby et al. 238).

It should also be understood that Latino immigration and migration to the south has not been limited to rural or isolated agricultural and industrial areas. In fact, the increase in Latino immigrant and migrant populations to urban areas of the south in last twenty years has been termed a "Hispanic hypergrowth [of] metro regions" by Suro and Singer. The authors note that the rate of immigration and migration to urban areas traditionally known as "gateway cities, including Los Angeles, New York, Chicago, and Miami," has been in decline over the last twenty years. In spite of the fact that these cities continue to maintain the largest Latino populations in the U.S., urban areas of the south, including Raleigh-Durham, Atlanta, Greensboro, Charlotte, and Orlando, have witnessed population growth ranging from over 850percent to 1180percent in the decades between 1980-2000 (qtd. in Furuseth and Smith 8).

In keeping with the labor force dynamic of rural areas of the south and elsewhere in the U.S., Latino workers who immigrate or migrate to the urban areas of the south are targeted for low wage labor. Latino laborers can be found in cities such as Durham and Atlanta working "construction labor, landscaping, cleaning services, kitchen help, and low skill manufacturing" (Furuseth and Smith 9). Latina women are present in greater numbers in urban areas such as Birmingham for labor in restaurants, the hotel industry, and janitorial work. Custodial labor in office buildings in downtown and on the outskirts of Birmingham is performed by Latina women under contract with sizable building-maintenance companies. Latino men are targeted for labor as construction workers and roofers (Mohl "Globalization" 54).

Many industries in the southeast and Deep South have undergone a labor force transition over the last two decades, the most marked increase being documented in the decade of 1990-2000. In this decade the rate of immigration and migration by Latinos/as to the U.S. South climbed so dramatically that the south is now considered "the second largest home, after the southwest, to U.S. residents of Hispanic decent in the nation" (Furuseth and Smith 4). U.S Census figures for 2000 record the total population of Latino/as in the South as 95,928 with Latinos making up forty-nine percent of the population and Latinas fifty-one percent (United States Census Bureau, 2002). This is a 12.6 percent total increase in the Latino population since 1990 (Mohl "Globalization 38). This growth in the immigration and migration to the South is part of the ongoing process of capitalism, globalization, and the resulting impoverishment of the Global South in the service of the Global North.

Nation-State Factors:

The growth in Latino populations to the south must be understood from a larger institutional perspective. In the examination of immigration policy and imported labor, the Bracero Program, active from 1948 to 1964, provides an historical context of U.S. recruitment of immigrant labor and the beginnings of guest worker programs in 20th century. As Ngai points out, other cases of contract-labor were in operation during this time period, however, "the Bracero Program was by far the largest project, involving some 4.6 million workers" (138). Ngai employs the concept of "imported colonialism," which the author explains has "produced new social relations based on the subordination of racialized foreign bodies who worked in the United States but who remained excluded from the polity by both law and by social custom" (129). Although the guest workers

enjoyed the status of being documented, the only privilege this status allows is safety from deportation and only if the laborer remains working for the contracted employer. Guest workers are effectively locked out of the larger institutional structures that have considerable impacts on their lives. Additionally, the large numbers of immigrants recruited for labor in the U.S. who do not enjoy documented status are not just disenfranchised from the polity, but have been so marginalized as to be rendered invisible. The Bracero Program can be understood a significant starting point for legislation aimed at "subordination of racialized for bodies" (138).

The 1986 Immigration Reform and Control Act (IRCA) was seemingly designed to decrease the number of undocumented workers in the United States, "to legalize unauthorized foreigners and reduce illegal immigrations" (Martin 183). IRCA offered an amnesty program for undocumented individuals who could prove residency in the U.S. since 1982. Further opportunities to obtain documented status were offered for farm laborers through provisions for Special Agricultural Workers (SAWs), and Replenishment Agricultural Workers (RAWs). Employer sanctions were imposed for the knowledgeable employment of undocumented laborers, however, restrictions on Immigration and Customs Enforcement (ICE) inspections of farm workers were increased (Martin 186). Mohl asserts that "The surge of Hispanic migration to the South coincided with the new immigration provisions introduced by IRCA, as both illegal and amnestied Mexicans found new labor markets in the southeast" (Mohl "Globalization" 54). Acts initiated by the nation-state in the form of immigration policy were instrumental in facilitating the growth and movement of an exploitable immigrant workforce into the Southeast. As a result, the major benefactors of IRCA were in fact, farmers who

employed SAWs and RAWs. The availability of a large and replaceable agricultural workforce served to keep wages low and precipitated the movement of immigrant workers into agriculturally related industry in the southeast (Martin 186-187).

The Latina population in the U.S. also experienced an increase as a result of IRCA. Provisions of the legislation that provided amnesty to approximately 2.3 million Mexicans who could provide proof of five years of labor and residence in the U.S. were granted the right to bring their families from Mexico. With the majority of those granted amnesty being male, the immigration of families from Mexico greatly increased the Latina population. It is estimated that "as many as 9.2 million additional Mexican migrants" came to the U.S. under this legislation (Mohl 34). Furuseth and Smith observe "Under the IRCA regime, there are more Hispanic women immigrating to the U.S., in some cases following partners, in others coming alone" (6). The growth of Latina women in the U.S. labor force has historically been ignored by scholars of immigration. Latino immigration history, as discussed earlier in this chapter, has been viewed and researched as a primarily male phenomenon. This is, in no small part, due to the large numbers of immigrant woman rendered invisible by the nature of the labor demands, primarily labor as domestic workers. However, as discussed earlier in this chapter, immigrant women have been present in the agricultural industry, meat packing, seafood processing, and in the service sector, to name a few, for the last several decades. The 1986 IRCA legislation, as well as major policy changes that have followed, have served to encourage U.S. employers to utilize this marginalized and disenfranchised labor force.

Federal Immigration Policy interacts with late stage capitalism and the forces of a globalized economy to further reify the historic symbiotic dependence of the U.S.

economy on low wage labor from Mexico and Central America. The demand for low wage workers in the south has been increasing as these factors converge. The impacts of globalization on the migration of a primarily Latino labor force to this area is documented:

A restructuring of the regional, national and global economies has undermined older forms of production in the South, such as in agriculture, steel, textiles, and apparel. At the same time, new economic investment poured into the region as American and foreign capital sought cheap labor, new markets, and government incentives. (Mohl "Globalization" 33)

Mohl additionally claims that due to the population increase in the south, there has been growth in the service economy, which consequently increases the demand for low wage jobs (33). He cites the impact of globalization coupled with changes in federal immigration and international trade policies as primary forces that motivated the migration of Latino laborers to the south. Mohl further links the effects of NAFTA to an intensification of this labor migration, and condemns NAFTA as failing "to produce promised wage increase in Mexico and fostering further immigration" ("Globalization" 35). This has been a consistent criticism of NAFTA, once again demonstrating the effects of neo-colonialists policies that benefit Northern American at the expense of the South American countries.

Sassen furthers the examination of globalization's impacts to the nation-state with regard to immigration policy. Sassen asserts that the forces of globalization are transforming the nation-state in multiple ways and impacting its authority with regard to national sovereignty: "The particular combination of power and legitimacy we call

sovereignty...almost synonymous with the national state, is today being partly unbundled, [and] redistributed onto other entities" (25). These "entities" include multinational corporations, international trade agreements, and human rights agreements. Sassen argues that increased fluidity of borders and macro level influences on immigration result from the process of globalization, stating "It is now being increasingly recognized that international migrations are embedded in larger geopolitical and transnational economic dynamics" (27). This is a process occurring in the Deep South, as in numerous other regions of the U.S. and multiple counties counted among the Global North. Comprehension of this progression is useful in understanding current labor demographic shifts in the Deep South. A lack of such an understanding by strategically disenfranchised populations has resulted in a significant intensification of racial tensions in the region as communities cope with these changes.

Community Responses:

One way to examine community responses to the demographic and labor force shifts is to investigate the workplace environment in the pre-Katrina South, as it is experienced by Latino immigrant laborers. In the Deep South a process of "racial triangulation" has unfolded whereby Latino immigrant workers are perceived and treated as "inferior and foreign" (Kim; Maldonado). Latino workers often experience lack of access to engage in civic processes, a positioning desirable by employers as it decreases resistance to labor abuses. It is clear that this positioning produces an extremely vulnerable exploitable "underclass" of workers.

The transition of a low wage exploitable labor force has had significant impacts on the racial dynamics at work in the south as a region. One example can be seen in

Charlie LeDuff's study of workers in a slaughterhouse in North Carolina, which enriches understanding of racial positioning and labor exploitation as it operates within a labor force in transition in the southeast. LeDuff found racial positioning and labor hierarchies to be clearly in place in the slaughterhouse, with Native American and Latino men and women performing the dirtiest and lowest paying labor. LeDuff found that, although the company denies the allegation, workers are assigned by race with white workers most often employed as mechanics or supervisors and Native Americans generally assigned cleaning and menial work in the warehouse (98). LeDuff asserts, "With few exceptions, that leaves the Blacks and the Mexicans with the dirty jobs at the factory" (98). There is further division among the "dirty jobs" with the Black laborers tending to work the higher paid jobs on the "kill floor," the heavy work which begins the butchering process. Mexican men and women are most often assigned the work on the "cut floor" where they performed hazardous and high pressure work on the disassembly lines (103). LeDuff reports that consistently low wages at the slaughterhouse triggered a loss of native born poor and working class laborers and gave rise to an increase in a poor and working class Latino/a workforce. The resulting shift has produced a complex climate in which racial conflict and "racial triangulation" are in operation.

Similar racial positionings were observed by Selby et al. in their study of the crab processing industry in eastern North Carolina. The study found that a "dual labor structure" was in place in the crab houses of the region. The labor force of the crab houses along the east coast has traditionally been made up of poor and working class women and their respective positionings determined along racial divisions between Black and white women. With the recruitment of Latino women as H-2B workers in the late

1980s, these dynamics have undergone a significant shift. Selby et al. reports that the current makeup of this labor force consists of white and Latino women laborers and this workforce is stratified along racial lines, with the white women most often functioning as managers.

The few white women who work as "pickers" on the work-floor segregate themselves from the Latina women pickers physically and socially. Of the Luther Lewis and Son's seafood plant Selby et al. notes that "a marked racial divide is immediately apparent on entering the crab house" (239). White women sit together at tables on one side of the room and enjoy a "relaxed atmosphere... as they sit laughing and talking at their table" (245). On the other side of the room, Latina women "stand around a table and work in silence" (239). Selby et al. reports that the white women were generally from the local area and employed in the crab houses for up to thirty years. These elderly women (all within the ages of 70-80) have formed a community within the workplace that is constituted "through whiteness" and excludes the Latina women (242).

Selby et al. also notes that the white women laborers tend to work fewer hours, produce less product, and are allowed a great deal of leniency in terms of absences. The authors further remark that the labor of the white women on the work floor actually serves to lower the earning capabilities of the Latina women, who tend to work much faster and pick up to fifteen more pounds of crab per day. The daily availability of crab to be picked coupled with the lower producing white women workers limit the wage earning potential for the Latina workers. In spite of their low production rate, these white women tend to be virtually guaranteed employment for as long as they wish, a loyalty between employer and employee "predicated on their ties through whiteness" (245). This

stratification of labor privileges whiteness, and by doing so, disenfranchises Latina workers in the plant.

Latina workers in the crab houses report that most of their earnings are sent back to Mexico to support their children and families. They also describe conditions of social isolation and lack of access to civic engagement with the communities in which they live and work. The women claim that they "did not interact with the white or black community" in the area. These women reported that "racism and discrimination" were the most difficult obstacles in their lives in the U.S. One immigrant laborer states "migrants are treated badly by the local community because they cannot speak English" (248). The barrier of language is a common theme in terms of barriers within the larger community, as well as in the workplace. Lack of attention by employers to the needs to accessible communication for non-English speaking workers further serves to segregate and marginalize Latina workers.

The women employed in the crab houses in this study did express, however, some feelings of empowerment and the ability to resist through use of the litigation process known to have been successful in other crab houses in the region (248). Use of the litigation process seems to be a growing and significant path to a form of civic engagement for marginalized workers with few human and civil rights protections.

II. Part Two: Post Katrina

Post-Katrina: Demographics and Labor Industries:

After Katrina hit, Armando Ojeda paid \$1,200 to be smuggled across the desert border from Mexico, a walk that took several nights. Talk of \$10 an

hour—more in a day than he made each week at a computer factory back home—led him to pay another \$1,200 to be crammed in a van with a dozen other immigrants and driven 1,600 miles, from a safe house in Arizona to Mississippi.... But six weeks later, Ojeda still hasn't been paid the \$600-plus he said he is owed for eight days of dawn-to-dusk labor.

(Pritchard)

Ojeda's ordeal is only one story among hundreds involving severe conditions of labor exploitation experienced by a primarily male Latino immigrant workforce recruited to the Deep South by the promise of plentiful and lucrative employment in the cleanup and construction industries following the events of Hurricanes Katrina and Rita (Chandler and Susman). The sectors hit by the hurricanes are now encountering tremendous growth in the areas of demolition and construction. The demand for low wage labor in the Deep South as a result of hurricane damage will likely result in continuing shifts in demographics over the next several years and is already causing friction between established disenfranchised groups and their new counterparts (Root and Davis).

As recorded by the 2000 U.S. Census, Latino inhabitants made up 2.4 percent of the total population in Louisiana, 1.4 percent in Mississippi, and 1.7 percent in Alabama. Since reconstruction efforts began in September 2005, it is estimated that thousands of immigrants have arrived in the affected areas. According to the Gulf Coast Reconstruction Watch (GCRW), New Orleans has experienced a substantial growth in Latino residents, primarily the result of labor demands (GCRW 13). An organizer for the Mississippi Immigrant Rights Organization (MIRA!) explains that many of these workers

"were recruited to the state and others [came] looking for work" (qtd. in Goodman). Subcontractors have recruited workers "from Florida, Texas, California, North Carolina and other immigrant-rich states" (Root and Davis). Organizer, Vicki Cintra of MIRA! states "Many of the contractors are just unscrupulous, promising all unskilled workers...a place to live, food and a per diem rate to work" (qtd. in Barclay), which the workers often do not receive.

While many residents are temporarily displaced and may never return, this promise of work opportunities in the region is luring non-residents from all parts of the United States, as well as Mexico and Central America, to the Deep South (Root and Davis). Additionally, in areas where tourism is depended upon to aid the resurgence of the economy, particularly New Orleans, there is a great demand for low wage earning service workers. This new workforce, made up of primarily Latino/a immigrants are of both documented and undocumented status (Goodman). Due to multiple factors which will be discussed further here, this is a labor force that comprises some highly vulnerable and exploitable populations of people who are being strategically recruited to the region for low wage labor (Lydersen).

For immigrant workers who travel to the Gulf Coast for work, particularly undocumented workers, there are little to no protections available should employers choose to not honor the promises made regarding wages, overtime compensation and living conditions. Since the recruitment began there have been numerous examples involving labor exploitation. One such example is that of a 30 year old Honduran man named Osmond Rafael who describes how he was recruited. He was living in Plano, Texas, "When a Spanish-speaking recruiter came to his apartment and offered him

construction work in Mississippi" (Lydersen). Rafael states that the recruiter, who worked for a construction company called Gonzales, promised high wages (including overtime pay), housing and food. Rafael relates that once he arrived in Mississippi, the conditions of the agreement were not honored. He worked an average of 75 hours per week on a demolition crew in Biloxi and was never compensated for his overtime labor. Rafael further reports that in addition to being underpaid for time worked, he was not compensated at all for two weeks of work, and the apartment housing he was promised was never provided by the recruiter. Rafael was forced to choose between housing in a workshop occupied by approximately seventy men or sleeping on the street (Lydersen)

Rafael is an undocumented laborer. A recently published study of Latino workers in New Orleans, conducted by U.C. Berkeley and Tulane University, details the conditions for both documented and undocumented laborers. Study findings indicate that "nearly half of the reconstruction workforce in New Orleans is Latino, of which 54 percent is undocumented" (Fletcher, Pham, Stover, and Vinck 2). The findings of the study show that both groups are exposed to wage abuses, hazardous working conditions, lack of health care, inadequate housing, and police and ICE harassment (Fletcher et al. 3). In all cases, undocumented workers fare significantly worse compared to documented laborers. Results of the study indicate that "The average hourly wage among documented workers is \$16.50 compared to \$10.00 for undocumented workers" (Fletcher et al. 17). Additionally, study results indicate that undocumented workers experienced significantly more difficulty obtaining their wages from employers, felt they were paid less than they were owed, and were not compensated for overtime work (Fletcher et al.17-18). Undocumented workers also reported a substantially higher (twenty-seven percent as

opposed to twelve percent) of lost wages due to employer deductions for "expenses" including "housing, transportation, and food" than documented workers (Fletcher et al. 18). Undocumented workers report they are given less protective equipment and less frequently trained on how to use protective gear (Fletcher et al. 19). Undocumented workers also have little or no access to health care when sick or injured. Lovato describes numerous incidents of laborers working on military bases in Mississippi who "complained of suffering from diarrhea, sprained ankles, cuts and bruises, and other injuries" incurred on the worksite who were given no medical attention, "despite being close to medical facilities on the same bases they were cleaning and helping rebuild" (Lovato).

According to this study, undocumented workers reported significantly high incidences of substandard housing conditions, including lack of "access to a bathroom with a shower... [and no] access to a kitchen, running water or electricity" (Fletcher et al.16). Other news sources report deplorable conditions for undocumented laborers living in "squalid trailer parks...where up to 19 unpaid, unfed workers inhabited a single trailer for [which they were charged] \$70 per person, per week" (Lovato). Workers laboring in the city of Belle Chasse, Louisiana, describe being forced to live in tents and report that the water supply "smelled like petroleum." Still others who worked at Seabee Naval Base, in Gulfport, Mississippi, were forced to live on the base, "under threat of deportation by contractors" and sleep on cots in large hangars with dozens of other workers (Lovato). These are only a few of the multitude of cases involving current labor conditions for immigrants in the region, which ultimately are created to benefit government-sponsored contracts to large corporations.

The Big Winners

The high demand for rapid rebuilding and the resulting multiple opportunities for labor abuses has proven to be a financial windfall for a select number of primary contracting corporations, most of whom have connections to the Bush Administration and received no-bid contracts from FEMA. These corporations now stand to receive enormous profits from the labor of immigrant workers. The primary contractors, funded by FEMA, have a myriad of conflicting governmental ties and histories of fiduciary and labor abuses. The short list of major players includes Ashbritt, Inc., awarded \$500 million in contracts for cleanup work in Mississippi. The former executive of the company was Haley Barbour, recently the Governor of Mississippi. The current President and Vice-President of the company have made donations to the Republican Party of over \$123,000 since 2001 (Gulf Coast Commission on Reconstruction Equity [hereafter referred 5). The Bechtel Group Incorporated's executives and consultants include former Reagan cabinet members and CIA directors and Kellogg, Brown, & Root/Halliburton were awarded over \$171 millions to date in Katrina-related contracts. This company employed former Vice President Dick Cheney as CEO up until 2001. Cheney only made the decision to resign following the national Presidential elections and his election as Vice President of the U.S. (GCCRE 6).

The biggest winners in the awarding of labor contracts have clear ties to the former Bush Administration and the trail of contracting and sub-contracting is quite difficult to trace. An example of this can be demonstrated by examining Karen Tovar Construction (KTC). KTC is the recipient of a large FEMA contract awarded to clean up Navy bases in the affected areas. The GCCRE exposes the trail of KTC subcontractors

back to primary contractor, Halliburton, by explaining "Karen Tovar Construction [is] a subcontractor of KCT (Kansas City Tree), which is subcontractor of TRF Services (Tipton Friendly Rollins), which is a subcontractor of Kellogg Brown & Root (KBR), a division of Halliburton Company" (GCCRE 4). This literal maze of subcontractors leaves workers in an utter state of confusion as to who is to be held responsible when issues such as wage theft, lack of overtime payment, lack of adequate housing, healthcare, food, etc. become a problem.

It has proven difficult even for legislative members to trace the maze of contractor to subcontractor. James Hale, a vice president of the Laborer' International Union of North America makes this point when discussing the role of Halliburton/KBR in the management of their contract for the clean up of naval bases in the affected area:

There is an utter lack of transparency with the process—and that invites malfeasance. To my knowledge, not one member of Congress has been able to get their hands on a copy of a contract that was handed out to Halliburton or others. There is no central registry of Katrina contracts available. No data on the jobs or scope of the work. (qtd. in Lovato)

Hale further asserts that considering the difficulty in obtaining information on the contracts given to the primary contractors, the records of contracts between contractors and subcontractors are virtually buried (Lovato). Clearly, if members of Congress are unable to trace the trail from contractor to subcontractors, given the level of information at their disposal, it is quite unlikely that laborers who experience these common exploitative circumstances would have the information available to know who is accountable.

As the primary contactors work their way down from subcontractor to subcontractor, the recruitment of cheap labor at the bottom of the chain has become a priority for employers seeking high profits. Advertisements by Spanish-language television networks, including *Univision*, have attracted workers to the Gulf Coast (Barclay). Job brokers also locate potential workers with advertisements in Spanish-language newspapers like *La Subasta* and *El Dia* in Houston. These ads "promise room, board and pay in the range of \$1,200 a weeks." Job brokers seek to recruit laborers at job fairs in locations they expect to find large numbers of immigrant workers, such as central and southern California (Lovato).

Job brokers are traveling outside the U.S. to recruit laborers as well. Others have taken advantage of the current circumstances to extort potential laborers interested in possible labor opportunities. In November of 2005, the publication *La Jornada* reported that businesspeople from the Gulf Coast, posing as representatives of three different companies, came to the Mexican city of Guanajuato to recruit laborers (Diego-Rodríguez). These company representatives allegedly obtained permission to conduct business in Mexico from the Secretary of the Government and told prospective workers that through their connections to the Secretary of Exterior Relations (an agency with no powers to deal with immigration issues) they were able to secure worker visas for those willing to come to the United States. Reportedly, over 2,000 people paid between \$500 to \$800 to these imposters, a fee that was alleged to be payment for a work visa, and transportation to New Orleans. The representatives "ofrecía un pago de 12 dólares la hora a electricistas, albañiles y carpinteros" (offered payment of \$12 an hour for electricians, construction and carpentry). The day the workers were scheduled to travel to the U.S., the

recruiters absconded with the money and never returned (Diego-Rodríguez).

Unfortunately, this is not an isolated event but a recurring pattern of U.S corporations who employ labor brokers. What is significant about this particular incident is the apparent complicity of the Mexican government, an act that further demonstrates the unequal power relations between the U.S and Mexico.

The development of labor recruiters on the Gulf Coast is compared by Jeffrye Ponting, Directing Attorney of California Rural Legal Assistance Incorporated's Indigenous Farmworker Project, as replicating "a black-market practice found among farm workers in California and elsewhere" (qtd. in Martinez). Addressing the same issue, Chandler states "Such contractors are essentially middlemen who round up Latino workers, frequently undocumented immigrants, in Florida, Georgia and elsewhere. The labor contractors then sell the manpower to construction contractors" (Chandler and Susman). These "middlemen" involved in labor recruitment to the Deep South have demonstrated a propensity for being overtly dishonest and engaging in grossly premeditated acts of fraud.

Some employers are making use of official and legal channels to recruit immigrant workers by accessing guest worker program resources. Agencies such as The Hispanic Connection, Inc., based in Baton Rouge, report a dramatic growth in the demand for recruitment of Latino laborers as H-2B guest workers needed for clean-up, construction, and service work in the aftermath of the hurricane. Guest worker recruitment agencies like The Hispanic Connection are in the business of recruiting female and male immigrants as H-2B workers for labor as janitorial and service workers in casinos and hotels and for domestic workers in private homes. Maher, an immigrant

labor scholar asserts that "such businesses function less as employer agencies than as labor brokers, treating migrant workers as commodities for sale" (55). Maher notes a frequency of fiduciary abuses present in the contracting relationship between the agency and the worker. Maria Edwards, director of the Hispanic Connection, states that the agency "has been flooded with requests for laborers since the two hurricanes hit" (Barclay). Edwards states that the agency is currently unable to meet the demand for immigrant labor and that the employers she was unable to assist have gone to extensive lengths to find workers on their own laborers, including recruiting from homeless shelters (Barclay).

Nation-State Factors:

The formation of current labor conditions in the Deep South is a strategy by the federal government to recruit a super-exploitable labor force. Following an established historical pattern, the nation-state is facilitating and encouraging the use of immigrant labor as an exploitable and disposable workforce to fill these vast labor demands. Actions taken by the nation-state in the affected areas following the hurricanes expose these tactics. The strategies targeting laborers recruited for cleanup and rebuilding include the actions of the Department of Homeland Security in temporarily suspending I-9 employer inspections, which require employers to verify the citizenship status of their employees, and the Bush Administration's decision to suspend the Davis-Bacon Act of 1931 that mandates employers to pay the prevailing wage rates on federally financed construction projects. This was a decision Bush was forced to overturn after two months due to pressure from the House and Senate (Barclay).

In addition, the actions taken by OSHA eased requirements on employers in their adherence to health and safety laws and regulations following the disaster. These decisions by OSHA to waive enforcement of laws and regulations have resulted in serious health risks to workers laboring in unsafe conditions without the most minimal of protective gear such as gloves, goggles, and respirators. Environmental studies conducted since the disaster documents the presence of hazardous oil, chemicals, mold, asbestos and other toxins. Since the onset of the rebuilding, workers enter buildings and homes that are structurally unsafe without any protections and without workers' compensation insurance. The EPA has yet to establish clean up standards to deal with the contaminants known to be present in the affected areas (GCCRE 9). Without OSHA protections, those laboring in the affected areas are being exposed to hazardous pollutants which will likely have both short and long term health effects.

There are numerous examples of health and safety hazards to which immigrant laborer are being exposed. According to one newspaper reporter, "To many employers, workplace safety laws seem to have become little more than a suggestion" (Colson). In this context, employers are free to treat workers in this manner without fear of appraisals.

Early in the cleanup efforts, an investigator with the Laborers' Union reported that "outside the New Orleans Arena" they encountered Mexican teenagers as young as fifteen and sixteen years old removing carpets covered in excrement. The teens said they were sleeping in a field under a tent" (qtd. in Colson). This is only one example from many documented since the clean-up began. One activist stated "Many Latino workers, besides being threatened with deportation, have become hurricane victims of another sort: left helpless after the allure of good wages and shelter vanished in a haze of broken

promises from unscrupulous contractors" (qtd. in Root and Davis). These victims are among the most marginalized and vilified populations in the U.S., a condition which only invited more employer abuse.

These groups of workers became even more denigrated due to federal actions. The suspension of affirmative action requirements by the federal government and the awarding of no-bid construction contracts caused "local minority-owned contractors [to be] shut out of the reconstruction contracts and unable to get SBA loans" (Brown-Dianis, Lai, Hincapie and Soni). Additionally, the process of subcontracting labor has driven down wages for construction workers in the effected areas, making the work undesirable. As of mid-February 2006, FEMA has awarded almost \$4.9 billion in hurricane-related contracts. Bill Chandler, president of the Mississippi Immigrant Rights Association (MIRA!) explains, "Primary contractors like Halliburton and Bechtel receive about \$24 per cubic yard for debris clean-up. This is then sub-contracted down through a whole chain of subcontractors, with the subcontractors at the bottom receiving around \$4 a cubic yard" (Chandler and Susman). Subcontractors then employ the most exploitable work force available, resulting in labor and human rights abuses on a massive scale.

The labor abuses primarily experienced by an immigrant labor force in the affected regions go largely unchecked. The GCCRE report that Mississippi and Louisiana (which fall into the category of "right to work" states which have no state departments of labor) have "only one bilingual [Federal] Department of Labor investigator" assigned to address labor issues in these two states (GCCRE 4). Thus, there are only two formal recourses available to the individual in response to labor abuses, a civil suit filed with the

state or a claim with the Federal Department of Labor. Neither action is likely to be taken by an immigrant person of undocumented status.

In response to the Federal Government's facilitation of immigrant labor exploitation in the Deep South, federal and local representative for the state of Louisiana have taken actions that have heightened the racial tensions in New Orleans and made exploited laborers into targets. In early October of 2005, African-American Mayor Ray Nagin asked local business leaders "How do I ensure that New Orleans is not overrun by Mexican workers?" (Colson). Attendees at the meeting applauded him for this statement (Colson). In the same month Senator Mary Landrieu (D-Louisiana) spoke out in response to the influx of immigrant laborers stating, "While my state experiences unemployment rates not seen since the Great Depression, it is unconscionable that illegal workers would be brought into Louisiana, aggravating our employment crisis and depressing earning for our workers" (Martinez). Landrieu called for an increase in ICE investigators and requested the Department of Homeland Security "institute a zero tolerance policy for the use of illegal workers in government contracts for reconstruction" (qtd. in Browne-Dianis et al.). On October 19, 2005, ICE officials "raided a worksite at the Belle Chasse Naval Air Station ... detaining more than 100 immigrant workers." This raid was "executed at the request" of the Senator (Lydersen). It appears that federal, state, and local governments are at odds with strategies for the rebuilding of the region. The federal government's actions demonstrate a support of large corporate profits, which demand large workforces of extremely low paid workers. State officials' concerns seem to be focused on the demographic and economic effects, but with full consciousness of the multitude of factors that have brought about such a shift. Their focus seems to be more on

blaming these "other sort of hurricane victims" rather than critically examining capitalist corporate government motives and the divisive tactics being used to split communities.

Civil rights leader Jesse Jackson, who initially expressed frustration with the employment of immigrant workers, more recently articulated a need for understanding of the conditions under which immigrant laborers are coming to New Orleans. In an interview with CNN's Lou Dobbs in January 2006, Jackson stated "these workers are not just coming across the border, they're being sent for, brought in, and hired. They've been trafficked in often working in...very exposing conditions without of course any health insurance" (Browne-Dianis et al.). This is an awareness that seems to be lacking at the state and local level.

Community Responses:

The 2000 U.S. Census data ranks Mississippi and Louisiana as the top two poorest states in the nation, with Alabama ranking sixth (U.S. Census Bureau, 2002). According to the Congressional Research Services Report to Congress (CRSRC), 20 percent of the Hurricane survivors lived below the poverty line prior to the event (CRSRC 14). The areas most affected by the hurricanes comprise some of the most impoverished regions in the United States. The report further indicates that many of the affected areas show a disproportionate toll on Africans Americans. The CRSRS indicates:

Among blacks living in Orleans Parish who were most likely displaced by the storm, over one-third (89,000 people, or 34.0percent of displaced blacks) were estimated to have been poor; based on 2000 Census data.

Among non-black (predominantly white) persons living in the parish who

were likely displaced by the storm, an estimated 14.6percent (14,000) were poor. (17)

Prior to the hurricane, there did exist multiple immigrant populations, however, the percentages were quite small. In the examination of racial oppression and class oppressions post-Katrina the shift, particularly with regard to the population of Latino/a workers, has resulted in new and emotionally charged responses by the impacted communities. The struggles and abuses of a highly marginalized population of primarily Latino/a workers have most often received one of two responses, erasure or hostility. A recently released report detailing ongoing racial division in New Orleans asserts:

In the aftermath of Katrina, the authors of media and political discourse wrote a script about race war and job theft. They cast the actors as Black victims and Brown invaders, and told stories that distracted the public's focus from the institutional responsibility of government and private contractors to insure that all workers are treated with fairness. This "bait and switch" has fueled the perception of racial conflict and competition. The conflict has been embraced by many, to the disadvantage of the excluded and exploited communities. (Browne-Dianis et al.)

Saket Soni of the New Orleans Worker Justice Coalition further addresses this conflict with regard to guest worker programs, which he refers to as "wedge policies that divide African Americans and immigrants" (SPLC "Center"). Soni asserts that workers brought in to the area for exploitable labor in the service industry create a "misperception of competition that positions labor issues as a wedge issue between communities of color" (Browne-Dianis et al.). Soni notes that in the post-Katrina economic crisis faced

by African American communities in New Orleans, unemployment is "7.2 percent...[and] survivors are locked out of the hotel industry even as they struggle to return home and regain their lives a year after Katrina"(SPLC "Center"). Soni's employment of the term "wedge policies" is a most useful way in which to understand how the actions taken on the part of the federal government have orchestrated these perceptions of job competition and dynamic of racial tensions present in the region.

Conclusion

Frequent reports of labor exploitation and abuses numbering in the hundreds have surfaced since the rebuilding of structures and economies began (Chandler and Susman). As a heavily disenfranchised group, these workers will likely join the African American populations of the region as another "underclass" of the Deep South¹.

The circumstances of racial tensions and dramatic shift in the demographics of the region can be best understood as the coalescence of federal actions and federal allegiances to the wealth and growth of large corporations and to the demands of maintaining the capitalist structure. Laborers at the bottom of this structure who find themselves confused by a system of labor contractors and multiple (extremely difficult to trace) subcontractors, find themselves in extremely vulnerable, sometimes life threatening conditions. With little access to human and civil rights protections and disenfranchisement from civic engagement, there would seem to be little possibility for resistance. However, in the following chapters I will examine the possibilities for civic engagement through the courts and litigation process. It is this avenue that has provided

¹ The use of the term "underclass", admittedly a contentious term historically used to imply poverty coupled with "individual and family pathology", is employed here, rather, to denote conditions of "concentrated and persistent poverty" (Katz 442).

multiple successes for immigrant laborers who have experienced a multitude of labor abuses in the post-Katrina cleanup.

CHAPTER THREE

UNDOCUMENTED WORKERS AT HIGH RISK

New Orleans is being rebuilt on the backs of underpaid and unpaid workers perpetuating cycles of poverty that existed pre-Katrina, and ensuring its existence in the newly-rebuilt city. Exploitation and exclusion are deeply immoral grounds upon which to reconstruct and repopulate the city. (Browne-Dianis et al.)

Introduction:

This chapter will examine evidence of the exploitation and oppression of primarily undocumented Latino/a immigrant workers, in the Deep South following the Hurricane Katrina disaster. The data considered here brings attention to human and civil rights abuses in a region whose primary immigrant populations prior to the hurricane consisted of a small number of Latinos/as (mainly Honduran), Vietnamese, and Indian communities (Elliott and Ionescu). As discussed in Chapter One, need for low-cost rebuilding following the Hurricane served as an impetus for massive recruitment, resulting in changes to the demographic composition of the region. Although a great deal of scholarship examining human and civil rights abuses has emerged since the disaster, the bulk of these works emphasize the inequalities between black and white residents. This project, however, addresses a gap in knowledge by providing focus to the ongoing and highly exploitive labor practices experienced by immigrant laborers.

There is a long history of immigrant laborer exploitation as a pervasive practice in the United States, and many academics have documented abuses concerning different populations of people. The this chapter adds to this body of scholarship by examining abuses of populations of laborers recruited to a region of the country not historically associated with high levels of immigrant workers but who now face significant labor exploitation.

The primary evidence used in this chapter to examine the human and civil rights abuses of immigrant laborers in the region consists of court records and documents generated by litigation taken by the SPLC on behalf of exploited workers. These documents reveal the extreme conditions faced by immigrant laborers in the Deep South, contain testimonies of workers who have experienced labor abuses, and provide a record of unjust employer activity and action. The evidence presented here illustrates the need for scholars and activists to engage in social justice work focusing on a region previously unassociated with a high incidence of immigrant labor abuses. The SPLC is one of the primary agencies in the region taking the lead in obtaining justice for immigrant laborers and holding exploitive employers accountable for their actions. To date, the SPLC has filed four large class action suits against abusive employers who specifically recruited immigrant laborers for various forms of work, many which directly relate to the rebuilding or revitalization of the Deep South following Katrina. Two of these cases concern primarily undocumented workers and will be examined in detail in this chapter. This examination begins by investigating the history and current work of the SPLC, an agency which has been at the vanguard in confronting human rights abuses in the South.

Part I: The Southern Poverty Law Center

The SPLC, founded by attorneys Morris Dees and Joseph J. Levin, Jr. and formally established in 1971, has its roots in the effort to implement the Civil Rights Act of 1964 and the Voting Rights Act of 1965. At its inception the center focused on seeking justice for African-American and Black people in the south who experienced racial injustice and inequality, as well as racial violence. The SPLC's early legal activities focused heavily on issues of segregation and hate crimes. The center is well known for their legal battles with numerous white supremacist organizations, including the KKK and the Aryan Nation. The cases won against white supremacist groups, many of which became landmark Supreme Court victories, have had national impacts on civil and human rights (SPLC "Advocates").

In the last thirty-seven years, the SPLC has grown and evolved in efforts to address multiple issues of social justice and civil and human rights abuses. The SPLC began a project in 1981 to monitor Klan activities, once called the "Klanwatch." The project initially focused exclusively on monitoring the activities of white supremacist groups around the country. In 1994, the project broadened in scope to include militias and other extremist groups found to have ties to white supremacist organizations, and renamed the project "The Intelligence Report." This report is released on a quarterly basis and is responsible for monitoring over 800 hate groups in the U.S. It has had a national impact on law enforcement agencies and has provided information that has assisted in numerous criminal convictions on charges of hate crimes (SPLC "Advocates").

The SPLC has further been recognized for efforts to provide educators with tools with which to teach young people about tolerance and diversity. The project, "Teaching

Tolerance," which began in 1991, publishes a bi-annual magazine and provides multimedia kits to schools nationwide used to educate students about such issues as race, class, gender, nationality, and religious differences. As an additional effort to educate young people about the Civil Rights Movement and to remember those who sacrificed their lives in this struggle, the SPLC created the Civil Rights Memorial Center, located directly across the street from the SPLC law office located in Montgomery, Alabama. This center offers a large exhibit documenting the Civil Rights Movement as well as educational activities for school children (SPLC "Advocates"). In addition to the Center's fight against white supremacist organizations, there are a number other civil rights issues that have received attention and litigation by the SPLC. These include race and gender employment discrimination, opposition to the death penalty, worker safety issues, prison reform, health care and social service rights, and race and class-based discrimination in education (SPLC "Advocates").

In 2004, the SPLC added issues of immigrant justice to their register of social justice projects. The result was the creation of the "Immigrant Justice Project" (IJP) to "address the unique legal needs of migrant workers, a group particularly vulnerable to workplace abuse" (SPLC "Immigrant"). Since its inception in 2004, the IJP has litigated at least twenty class action suits on behalf of immigrant laborers whose civil and human rights have been violated. Most of these cases have focused on Federal Labor Standards Act (FLSA) violations and wage theft (Bauer). The FLSA has become the major avenue for immigrants of both documented and undocumented status to pursue litigation primarily because litigation against employers for violation of this act is not contingent upon the documentation status of the employee. Therefore, it is one of the few civil rights

available to immigrants of undocumented status. Furthermore, the act prohibits employers for retaliation against employees who take action based on violations of the FLSA, which is a protection (not always practiced however) that allows those of documented status more security.

Anti-Immigrant violence has been a growing reality in the South during the last decade. In 2004 The Intelligence Report, published by the SPLC began including incidents of anti-immigrant violence in its listings of hate crimes. Attention has also been directed to monitoring the growth of nativist groups across the country. The inclusion of anti-immigrant violence would seem to indicate recognition of a shift, or rather of a new and additional focus of anti-immigration by white supremacists organizations in a context of a heightened awareness of borderlands and national security (SPLC "Advocates").

The anti-immigrant sentiment in the U.S., fueled first and foremost by the U.S. government as well as state and local politicians, has become a cause now adopted not only by extremist groups historically associated with racism, but with longstanding mainstream organizations, such as The American Legion, the nations largest veterans organization. In the fall of 2008, the American Legion produced *Policy on Illegal Immigration: A Strategy to Address Illegal Immigration in the United States*, which focuses on Latino/a immigrants crossing the U.S.–Mexico Border. This booklet makes inaccurate, inflated and unsupported claims that "illegal immigrants" are a threat to the "security, economy, and social fabric of the United States of America," by increasing rates of crime, incarceration rates, spreading communicable diseases, and vastly impacting costs to federal and state governments for education and healthcare (The American Legion 6). This racist anti-immigrant rhetoric, espoused by such a large and

mainstream organization reflects the increasing stance of anti-immigration as status quo in the United States. The primary target groups of focus in this anti-immigration movement are Latino/a people.

The growing anti-immigrant sentiment in the U.S. can be clearly illuminated by an examination of the hate crime statistics released by the FBI in 2007. These statistics show a sharp rise in hate crimes against Latino/a people in the last few years. FBI records indicate the number of reported hate crimes against Latino/as in 2003 to be 595. In 2006, this number climbed over 25percent to 819 reported crimes (U.S. Dept of Justice). In a report documenting hate crimes of 2006, "A Year in Hate," the SPLC indicates that "such crimes are typically carried out by people who think they are attacking immigrants." This report further signifies a substantial rise in hate groups between the years 2000 and 2006, growing from 602 to 888, an increase attributable, at least in part, to national anti-immigrant sentiment. Finally, the Center reports that these numbers do not even take into account "some 300 other anti-immigration groups, about half listed by SPLC as 'nativist extremist,' formed in the last three years," creating a total rise of the number of hate groups to be at about "48percent" (Holthouse and Potok).

Following the events of Hurricanes Katrina and Rita, the SPLC formed a new commission as part of the IJP, the Inter-American Commission on Human Rights. IJP attorney J. J. Rosenbaum, and outreach paralegal, Rebecca Watson, testified at a hearing held by the newly formed commission in Washington D.C. in February of 2006. The SPLC explains the make-up and goals of the commission in the following statement:

The commission is an independent human rights body established by the Organization of American States, an international group composed of

countries in the Americas. Its central mission is to protect and promote human rights through on-site visits and hearings. Through these methods, the quasi-judicial organization successfully pressures governments to reform policies and practices. (SPLC "SPLC Seeks")

Commissions of this type are vital to protection of immigrant workers denied human, civil and labor rights protected by nation-state policies. Pressures applied to governments by commissions like this one are a fundamental component in the move toward transnational labor rights. Present at this hearing were numerous grass-roots groups from all parts of the country who came to give evidence of human and civil rights abuses and confront the failures of the U.S. Government in providing adequate assistance to multiple populations following the Hurricane. The representatives from IJP provided like evidence in the form of testimonials from immigrant laborers gathered from interviews with over 500 workers recruited to the Deep South for labor following the Hurricane (IJP).

The Immigrant Justice Project Post-Katrina:

Since the Hurricane Katrina disaster in August of 2005, the SPLC has acted as the vanguard in the fight to enforce immigrant justice on behalf of laborers lured to the Deep South for the work of demolition, construction, and service industry jobs. This section will focus on two class action civil suits litigated by the SPLC on behalf of exploited immigrant laborers. These cases are *Navarrete-Cruz v. LVI Environmental Services of New Orleans, Inc. et al.*, and *Rodrigues v. Belfor USA Group, Inc.* Knowledge of these legal actions is a vital dimension to understanding the abusive conditions faced by immigrant laborers in the post-Katrina Deep South. Legal action on behalf of immigrant

populations is critical in order to secure protections of civil and human rights.

Immigration scholar, Calavita asserts:

Law is a central protagonist here. Just as immigration law has increasingly criminalized undocumented immigration but not reduced the flow, so have civil rights laws pushed racism underground but not diminished it. Third World immigrants and native blacks continue to be racialized, but now in ways that are more difficult to access and thus to confront and that complicate considerably the interracial interactions of the African Americans displaced by Hurricane Katrina and the immigrants daily arriving in New Orleans to take the jobs Katrina created. In this post-civil rights era, the connections between law, immigration, and racism are not always direct or explicit, as employer preferences for immigrants over native blacks get encoded as a natural proclivity for those with a strong work ethic and illegal status is a de facto passport into some job markets. ("Immigration" 16)

Calavita makes several pertinent connections that speak to the conditions of labor exploitation in the post-Katrina Deep South and demonstrates the need for focus on law. This author remarks on inadequacy of law in terms of addressing the racialization of black and brown bodies. Calavita also speaks to the use of a colorblind rhetoric of the "natural" (Bonilla-Silva). This positioning of racialization has specific relevance in the forthcoming analysis of two class action lawsuits. An examination of the cases attempts to make explicit the "connections between law, immigration, and racism."

Part II: Litigated Cases

Navarrete-Cruz v. LVI Environment Services of New Orleans:

The *Navarrete-Cruz et al. v. LVI Environmental Services of New Orleans, Inc. et al.* was filed by the SPLC on February 1st, 2006, in the United States District Court for the Eastern District of Louisiana, New Orleans Division. The plaintiffs in the case are individuals who were at the time or who had once been employed the defendants. The case alleges that the defendants were in violation of FLSA provisions for failure to provide compensation at a rate of the minimum wage and payment for overtime labor, thereby committing wage theft and labor abuses. The plaintiffs in the case are primarily immigrant laborers of both documented and undocumented status, with limited proficiency in English and were employed to remove debris and clean public elementary and high schools in the New Orleans area following the destruction resulting from Katrina (*Navarrete-Cruz v. LVI Environmental Services of New Orleans, Inc "Initial Complaint"*).

LVI Environmental Services (LVI) is a national corporation founded in 1986, which claims to be the "nation's largest remediation and facility services firm, providing integrated service offerings nationwide" (*LVI Environmental Services*). A remediation and facility service, in this case, refers to the removal of mold, and the demolition and clean-up of buildings. LVI has offices across the U.S. and reportedly works with multiple industries including "commercial, government, industrial, retail, healthcare, education, hotels, and banks" and provides a "variety of mold remediation, demolition and abatement projects" (*LVI Environmental Services*). LVI has an office in New Orleans, is incorporated in the state of Louisiana, and was contracted for clean-up, restoration, and

reconstruction in the city. Once contracted, LVI hired subcontractors, including D & L Environmental Inc. (Incorporated in the state of Florida) to provide workers for clean-up projects in New Orleans. LVI Environmental Services of New Orleans, Inc. and subcontractor D & L Environmental, Inc. (D & L) were charged with the task of recruiting hundreds of workers in order to meet the demands of this contract (*Navarrete-Cruz v. LVI Environmental Services* "Initial Complaint").

Upon being subcontracted by LVI, D & L proceeded to recruit a large pool of predominantly immigrant workers to meet labor demands. The project for which LVI was contracted was the clean-up and restoration of public elementary and high school buildings in the New Orleans area. These public facilities were severely damaged by the hurricane and restoration was vital in order to meet the educational needs of the city's school-aged children. The exact number of the workers recruited is not known, but SPLC estimates put it at approximately 700, as documented in the complaint filed with The Eastern District Court of Louisiana (*Navarrete-Cruz v. LVI Environmental Services* "Initial Complaint" 5-6).

The plaintiffs of the case allege that the work consisted of removing mold, mud, and debris from the buildings, in order to prepare the facilities for use by the public school system. The plaintiffs worked in these buildings in severely contaminated environments for weeks. The complaint does not mention the availability or use of protective gear, although there are numerous reports from news sources in the Deep South regarding a myriad of labor abuses post-Katrina that included concerns regarding exposure to environment hazards and lack of education about or use of protective gear. The particular circumstances in this particular case are not documented.

In addition to working in environmentally hazardous conditions, the plaintiffs report they were frequently forced to work seven days a week and more than twelve hours per day. Workers allege they were subsequently paid sub-minimum wages by subcontractors, and not compensated for overtime labor. Lawyers from the SPLC allege that "LVI used this subcontractor system to evade responsibility to pay minimum wage and overtime wages as required by the Fair Labor Standards Act" (*Navarrete-Cruz v. LVI Environmental Services* "Initial Complaint" 3). The strategy of LVI's defense was to claim that as the contractor, they had no responsibility for the actions of their subcontractors and should not be held accountable for the subcontractors' actions.

In addition to these charges, the SPLC also accused LVI and D & L of purposefully exploiting a primarily immigrant labor force whose level of English proficiency was limited in order to more easily violate federal labor standards. The plaintiffs' lack of English language skills, lack of knowledge regarding labor rights, and lack of provision and education regarding labor rights is alleged to have contributed to extreme level of wage theft in this case (*Navarrete-Cruz v. LVI Environmental Services* "Initial Complaint" 2). The complaint before the court asserted that the plaintiffs (and others who are members of the class action) routinely worked in excess of forty hours per week, that LVI and D & L failed to pay the workers in a timely fashion and did not remit payment for total hours worked, that the defendants did not pay overtime wages in a timely fashion and did not remit payment for total overtime hours worked; and finally, that the defendants did not provide earned wages on "regular paydays as required by the Fair Labor Standards Act" (*Navarrete-Cruz v. LVI Environmental Services* "Initial Complaint" 5). The plaintiffs represented by the SPLC sought compensation for unpaid

wages, monetary reparations for damages, and "declaratory relief to make them whole for damages they suffered" (*Navarrete-Cruz v. LVI Environmental Services* "Initial Complaint 3). Declaratory relief, in this case, refers to an action whereby the judge makes a determination of the contract rights of the plaintiffs without making an order for enforcement. Declaratory relief can significantly shorten the judicial process by nullifying the need for the trial process (Garner 859).

The SPLC interviewed hundreds of workers in the process of gathering evidence for the claim against the defendants. One laborer, Sergio de Leon, who worked cleaning mold, mud, and debris from the St. Bernard Parish schools, stated "When we weren't paid, we didn't even have money for food.... These companies are robbing us of our money after we worked so hard" (SPLC "Southern").

In an amended report to the court, submitted on February 1st, 2006, the SPLC added a second subcontractor to the complaint (*Navarrete-Cruz v. LVI Environmental Services* "First Amended" 1). The company, AMS Staff Leasing, Incorporated in the state of Florida, claims to be the "nation's leading Professional Employer Organization (PEO) serving the construction industry" (*AMS Leasing Services*). AMS was founded in 1991, and began operations in Dallas, Texas. AMS describes itself as an employee management service, created to assist large and small companies in the tasks of employee administrative labor, such as "employee leasing-PEO services" payroll services, workers compensation, liability insurance, and consulting services. When a company contracts for services through AMS, they are said to be entering an arrangement that AMS terms "co-employer...a special arrangement [that] provides a full range of services by transferring or sharing many employer liabilities." Workers are considered to henceforth have two

employers, the contractor that hired them and AMS. The company boasts in their own description that "Your company can outsource human resources [to AMS] while maintaining complete control" (*AMS Leasing Services*).

The amended complaint filed with the court by attorneys from the SPLC, states that D & L (subcontracted by LVI) subsequently subcontracted with AMS Staff Leasing, Inc, in order to meet the contract obligations to supply labor for the project. The complaint claims that all allegations of the original complaint filed against LVI and D & L, regarding violation of the FLSA, apply equally to AMS. The complaint further stipulates that all plaintiffs (and class members) in the case are considered employees of both D & L and AMS (*Navarrete-Cruz v. LVI Environmental Services* "First Amended").

1)

On December 22, 2006, AMS filed a "Statement of Uncontested Material Facts" to the Eastern District of Louisiana Court. In this statement, AMS denied any knowledge of violations of the FLSA. AMS asserts that their involvement with the defendants in the case consisted of "client's payroll, the payment of all applicable federal and state taxes for employees and providing workers' compensation insurance coverage for employees" (*Navarrete-Cruz v. LVI Environmental Services* "Statement of" 2). The report filed by AMS asserts D & L had sole responsibility for the reporting of all hours worked by employees and that AMS had no oversight in these matters. The company, therefore, claims no knowledge of wage theft, asserting that their role was merely to pay the employees for the hours worked (as reported by D & L) at the rates to which D & L contracted the workers. AMS reports that all decisions regarding the hiring and firing of employees was the sole purview of D & L. AMS further claimed that D & L was

responsible for supplying the funds required to pay the employee salaries and that the company "did not pay the leased employees until it received these monies by check from D & L," thereby disclaiming any responsibility for failure to comply with the FLSA regarding the requirement of payment to employees on regularly scheduled paydays " (*Navarrete-Cruz v. LVI Environmental Services* "Statement" 3).

No judgment was ever made with regard to these charges because this case never went to trial. On May 2nd, 2007, the Eastern District Court of Louisiana ordered the case "Dismissed with Prejudice" on the basis of a Confidential Settlement Agreement. A dismissal order of a case stipulated "With Prejudice" precludes the plaintiffs (and all others who opt into the Class Action) from bringing any further actions to the attention of the court with regard to these particular defendants (Garner 502). The court action indicated that a "Confidential Settlement Agreement" was reached; however, this does not prove culpability on the part of the defendants (Garner 1079). Since the settlement is confidential and the records sealed, no information is available regarding the specifics of the settlement. The court did "find that the settlement of Plaintiff's claims [to be] a fair and reasonable resolution of a *bona fide* (emphasis theirs) dispute over the FLSA provision" (*Navarrete-Cruz v. LVI Environmental Services* "Confidential Settlement" 3). This again, does not prove culpability on the part of the defendants, rather it is an acknowledgment by the court that the charges made by the plaintiffs were valid in the making of an allegation of FLSA violations (Garner 194). The records were officially sealed on May 10th, 2007.

Although no court testimony is available in the case due to the sealing of the records, many laborers who worked in the cleanup of city schools and other public

buildings were interviewed by the IJP. The disclosures of individuals who shared their experience of labor exploitation are documented in a report (published by the IJP) *Broken Levees, Broken Promises: New Orleans Migrant Workers in Their Own Words*. In this report, a man named César states that the workers were not paid as promised, that they went without food with frequency and that workers were even denied breaks to use the restroom. César explains "If someone asked for a break, they told him he had two options—to continue working or be fired." He asserts that the individuals he worked with continued with the labor for fear of never being paid the wages they were owed. He also reports that people began to feel hopeless and sometimes cried out of desperation and from hunger. He further discloses that workers were treated with contempt by employers and states: "Cuando los supervisores nos hablaban, parece que les estaban hablando a animals" [When the supervisors of the company talked to us, it was like they were talking to animals"] (IJP 5).

Another worker by the name of Antonia who accepted a position in one of the clean-up projects reported extremely difficult and unsanitary working conditions. She states that the work crew labored 10 hours per day cleaning out flooded buildings "pulling out all the filthy things that were completely wet, covered in mold.... We pulled out all the trash from the building, tore down the walls with hammers, and then dragged everything outside. It wasn't easy." Antonia relates that after working under these conditions for two weeks, she was not paid as promised and had no money for food. She claims that workers were forced to wait in line for their paychecks. The line up for checks would begin after a full day of work, at 6 p.m., and workers waited to be paid until midnight or as late as 2 a.m. She further states that after waiting 6-8 hours in line for their

pay check, most workers were not paid at all. When Antonia was not paid she became so distressed that she began to cry and complained to the employers that the working conditions were abusive. She was fired and forced off of the premises. At the time the interview two months had passed since this incident and she has still not been paid. Antonia declares "Estaba reclamando mi sudor" [I was demanding what I had earned with my sweat] (IJP 7).

Hector, who also worked in a clean-up crew related that he and his co-workers were forced to be ready for work at 5 a.m., which was the time the company bus came to pick them up. Work began at 7 am and most often continued until 7 or 8 pm, whenever the bus returned. The workers could not leave until the company bus came to transport them back to the hotel in which they were housed. Hector reported the working conditions were horrendous with school buildings "full of mud—three or four feet of mud. All sorts of filth was in the mud. There were horrible smells, and we found snakes, frogs and a lot more." Hector reports ongoing health problems that he believes stem from exposure to the toxins in the workplace and from going for such long periods of time without food. Of his former employers he states "I believe that the contractors don't have a heart to be touched" (IJP 11).

The testimony of these workers reveals one of the primary difficulty for workers seeking recourse from labor contractors. This issue lay in the fact that the workers were isolated and had little control over their daily lives. Immigration scholar, Stephen documents a similar process that has a long history among immigrants employed as farmworkers. The author notes:

The likelihood of abuse of farmworkers by labor contractors increases in direct relation to the amount of control contractors have over a farmworker's daily existence. Contractors may pay farm laborers for fewer hours than they work, loan them money at high interest rates, and require workers to pay for food, rent tools, and transportation—often charging exorbitant prices...[and] as long as contractors tend to hire newly arrived and undocumented workers who are not familiar with U.S. workplace rights, workers are unlikely to complain. (165)

Stephen's work and the work of other numerous scholars demonstrate that similar circumstances exist for immigrant labors across a multitude of occupations. The circumstances currently being experienced by laborers in the Deep South are merely reification of a historical relationship of exploitation by the U.S. and several Central and South American countries.

Rodrigues v Belfor USA Group Inc:

The second case examined here also concerns wage theft and violation of the FLSA, and was also filed on February 1st 2006 by the SPLC. This case, *Rodrigues v Belfor USA Group Inc.* was filed in the Eastern District Court of Louisiana, New Orleans Division, "on behalf of a class of over one thousand workers, predominantly immigrants" who were employed by the defendant to perform debris removal, restoration, and reconstruction of public buildings in New Orleans (*Rodrigues v Belfor* "Initial Complaint" 1-2). Included in this contract were the clean-up and restoration of court buildings, hospitals and buildings on the Tulane University campus.

The plaintiffs, who engaged in labor for several weeks in the dirty and dangerous work of cleaning debris and restoring mold and floodwater from contaminated buildings, allege that they did not receive full compensation for their labor. The plaintiffs testified to laboring seven day work weeks for a minimum of twelve hours per day. The laborers brought suit against the defendant, alleging they were not paid for overtime labor. The plaintiffs further allege they were not paid on regularly scheduled paydays. Both of these complaints constitute violations of the FLSA (*Rodrigues v Belfor* "Initial Complaint" 1-2).

In addition to these charges, attorneys for the plaintiffs stipulated that the Belfor hired subcontractors to recruit and manage labor, then made use of the subcontracting system to avoid paying wages. It was further alleged that the primary contractor and subcontractors took advantage of a vulnerable labor force made up primarily of Latino immigrant workers who possessed limited proficiency in English and lacked full knowledge of U.S. labor law, to avoid paying full wages and following all provisions of the FLSA. The complaint stipulated that the plaintiffs were joint employees of Belfor and the subcontractors hired by the company, and that therefore, Belfor was obligated to redress this grievance." (*Rodrigues v Belfor* "Initial Complaint" 1-2). SPLC attorneys sought reparations from Belfor for remittance of unpaid wages, "an award of money damages, and declaratory relief to make them whole for damages they suffered due to the defendant's violations of the law" (*Rodrigues v Belfor* "Initial Complaint 1-2).

Belfor USA Group, Inc. (incorporated in the state of Colorado, with its principal place of U.S. business in Birmingham, Michigan) is an international corporation with operations in twenty-seven counties with 170 locations. Their motto is "We manage your

damage" (*Belfor USA Group Inc.*). The Louisiana Secretary of State shows Belfor registered "as a foreign corporation" (*Rodrigues v Belfor* "Initial Complaint" 3). Belfor has its roots in a company formed in 1989 under the name Haniel Umweltschutz Environmental Services with its first operations in Germany, Switzerland, Austria, Belgium and Italy. Since that time the company has grown to include operations all over Western and Eastern Europe and has begun to move into Asian markets as well with operations in Japan. In 1991 Haniel Umweltschutz split into two companies based on the separation of services provisions, both of which officially came under the "Belfor umbrella" in 1998. The company began making inroads into the U.S. market in 1999 and boasts that since that time it has become a "world-leading disaster recovery and restoration company" with primary services focused on fire and water damage (*Belfor USA Group Inc.*).

Attorneys for the plaintiffs collected forty-one official affidavits from individuals included in the lawsuit and filed in the District Court. These affidavits provide a record for the court regarding the conditions under which they were contracted for employment and the actions of the employer with regard to compensation. The questions on the affidavits were standardized with plaintiff providing responses to each (*Rodrigues v Belfor* Affidavit 1-41). The plaintiffs who signed official affidavits were comprised of twenty-six males ranging in age from nineteen to fifty-two years, and fifteen females ranging in age from twenty -four to fifty-seven years (this information is based on first names as indicators of sex, and reported age on the signed affidavits).

Question #2 of the Affidavit asks plaintiffs what company they were recruited by and where they were living when recruited. Of the plaintiffs who responded, eighteen

reported being recruited by Belfor, two reported being recruited by subcontractor Ticos Construction, five reported being recruited by subcontractor Carl E. Woodward LLC, and five respondents listed the name of the recruiter and did not record the contracting company. In Question #2, the workers report that they were recruited from several cities and towns in Florida and Ohio (*Rodrigues v Belfor* Affidavit 1-41).

The vast majority of the workers who signed affidavits reported being promised \$8 per hour for labor with "no mention of overtime." Of the thirty-seven total plaintiffs who reported their contracted wage, one woman reported being promised \$9 per hour, another woman reported being promised \$10 per hour, and five men reported being promised \$10 per hour. These workers also stipulated that "no mention of overtime" was made at the time of the recruitment (*Rodrigues v Belfor* Affidavit 1-41).

All plaintiffs stipulated to being "on call" for Belfor while in their employ, being contacted frequently only one to two days before their presence at a job site was required, the location of which was quite often in another state. The plaintiffs testified that they were never compensated for the hours of travel or for being "on call". All but one of the plaintiffs reported that they were told by Belfor Agents or their supervisors that if they failed to show up for work when called, they would be fired immediately (*Rodrigues v Belfor* Affidavit 1-41).

The number of plaintiffs in the class action is estimated to be in excess of one thousand. An examination the affidavits show laborers reporting working in groups ranging from twenty to one thousand. All plaintiffs reports being supervised under Belfor. The vast majority of the plaintiffs report working twelve hour days, seven days a week and all plaintiffs report that they were not paid overtime. Finally, the plaintiffs all

submit that there were was no information posted regarding worker rights, rights to minimum wage or time and a half wages for overtime labor (*Rodrigues v Belfor* Affidavit 1-41).

Plaintiffs involved in this lawsuit were also among those who participated in interviews with the IJP for the *Broken Levees, Broken Promises*. The workers interviewed related that after being promised fare wages, housing, and food, they came to New Orleans to find that they did not get paid, some were forced to sleep out in the open in parking lots on bare mattresses with no bathroom or bathing facilities (some bathed in the Mississippi River), and were frequently not given meals or given spoiled food. These laborers further report working in extremely hazardous conditions. One such worker who labored cleaning up in the hospital basement related that there was an overpowering stench and that he labored in flooded rooms. He stated "I was in contact with contaminated materials—syringes, dead monkeys, medical waste. We took all the filth out of the buildings with our own hands" (IJP 7). This worker stated that he and other members of the work crew were provided with some protective gear, primarily breathing masks, which they used when inside, however, he related that during their mealtimes, they sat outside on the very furniture that had been taken out of the contaminated building and were surrounded by contaminated materials from the building. He further relates that the masks they were given had filters that needed to be changed with regularity, but that after a few weeks, the employers stopped providing new filters and if a worker lost their mask, they were not given a new one for several days. Remarking on these hazards, this worker states "There wasn't anyone to ensure that everyone had a mask—no one from the government, from the public health agency, or anyone to take

care of us" (IJP 14). Once again, the position of vulnerability and lack of any sort of protections demonstrates the complete disregard for the most basic of civil and human rights for immigrant laborers.

This case was also settled out of court by a negotiated agreement between the plaintiffs and the defendants. On August 7th, 2006, the SPLC filed a "Collective Action Settlement Agreement" with Belfor in the U. S. District Court for Eastern District of Louisiana New Orleans Division. At that time Belfor admitted to subcontracting with several companies including Expro Services, Inc.; Ticos Construction, LLC; M-2, Inc.; Carl E. Woodward, LLC; and Vent-Vac Systems, LLC. These Belfor subcontractors hired employees either directly or indirectly, making the plaintiffs employees of both Belfor and the hiring subcontractor. It was further disclosed that the subcontractors hired "other independent contractors to work on the Belfor projects" (*Rodrigues v Belfor* "Collective Action" 4). This layering of subcontractors posed multiple challenges for employees and their legal representatives. As stated earlier in this chapter, the SPLC alleges strategic use of multiple subcontractors as an avenue by which to confuse and exploit workers and evade responsibility for adherence to labor standards, an argument which would seem to be supported by the disclosure of Belfor with regard to the number of subcontractors involved in this project.

The Collective Action Settlement was filed, "AGREED and EXECUTED" in the District Court on August 7th, 2006. The defendant agreed at that time to settlement awards that included the following outcomes:

- (A) 100percent of overtime wages owed to the plaintiffs (B) Reporting, deduction and payment responsibility to the IRS for overtime wages paid

to the plaintiffs (C) Simultaneous payment of 45percent of the overtime wages calculated as owed to each covered employee as "liquidated damages." (D) The "Representative Plaintiffs" receive an additional payment of \$500 in liquidated damages for their service as representatives of the class, and (E) Preparation of tax paperwork for the liquidated damages (*Rodrigues v Belfor* "Collective Action" 3).

The settlement also put in place an arrangement by which the amount of damages owed to the plaintiffs was to be calculated and agreed upon as well as the manner in which the payments were to be made. Once the agreement of all parties was established, the case was to be dismissed. Following the settlement, Belfor attempted to have the provision regarding the management of income tax payments "nullified", but this dispute did not go to court, being successfully settled between the attorneys representing both groups (*Rodrigues v Belfor* "Collective Action Settlement" 11). Having mitigated this issue, the settlement was agreed upon by both parties and the plaintiffs were compensated as ordered.

One aspect of the Settlement Agreement which has not yet been discussed and has no direct effect on the plaintiffs in terms of wage compensation, but is nonetheless of significance to those laborers involved in the litigation is Section VIII of the settlement agreement. This section stipulated provisions that may prove to be of great significance to future laborers for Belfor. The provision of the agreement made between the parties places stipulations on the future management practices of Belfor. These stipulations reach beyond the confines of this particular case and demonstrate the ways in which legal advocacy by the SPLC is impacting labor exploitation of future immigrant workers. This

stipulation provided for specific guidelines with regard to "Management Practices" of the company (*Rodrigues v Belfor* "Collective Action" 7).

The agreement orders that the defendant take the following actions in future labor practices: (A) In all future projects resulting from catastrophic natural disasters that require large numbers of contract workers, the company is obligated to notify workers of their rights as they apply to wages and overtime. The defendant is ordered to post signs (with translations appropriate to the language(s) of the laborers) that provide a toll-free phone number that workers can call to ask questions about wage and overtime issues. This toll-free number is to be "answered at Belfor's headquarters" and available after working hours, so as to be accessible to the laborers (*Rodrigues v Belfor* "Collective Action" 7).

As part of provision (A), Belfor is ordered to provide interpreter services when necessary, make the phone line accessible for at least twelve hours per week "outside the hours workers are employed," provide confidentiality regarding complainants' identities as much as is reasonably possible and investigate promptly any complaints made by workers (*Rodrigues v Belfor* "Collective Action" 7).

Provision (B) of this agreement orders that all future contracts made by Belfor with subcontractors include stipulations which allow Belfor full access to all subcontractors records that involve employee payroll issues. All subcontractors would thereby agree to a full financial audit from Belfor as it applies to employee wages. Additionally any subcontractor of Belfor, who then subcontracts to another company, must include this provision in their contract, giving Belfor the right to audit the subcontractors of Belfor's subcontractors (*Rodrigues v Belfor* "Collective Action" 7).

Provision (C) orders that Belfor "make reasonable efforts" to audit all subcontractors employed by the company at least one time during the length of the contract agreement. The purpose of the audit is to ensure that subcontractors are complying with all provisions of the FLSA. These inspections are ordered to include "audit of employment, payroll and time-keeping records" worker status "as employees or independent contractors of Belfor subcontractors." If, upon audit, the subcontractor is found to be out of compliance, provision (D) stipulates that Belfor will notify the subcontractor of the violations and allow a reasonable time period by which the subcontractor will correct the violations. If the subcontractor fails to make the corrections, they will be subject to suspension and all future payments to the subcontractor will be held until such time as they come into compliance (*Rodrigues v Belfor* "Collective Action" 7).

The final provision (E) stipulates the manner in which employees are to be paid in all future cases in which a natural disaster requires the use of a large workforce and thereby makes it necessary for Belfor to make use of subcontractors. Belfor will include in agreements with all subcontractors, requirements that all employees be paid by check and that they receive "remittance advice reflecting the calculation of wages paid." Furthermore, it is ordered that all of those subcontracted by Belfor subcontractors contractually agree to this provision (*Rodrigues v Belfor* "Collective Action" 7).

This portion of the settlement agreement has a two-fold effect. First, it changes the way in which Belfor conducts all future labor contracts with regard to use of subcontractors in events of natural disasters. This section of the agreement could be quite significant for unknown numbers of future laborers, many of whom will likely be

immigrants who accept employment with Belfor. Since Belfor is one of the largest disaster recovery and restoration companies in the U.S., such settlement agreements may contribute to the reduction of future violations. Additionally, in spite of the fact that Belfor settled the case without a trial, thereby failing to create a 'Legal Precedent', this agreement may be cited in the future in the litigation of similar cases, and suggested as a guide for the court in settlements or litigation with regard to employer conduct (Garner 1214).

Although the defendant's agreement in the settlement was made with the stipulation of "NO ADMISSION", meaning that the defendant did not admit to agreement with the "statement of facts" made by the Plaintiff, or admit guilt on any count (Garner 50) the defendant's agreement to future "Management Practices" would indicate that these "Management Practices" present a new policy regarding contracted labor and that will have long-term benefits for immigrant workers (*Rodrigues v Belfor* "Collective Action" 7).

Part III : Documentation Status

Legal Rights of Undocumented Workers in the U.S.:

The class action suits examined here provide documentation and testimony of employer misconduct with regard to immigrant labor in the post-Katrina Deep South. Further evidence of labor abuses come from the work of Peter Orner's collection of oral histories of undocumented immigrants. One such history documents an interview with a man by the name of Polo, age 23, who was recruited from Oaxaca, Mexico, to Gulfport, Mississippi, by the subcontractors of Kellogg, Brown & Root (recently owned by

Halliburton) for clean up of the Seabee Naval Construction Battalion Center (Orner 135). The harsh conditions at Seabee Naval Base have been recorded by various news reporters (Pritchard; Lovato) who have compared circumstances on the base to that of slave labor. Polo reports that the work in which he and many other Latino workers engaged in at the Base were extremely demanding and hazardous, "Our job was to clean all the mess—the houses, the trees, everything—all that the wind had damaged, had destroyed. We collected trash...cut up fallen trees...there was so much cleaning up to do" (Orner 135). Polo reported that the promise from recruiters for housing turned out to be a cot to sleep on in an airplane hanger. Polo claims, "After two weeks, they began to take away some of the cots...some of us had to sleep outside...the people on the floor had some blankets, but that was it. There was intense heat during the day and intense cold at night" (Orner 136).

Workers were not allowed to leave the base and were guarded by "the poyeros—human smugglers." Polo reports he labored for three weeks on the naval base before he and the other laborers were forced out of the facility by soldiers at gun point, "They came up to...the few cots that we had—and took them. Then they shut off the bathroom. And they took us out, like they were cleaning out the base" (Orner 136).

This worker's report of his experience at Seabee Naval Base corresponds with the documented ICE raid of the base prompted at the request of Senator Mary Landrieu, D-Louisiana (Martinez). None of the workers had been paid for their labor. It took extensive advocacy on the part of the Mississippi Immigrant Right Alliance, the agency that appealed to the U.S. Department of Labor, to eventually force KBR to remit the unpaid wages to Polo and the crew with whom he labored (Orner 136).

The conditions these laborers were forced to endure are not unique for immigrant laborers. Stephen has recorded similar circumstances that have long been standard practice in farm labor camps. Stephen notes, "Labor contractors often strictly control who can have access to labor camps, the forms of transportation available, access to medical help, and even access to food" (144). The author notes that for the immigrant worker, this level of surveillance and control are common conditions across occupations (143).

In addition to the strategic control of immigrant laborers, the lack of protections enjoyed by U.S. citizens and documented individuals living in the U.S. is key to understanding the attractiveness of a work force comprised of people who have few, if any option for legal recourse. Undocumented workers have long been the target of unscrupulous employers looking for low wage labor that is unencumbered by state and federal labor rights and regulations. It has also long been the practice of the federal government to encourage a certain amount of this labor as the demands of capitalism require. As many immigration scholars have asserted, Stephen contends "U.S. immigration policy in relation to Mexico and other countries has served primarily as labor policy—inviting workers in when they are needed and then showing them the door when it became politically expedient to ‘defend’ the border" (145).

Bustamante asserts that the "contradictions between the ideology and the economy of undocumented migration from Mexico to the United States are reflected in the discrepancies between the objectives of written text of immigration... [IRCA]...and the realities of the international labor market" (23). This point is clearly demonstrated by the duplicity in the actions of the federal government in response to the Katrina disaster. At a time when the Bush Administration and the Congress were both actively (and

separately) involved in the drafting of new and stricter immigration legislation with a particular focus on "illegal immigration" and the bolstering of guest worker programs, all of which failed to pass (Katzenstein), the President eased wage restrictions and ICE mandates in the Deep South.

In January 2004, just eighteen months prior to the hurricanes, President Bush released his proposed legislation for "Fair and Secure Immigration Reform" in which he recommended "a new Temporary Worker Program." and requested assistance from Congress "to work with him to achieve significant immigration reform". The major provisions of this proposed legislation included (1) Border Security (2) a New Guest Worker strategy (3) provisions to control "undocumented aliens" (4) time limits on documented workers with mandates on the return to the "home country" (5) safeguarding the legal protections for "Legal Immigrants." In addition to these proposed components, the administration mandated that the legislation "must meet the nation's economic needs and live up to the promise and values of America" ("The White House").

It is clear that immigration legislation, particularly with regard to Mexico and Latin America, has always been aimed at "meeting the economic needs" of the U.S., however, given the ambivalence with which the nation-state has and continues to address the issue of immigration, particularly with respect to documented and undocumented workers from Mexico and Latin America, it is rather difficult to infer exactly the meaning of the "promise and values of America." This was the beginning of what proved for the Bush administration to be an irreconcilable issue that underwent debate for four years and produced no significant new policy.

While the debate continues with the death of the former Bush administration's proposed legislation, "The Comprehensive Immigration Reform Bill" and the failure of several bills proposed in the House of Representatives (Katzenstein 279-280), immigrant laborers who are undocumented continue to be the most vulnerable of work forces with little to no protections from abusive employers.

In 2006, the University of California, Berkeley, and Tulane University conducted a collaborative research study designed to assess the risk factors and labor conditions of Latino workers, documented and undocumented, engaged in demolition and reconstruction in the New Orleans area. In this study (part of which was addressed in Chapter 1) researchers interviewed 212 "workers of all origins," and twenty-five "Key Informant Interviews," a group comprised of various professionals and activists in Orleans Parish (Fletcher et al. 117). Legal and human rights issues as they differ between documented and undocumented workers were one of the primary areas of focus.

Legal rights for undocumented workers in the U.S. intersect with immigration to make this work force particularly vulnerable . The Fletcher et al. study exposes the failure of the U.S. to follow international human rights and labor standards, standards that could have significant benefits for workers otherwise not included under protections conferred upon citizens and documented immigrants. Illustrating the intersection of these issues, Fletcher et al. state:

U.S. Immigration laws are at odds with national and international labor standards. The Inter-American Court of Human Rights, the highest human rights tribunal in the Americas, recently held that labor rights must be extended to all workers regardless of status because "the migratory status

of a person can never be a justification for depriving him of the enjoyment and exercise of his human rights, including those related to employment".

(148)

This assertion speaks to the pervasive disregard of human right for undocumented workers and to a growing international concern for transnational laborers. As labor flows continue to follow the forces of globalization, this most basic of labor standards becomes paramount. For U.S. employers held to no legal standard, undocumented status becomes code for inhumane treatment and few, if any, consequences.

The right of jurisdiction over the U.S. by the Inter-American Court has been rejected by the federal government; therefore, the U.S. acknowledges no obligation to abide by the principles of the organization. The International Labour Organization, of which the U.S. is a member, is a "tripartite international organization of states, labor, and employers" (Fletcher et al. 138). In 1998, this organization came to an agreement on a "set of four 'core labor standards'" vital to the protection of all workers. These standards include "the right to freedom of association and...to collective bargaining," the eradication of all manner of forced labor, the elimination of child labor, and "the elimination of discrimination with respect to employment and occupation" (138-139).

Although the U.S. is not bound by these standards, Fletcher et al. indicate that "a number of the conventions upon which these standards are based" have been separately adopted by the federal government (139). Other human rights standards, such as the International Bill of Human Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families," which could provide significant

health and safety protections for immigrant laborers, have not been adopted by the U.S. government (139).

Immigrant workers in the Gulf Coast who are undocumented have faced further challenges to labor rights, particularly with regard to wages due to lack of state protections. Mississippi and Louisiana, as discussed in Chapter One, are "right to work states" and have no State Department of Labor (GCCRE 4). These states also lack state minimum wage laws. In order for a worker to be protected under the federal minimum wage rate, they must fall under those that apply to regulation of wages in particular industries. Workers who are employed by public agencies and "certain types of private enterprises" are protected by the federal Fair Labor Standards Act. This not only deems all of the employees as protected by federal minimum wage standards, but also includes a provision for overtime labor to be paid at 1½ times the base wage (Fletcher et al, 141). The charges in the cases litigated by the SPLC discussed earlier were based on violations of the FLSA by the defendants. The FLSA was the sole legal labor defense available to the plaintiffs who were undocumented workers in these class action suits.

Although noncompliance with the FLSA enabled the SPLC to successfully litigate the cases discussed here, there are limitations to even this meager labor protection. Not all workers involved in demolition and reconstruction were eligible for such protection because they were employed by small contractors whose companies were not constrained by the federal government mandates. For these laborers the only recourse would be to file suit under state laws (Fletcher et al. 142). The number of workers who suffered labor exploitation from these small contractors is not known.

In Nestor Rodriguez' discussion of the recruitment of undocumented laborers by employers with the complicity of the U.S. government, he asserts:

Although some may view this as an economic situation of immigrant labor, it is actually a political condition that develops from government action or more precisely, inaction. Because the federal government defines eligibility for work authorization, it can keep an undocumented immigrant labor force politically (and legally) vulnerable by not providing it with legal protections, through a guest-worker program or other form of legalization." (456)

Here Rodriguez speaks to a system of structural violence whereby the federal government, through policy decisions regarding immigration, is the primary perpetrator. The concept of structural violence, as it is applied here "is a consequence of policies that have occurred or accumulated over a long period of time and...involve many decision-making bodies" (Chasin 15). The positioning of the undocumented immigrant as one who is at the mercy of policies that deny equal access to human, civil, and labor rights is a result of strategic decision and indecision on the part of the federal governing bodies.

Conclusion:

Human, civil, and labor abuses in the Deep South post-Katrina have been pervasive and extreme. Numerous scholars have examined the multitude of abuses resulting from the actions and inactions of the U.S. Government in its response to this national disaster. The bulk of this scholarship has focused on the impacts of structural racism in an area of the county that has historically represented a primary demographic made up of African-Americans, blacks, and whites. Although Latino/a (mainly

Honduran), Vietnamese, and Indian immigrants have long been present in the region, their numbers prior to the events of Hurricanes Katrina and Rita, were quite small. The large influx of Latina/o immigrants has changed the shape and scope of racial oppression in the Deep South. This presents a gap in the scholarship which requires investigation.

The lawsuits examined in this chapter, *Navarrete-Cruz et al. v. LVI Environmental Services of New Orleans* and *Rodrigues v. Belfor USA Group Inc.* expose the extreme labor abuses and human rights violations suffered by undocumented laborers in the post-Katrina Deep South. These class action law suits litigated by the SPLC also demonstrate the critical importance and possibilities for change that legal advocacy affords. The actions taken by the SPLC in the cases discussed here have proven to be vital to the wellbeing of thousands of undocumented workers in the post-Katrina Deep South. The IJP is at the forefront of the struggle for human, civil and labor rights protections of undocumented workers. The IJP is a model which, if adopted by legal agencies throughout the U.S., would have major impacts on the health and safety, and possibly on governmental policy, for thousands of people who do not enjoy the privilege of citizenship, legal status or even respect for the most basic of civil and human rights in this country.

CHAPTER FOUR

GUEST WORKER OR SLAVE LABOR?

For too long, our country has benefited from the labor provided by guestworkers but has failed to provide a fair system that respects their human rights and upholds the most basic values of our democracy. The time has come ...to overhaul our shamefully abusive guestworker system.

(SPLC "Close" 46)

Introduction:

This chapter more closely focuses on the circumstances faced by immigrants employed in the U.S. as documented guest workers recruited to the Deep South post-Katrina. The current focus of a strongly debated immigration reform policy lies primarily with the issue of revisions to existing Guest Worker Program guidelines. As discussed in Chapter Two, former President Bush began proposing legislation for revisions in 2004. Since that time several members of Congress who disagreed with Bush's plan have tendered their own suggestions for revisions. These proposals for adjustments include changes that could result in "potentially millions of new 'guest' workers to the United States" (SPLC "Close"). This status of guest worker is suggested by the SPLC to be "close to slavery."

This chapter examines the current H-2B program regulations. An analysis of the flaws of H-2B program is provided through an investigation of a class action suit brought to the court by the SPLC on behalf of plaintiffs who are documented immigrant laborers under the H-2B Guest Worker Program for work in the rebuilding of the tourist industry in New Orleans. Unlike the two cases examined in the previous chapter in which the

human, civil, and labor rights dilemmas faced by undocumented workers were examined, the laborers here are considered to be in the United States as "legal" (though temporary) immigrants. One would expect that the difference in status would offer increased protections for this class of laborers, however, the provision of the H-2B program provide little more than the ability to avoid immediate deportation, and even then, only under explicit guidelines. The class action suit examined in this chapter exposes profoundly flawed guest work program policies, in particular, the H-2B visa policy provisions, and provides support for the call from immigrant rights advocacy organizations for a complete overhaul of guest worker policy as the only vehicle by which to adequately protect the human, civil, and labor rights of immigrant workers. The chapter concludes with an examination of the tourist industry, the increasing dependence on H-2B guest workers as a highly preferred work force by U.S. labor contractors, and the new rise in racial and ethnic tensions in the South based on perceptions of job competition.

The case to be examined in this chapter is *Daniell Castellanos-Contreras, et al. v. Decatur Hotels, LLC et al.*, a class action suit that was filed by the SPLC on August 16, 2006, in the United States District Court for the Eastern District of Louisiana: New Orleans Division. The suit alleges that "Decatur Hotels, LLC and its president at the time, F. Patrick Quinn III, violated the Fair Labor Standards Act when the company failed to reimburse workers for the exorbitant fees they paid to aggressive labor recruiters working as agents for the hotel chain" (SPLC "Center"). Guest workers recruited to New Orleans by the hotel chain were brought to work in hotel support jobs such as housekeepers, guest service attendants, and hotel maintenance workers. The primary focus of the allegations in the complaint against Decatur Hotels is that guest workers were brought in for labor

although "U.S. workers were available," and that the company's goal in hiring guest workers was to drive down wages" (Cass). Prior to the hurricane, the primary labor force in the hotel and tourist industry, some of the lowest wage work in the city, was made up primarily of African-American, Black, and white populations of low income working class status. The previously thriving tourist industry in New Orleans offered one of the major avenues of employment for large populations of low income people. Hundreds of New Orleans' residents were dependent upon this industry in order to support themselves and their families even as they struggled to meet their most basic needs. As the inquiry into the Decatur Case will reveal, these same people, who may have invested years of labor in the hotel and service industry, were purposefully and strategically locked out from a return to their previous jobs through (mis)use of the federal H-2B program. Workers brought in under the H-2B provision were then highly exploited, enabling, in this case Decatur Hotels, to reap huge profits in reviving their role in the tourist industry of New Orleans.

Decatur Hotels LLC is the wealthiest luxury hotel chain in New Orleans and one of the largest hotel chains in Louisiana. Decatur currently owns and/or operates seventeen properties throughout Louisiana, eight of which are located in historic districts in New Orleans. The first of these hotels was opened in the French Quarter in 1989. Decatur Hotels has built its reputation on the purchasing and refurbishing of abandoned historic buildings. These properties are located in the French Quarter, Business District, and Arts District of New Orleans (*Decatur Hotels LLC*). At the time of the hurricane, Decatur owned and/or operated fifteen hotels and, in April of 2005 the company was reportedly earning "annual revenue of about \$50 million" (Jordan).

Quinn has lived a quite comfortable life as the president of Decatur Hotels. The home in which he resided prior to the hurricane and flood, situated in an elite suburb of New Orleans has been described as "a white Palace [with] Corinthian Columns [that] call to mind the Pantheon in Rome" (Rivlin). This residence was flooded by three feet of water as a result of the storm and Quinn reportedly suffered the loss of "a number of precious antiques." However, in spite of this setback, Quinn managed to bounce back following the disaster, buying a "stately two-story brick home [with a] swimming pool, a rose garden and an expansive lawn large enough to hold a touch football game" (Rivlin).

Quinn, who reportedly stated to a reporter for the *New York Times*, that he dreams of "becoming the Donald Trump of New Orleans," enjoys the luxury of being well connected in high places. These connections include a State Senator for a wife and a son who is the state Republican Party Director. Furthermore, Quinn has friendly contacts inside the Shaw Group, which he exploited in a bid for FEMA funding post-Katrina (Cate-Gumpert, Finn, and Hight).

Following the devastation to multiple properties owned by Decatur Hotels, Patrick Quinn and the Decatur Hotel company moved quickly to begin the process of clean-up, rebuilding, and reopening in efforts to minimize loss of revenue. The actions of the company clearly indicated that no serious or committed effort was made to reach out to the community of workers whose livelihoods, prior to the storm, depended upon this industry. When presented with the allegations of the lawsuit, Quinn claimed that "after the hurricane displaced much of the local workforce, the company had no choice but to contract with an international recruitment agency" in order to meet their labor needs.

Quinn is further documented as stating that attempts were made to recruit labor locally, but that "no one applied" (Cass).

In truth, Quinn did advertise locally for laborers in the local newspaper for three consecutive days, the minimum legal requirement prior to eligibility for an application to request access to the federal guest worker program. Given the chaos in the affected areas post-Katrina, it is unlikely many people saw the ad and not surprising that it drew no applicants. The SPLC asserted that "local U.S. workers, mostly African Americans, had previously worked in this industry in New Orleans and were available to do so again." The action of the company to recruit guest workers was alleged to be a strategic tactic taken in order to reap greater profits through labor exploitation. Decatur Hotels and Quinn, it was asserted, utilized the Department of Labor and access to guest workers to manipulate wages and exploit laborers (Cate-Gumpet et al.). Tracy Washington, Co-Counsel in the lawsuit against Decatur maintains that "There is a real difference between hiring people in the community that will organize more easily and those who don't speak English and don't know the law of the United States" (qtd. in Jordan and Perez). Quinn strategically made use of this disadvantage in recruiting an immigrant work force with limited English language capacity and lack of knowledge of U.S. labor law. The Department of Labor in the State of Louisiana allowed Decatur to recruit immigrant laborers, accepting the thinnest of evidence with regard to the availability of a domestic workforce.

The number of workers recruited and employed by Decatur is estimated by the SPLC to be approximately three hundred. After enduring months of labor abuses, a number of the workers began to take action against the company. To date eighty-two

guest workers, women and men from South America and the Dominican Republic have joined a class action suit filed by the SPLC against Decatur Hotels (Rivlin).

Tracie L. Washington, Director, NAACP Gulf Coast Advocacy Center (and co-counsel on the case) targets the primary issue of exploitation and historicizes the strategy used by Decatur in the recruitment of immigrant laborers when she asserts:

This guest worker program is a continuation of the racial exploitation that began with slavery in this country. It's corporate-driven. Decatur profits from it. And it's state-sponsored. The Department of Labor signs off on it. (qtd. in SPLC "Center")

The details of the case against Decatur Hotels discussed later in this chapter will make clear the connections between guest work programs and slavery, as asserted by Washington. Additionally, links between the labor of guest workers and the rebuilding of the tourist industry in New Orleans are analyzed.

Part I: Documentation Status

H2 Guest Worker Programs:

The history of guest worker programs in the United States is one fraught with problems of abuse and exploitation. Hahamovitch exposes the role of the nation-state by framing guest worker programs as "state-brokered compromises designed to maintain high levels of migration while placating anti-immigrant movements" (72-73).

Hahamovitch concludes that

In the process they have drawn nations together in a new sort of dependency, in which the world's wealthy nations rely on foreigners to do

their hardest and dirtiest work, and in which poorer nations depend on earnings abroad for their very survival. (93-94)

This is clearly evident in the guest worker abuses and labor exploitation in the Gulf Coast post-Katrina. This labor includes demolition and reconstruction work in the most heavily affected regions of the Deep South, the dirty and dangerous work of cleaning out mold, mud, medical waste and all sorts of debris; working in structurally unsound buildings, as well as rebuilding damaged ships and oil rigs. This labor has been performed under highly dangerous conditions and in severely contaminated facilities. Labor contractors in the Deep South deliberately targeted guest workers in order to gain high profit margins and low wage levels and are reliant on their labor in order to meet the demands of the project contracts. Guest workers are now a transnational labor force dependent upon securing labor outside of their home countries in order to provide for the subsistence of their families. For impoverished Global South laborers the (false) promises made by the labor recruiters appear to be a highly desirable path to be the way to a better life.

After the Katrina disaster and in response to the Bush Administration's proposed immigration reform, executive vice president of the Service Employees International Union (SEIU), Eliseo Medina expressed concern for U.S. immigration policy as it applies to guest worker programs. In a response to the Bush Administration's proposed legislation Medina asserts:

Bush tells immigrants you have no right to earn citizenship but tells corporations you have the right to exploit workers, both American and immigrant.... This proposal allows hardworking tax-paying immigrants to

become a legitimate part of our economy, but it keeps them from fully participating in our democracy-making immigrants a permanent sub-class of our society. (qtd. in Bacon 12)

David Bacon notes that the SEIU is "one of the AFL-CIO's key policy makers on immigration" (12). Medina's statement here goes to the heart of the issue with regard to the problem of guest-worker policies. Guest workers are both indispensable and disposable in the context of the U.S. economy.

H-2B workers, treated as sub-classes are consistently vulnerable to a variety of abuses. The labor abuses primarily experienced by an immigrant labor force in the affected regions go largely unchecked. According to the Gulf Coast Commission on Reconstruction Equity (GCCRE), Mississippi and Louisiana, which fall into the category of "right to work" states, have no State Department of Labor (GCCRE 4) and there is "only one bilingual Department of Labor investigator to cover the states of Alabama and Mississippi" (GCCRE 4). Thus, there are only two formal recourses available to the individual in response to labor abuses, a civil suit filed with the state where the work is performed, or a claim filed with the Federal Department of Labor (DOL). Neither action is likely to be taken by an immigrant person of undocumented status. In fact, DOL investigations regarding allegations of wage theft has been declining in recent years, as the number of exploited workers has increased. A report by the SPLC indicates that DOL investigations

declined by 14 percent between 1974 and 2004, and the number of completed compliance actions declined by 36 percent. During the same period, the number of U.S. workers covered by the FLSA *increased* by

more than half—from about 56.6 million to about 87.7 million. (SPLC "Close")

Protection by DOL, as an H-2B worker would appear to be quite unlikely. This leaves these workers virtually at the benevolence or mercy of their employers, which can be an extremely precarious position.

The H-2A program, the guest worker program used to recruit and employ agricultural laborers, has a long history in the U.S. It has been heavily legislated with numerous built-in protections for workers and requirements for employers. Although these regulations are frequently violated and can be difficult to enforce, the existence of federal legislation is a vital distinction in the examination of H-2B guest worker provisions. The existence of federal provisions in the case of H-2A workers provides what the DOL considers legitimacy for action on complaints of labor abuses. The H-2B program, since its inception, has lacked federally legislated protections and provides no such legitimacy, according to the DOL, and this has been the rationale used to refuse action on the part of these workers, rendering them super-exploitable and therefore, highly desirable (SPLC "Close"). These distinctions will be discussed in depth in the following section of this chapter.

History of the H-2A Program in the U.S.:

The H-2A program has its early beginnings with the Immigration Act of 1917 and the "ninth proviso, an action precipitated by fear of worker shortages during WWI. This provision of the Immigration Act:

allowed employers to import foreign workers when and where they argued they suffered from extreme labor shortages, suspending those barriers in

immigration law (such as a head tax and literacy requirement) that made it difficult to import farm labor from Mexico. (Griffith 31)

Another early example of H-2A program utilization was seen in Florida in 1943. This early guest worker program was created to allow sugar cane growers from Florida to hire and import workers with temporary visas from the Caribbean (Wilkenson).

During WWII this program became much more formalized with the largest official guestwork program of its time, the Bracero Program. The Bracero Program, created through bilateral negotiations between Mexico and the U.S. was enacted in 1942 and imported much higher numbers of men from Mexico than any other guest worker program of its time (Calvita *Inside* 19)

Rodriguez cites the Bracero Program as the major contemporary starting point for employer recruitment of immigrant laborers to the U.S. The author's examination of the evolution of employer recruitment and the benefits offered by an immigrant labor force notes the "spatial advantage" of drawing immigrant labor from Latin America and declares that the "proximity of Mexico and Central America provides U.S. employers with a constant supply of low wage immigrant labor" (455). The Bracero Program (as previously discussed in Chapter One) began in 1942 as an emergency, short-term, labor contract between the U.S. and Mexico under the Truman Administration and with Congressional approval. When the war ended in 1945, pressure from the Secretary of Agriculture, members of congress, and agricultural employer advocates resulted in a two year extension. Formal Congressional approval of the program lapsed in 1948 and was not regained until 1951. It was during this two year time period that the program experienced changes in recruitment policies which can be said to be the beginning of

direct employer recruitment and the early beginning of the labor contracting system at work today (Calvita *Inside* 28).

In the first six years of the Bracero Program, labor contracts were negotiated in "government-to-government contracts" (Calvita *Inside* 28). During the two year lapse in which the Bracero Program continued to operate through "administrative agreement and international negotiations with Mexico" the contract arrangements shifted in two significant ways. The first major change was that agricultural employers were now allowed to directly contract with Braceros (27). This signified an important shift in terms of power relationships between employer and Bracero, and the beginnings of loss of protections for Mexican laborers.

Rodriquez notes that this shift included an increased financial burden to employers, who were now responsible for transportation costs associated with moving the work force from Mexico to employment sites in the U.S. Employers soon found that recruitment along the border towns was attractive as a cost saving measure, as opposed to the previous arrangement of contracting Braceros at "Reception Centers" created by the Mexican Government. These Reception Centers were located in the Mexican interior due to the Mexican Government's fear that centers located on the border would "create a labor rush to the northern Mexican border" (Rodriquez 460). Employers began contracting immigrant laborers in border towns, both Braceros and non-Braceros, as a way to cut costs and avoid Mexico/U.S. government entanglement.

The second major shift that occurred during this two year period speaks to the duality of the U.S. government with regard to undocumented immigrants. This change, opposed by the President's Commission on Migratory Labor (Calvita *Inside* 28), meant

that "agricultural employers could hire undocumented workers who were arrested and legalized by the INS ('dried out') as Braceros" (Rodriquez 459). Although the purported intention of this shift was to decrease the number of "illegal immigrants" coming in to the U.S., Calvita notes that "between 1947 and 1949, approximately 74,600 Braceros were contracted from Mexico, while 142,200 undocumented workers were legalized and contracted directly to growers" (28). The author further notes that in 1950 the increase in undocumented laborers continued with "20,000 Braceros imported and over 96,000 'illegal aliens' paroled to local farmers" (29). The two year period in which direct employer-to-Braceros was permitted, is theorized by Rodriquez to be the genesis of current employer recruited labor from Mexico. Rodriquez asserts that when the Bracero Program officially ended in 1964, "the undocumented worker replaced the Bracero worker" (460). The labor recruiter and contract employers also replaced the government's role and oversight. Thus, the long reach of corporate contract labor currently operating in the U.S. can be understood as an outgrowth of the Bracero Program.

Since the Bracero Program ended in 1964, recruitment of guestworkers for agricultural labor has continued to grow significantly, legislated under the H-2 sections of the Immigration and Nationality Act. The H-2 program has undergone numerous regulation revisions that have resulted from pressures from farm worker unions and the agricultural industry. This history serves as the backdrop to understanding the current cost-benefit analysis long employed by the U.S. Government in response to illegal immigration. In 1986, the year in which dramatic shifts occurred in immigration policy, particularly with regard to documented and undocumented Latino/a laborers via the Immigration Reform and Control Act, the U.S. Council of Economic Advisors admitted

that "undocumented immigrants produce more benefits than cost for the U.S. economy" (Bustamante 23). The duality, then, of a Guest Worker Program aimed at easing anti-immigrant sentiment, and the underlying admission that undocumented immigrants provide higher profits for U.S. corporations (and by extension, the U.S. government) has allowed labor contractors to engage in highly exploitive practices with virtual impunity.

The Emergence of the H-2B Visa:

The 1986 Immigration Reform and Control Act was the first to divide the H-2 program into H-2A for agricultural work, and H-2B for any labor not classified as farm work. Unlike H-2A worker protections, the H-2B guest worker program "has never promulgated regulations enacting substantive labor protections" (SPLC "Close" 8). Creation of the H-2B Program, designated as a guest worker program for non-agricultural labor, has historically consisted most often of seasonal service work (frequently in the tourist industry), seafood processing, work in the forestry industry, and stable and grooming work for horse racing tracks. Griffith notes that the use of women as H-2B workers has grown with the increase in need for labor in tourism and seafood processing (30-31). Immigrant women have also been the target of low wage labor in the service industry as well as domestic work, which may range from house keeping, providing in-home care for disabled or elderly individuals, as well as live in child care workers who also perform domestic service in the home (Chang; Hondagneu-Sotelo).

The procedures for certification of an H-2B visa were established by an "internal DOL memoranda" General Administrative Letter 1-95, a DOL procedure which was never adopted as federal regulation and is the only guide for the procurement of H-2B workers. The process for compliance with General Administrative Letter 1-95, enforced

only by the Department of Labor with no federal powers of enforcement, asks little of the employer beyond providing information regarding type of work, wage levels, and working conditions. The employer is asked to certify that there are no American workers available to perform the labor and is required to pay either the federal minimum wage or the "prevailing wage," as appropriate to the type of labor and the type and size of the contractor ("General Administration Letter No. 1-95"). Once DOL has certified a contractor to recruit H-2B workers, the agency claims it has no ability to enforce violations of the wage agreements of H-2B workers because no federal regulation exists to protect workers against labor abuses" (SPLC "Close").

The other major and significant differences between the H-2A and H-2B program lie in the allocation of specific benefits and rights granted to H-2A workers that are not shared by H-2B laborers. Of primary significance for H-2B workers is the utter lack of agency with regard to abuses by their employers. This is built into the structure of the H-2B program, which binds the worker to a specific employer. The process as it exists at present allows an employer to request H-2B workers to perform a particular job. If the employer meets the criteria, they are granted ability to recruit and bring workers legally from outside the U.S. Once the worker has agreed to the contract, the employer has no obligations in terms of assistance with the costs associated with travel and visa issues. Although some contractors may promise these things, there is no legal obligation (as there is with an H-2A worker) that these promises be kept. The worker is most often forced to finance their own trip to the U.S. and once in the country, are bound to that employer for the length of their stay. If the worker is abused or exploited, their only true recourse is to leave the country, once again financing their own travel. Unlike the H-2A

worker who has personal agency to change jobs and has support for the financial burden of travel to and from the U.S.(as long as specific requirements are met), the H-2B worker is truly at the whim of the employer (SPLC "Close").

The majority of workers who have been abused or exploited by their employers and decide to leave are unable to finance the trip to their home country, having paid extremely large sums of money to get to the U.S. However, once the worker separates from their employer, they are immediately considered to be of "illegal" status and can be arrested by ICE. Furthermore, the employer has the right to fire a worker for any reason and then report them to ICE as being of "illegal" status, in order to facilitate their arrest. Unlike the H-2A worker, who has the right to access federally funded Legal Service organizations for assistance if their rights are violated, the H-2B worker does not have the right to assistance from the legal assistance program. These workers are specifically denied the right of access to Legal Services and therefore must either find a way to finance legal assistance on their own or attempt to be granted assistance by attorneys or agencies that willing to work pro bono on their behalf (SPLC "Close").

In addition, H-2A workers have several other rights that are not enjoyed by H-2B laborers. H-2A workers are entitled to and must receive free housing "in good condition" by the employer. They are also guaranteed the right to receive "at least three-fourths of the total hours promised in the contract" of the position they accept, thereby guaranteeing the receipt of at least three quarters of their expected earning. H-2A workers are covered by Worker's Compensation for injury on the job; this includes payment of medical bills and reimbursement of lost wages from work. Worker's Compensation is also responsible to compensate a worker who suffers permanent injury on the job. Furthermore, H-2A

workers must be protected by "the same health and safety regulations as other workers." Finally, H-2A workers are compensated for their travel to the U.S. after working 50 percent of the contract period and are guaranteed payment for the trip back to their home country, as long as they complete the contracted job. H-2B workers do not share these rights (SPLC "Close").

This is not to say that H-2A workers are not exploited or that these rights are always respected; certainly they are not. The significant difference for the H-2A worker is that these rights are legislated and if violated, workers have the ability to seek assistance from Legal Services in order to address their grievances. These workers have the ability to leave a job if they are abused and are not considered to be of "illegal" status should they choose to do so. Workers who are injured are under contract to receive health care, unlike H-2B workers who labor in extremely hazardous conditions with no access to medical services in the event of injury. Finally, H-2A workers are not forced into virtual debt peonage by the need to finance their travel and related immigration expenses by selling their homes or turning over the title to their homes to a bank, selling their belongings and valuables, and borrowing money from family, and frequently from banks that charge exorbitant interest rates. These actions place H-2B workers into a position in which their debt becomes higher than the amount of wages they will have the ability to earn, even assuming that the offer of the employer regarding the wage rate and hours of labor are honored. This makes the H-2B program profoundly exploitive and fraught with abuse. The SPLC reports that Charles Rangel, the Chairman of the House Ways and Means Committee characterizes the H-2B program as: "the closest thing I've ever seen to slavery" (SPLC "Close").

Part II: Litigation

Daniel Castellanos-Contreras, et al. v. Decatur Hotels, LLC. et al.:

On August 16, 2006, the SPLC filed a class action suit against Decatur Hotels in the United States District Court for the Eastern District of Louisiana on behalf of eighty-two guest workers who came forward with claims of labor abuses and exploitation. The number of guest workers believed to fall under the class action suit was estimated at approximately 300. These workers came from Bolivia, Peru, and the Dominican Republic and were recruited for labor in the luxury hotel chain to work in guest services, housekeeping, maintenance, and various other hotel operations. Members of the class action included "all those non-supervisory H-2B workers employed by the Defendants from August 29, 2005 until the date of filing" of the lawsuit (*Castellanos-Contreras et al v. Decatur Hotels LLC* "Plaintiffs' First" 6).

The SPLC submitted to the court that F. Patrick Quinn requested guest workers from DOL after making the claim that no U.S. workers were available to perform the labor. Once approved for recruitment of guest workers by the DOL, workers from the above stated countries paid "exorbitant sums of money, typically between \$3500 and \$5000, plunging their families into debt" in order to come to the U.S. for work with Decatur. The enormous financial costs were claimed by recruiters to be necessary to cover the expenses of travel, visas, and various other expenditures related to the travel. The cost also included payment of fees to the recruiter. Unscrupulous labor recruiters promised high wages, full time and overtime work, and good living conditions. Individuals struggling to survive and support their families were eager for the chance to

improve their living conditions for themselves and their children and came to the region in large numbers (*Castellanos-Contreras et al v. Decatur Hotels LLC* "Plaintiffs" 2).

The primary charge in the case concerned violation of the Fair Labor Standards Act (FLSA) which demands that workers, regardless of immigration status, be paid the federal minimum wage or the prevailing wage for the particular labor they are required to perform. Although travel costs are not federally mandated for H-2B workers, the argument submitted by the SPLC stipulated that the FLSA intersects with this issue when the cost of debt repayment for travel to the U.S. causes a worker to earn below the federally mandated minimum wage. For these workers, repayment of their debts for travel and recruitment exceeded the total of wages they were able to earn during their employment. When this occurs, SPLC argues that in order to meet FLSA regulation, the employer is required to supplement the workers' pay rate accordingly and reimburse all fees and travel expenses incurred within the first week of work. Attorneys for the plaintiffs argued that failure of Decatur Hotels to take such action resulted in labors' earning far below minimum wage, violating the FLSA (Bauer).

This argument was supported in the class action suit based on a case precedent in the *Arriaga v. Florida Pacific Farms, LLC* court decision (Fallon 2007). The Arriaga case, decided by the United States Court of Appeals for the Eleventh Circuit in 2002, concerned H-2A workers and held that "under FLSA, migrant farm workers entering the United States on H-2A visas were entitled to reimbursement of (1) the one-time cost of travel from Mexico to Florida, and (2) the cost associated with obtaining the H-2A visa" (Fallon). The argument put forth by the SPLC asserts that this ruling, although decided in a case concerning H-2A workers, should and does apply to H-2B workers as well.

Attorneys for the plaintiffs argue that although immigration legislation includes a number of regulations that delineate the specific rights of H-2A workers, it does not preclude these same rights as applicable to H-2B workers.

In addition to violation of the FLSA, the SPLC claimed that workers were not being employed for the hours promised by the labor recruiters. Workers were promised full time work plus overtime, however, many worked far less than 40 hours per week. Since the immigration status of an H-2B worker is tied to the employer, the SPLC asserted that "workers' high level of ongoing debt has left them in virtual debt peonage, since they can neither pay off their debt by working for the Defendants nor lawfully work for any other employer to earn additional money" (*Castellanos-Contreras et al v. Decatur Hotels, LLC. and F. Patrick Quinn III* "Plaintiffs' First" 3)

The final charge in the case concerned one plaintiff in particular, Daniel Castellanos-Contreras. The SPLC contends that "on or about August 2, 2006" the named plaintiff as well as other plaintiffs who are now part of the case, complained to the Defendants regarding violations of FLSA regulations. Castellanos-Contreras and other plaintiffs filed suit on August 16, 2006. Soon after this action Castellanos-Contreras states he was fired from Decatur Hotel in retaliation for his actions and was ordered to vacate the housing provided by Decatur. As an H-2B worker, being fired from the contracted job which brought the laborer to the U.S. changes the immigration status to "illegal" and puts the worker at risk of arrest and deportation. The SPLC asserted that these actions "constitute illegal retaliation for protected activity under the FLSA." They further claimed that this action served to create a climate of fear among possible class action members who may, as a result, refrain from coming forward with similar claims

(Castellanos-Contreras et al v. Decatur Hotels, LLC and F. Patrick Quinn III "Plaintiffs' First" 6) .

In the initial complaint before the court, the SPLC, on behalf of the members of the class action suit, stipulated that the "Plaintiffs and other similarly situated were entitled to recover their unpaid minimum and overtime wages, plus an additional equal amount in liquidated damages, costs of suit, and reasonable attorney's fees." In addition, with regard to Daniel Castellanos-Contreras, the SPLC contended that the plaintiff was entitled to damages that he suffered as a result of the actions of Decatur Hotels as well as "any other legal or equitable relief as may be appropriate, including reinstatement of employment." Furthermore, the SPLC asked that the court take action to disallow the Defendants from retaliations against other members of the suit or possible class action members (*Castellanos-Contreras et al v. Decatur Hotels, LLC and F. Patrick Quinn III "Plaintiffs' First" 9*).

Several declarations were taken by plaintiffs in the case in December of 2006, all of which made similar claims of contact with recruiters who required that the plaintiffs pay large sums of money for the application process and visa expenses, in addition to all travel expenses. Some were told that should they opt to leave the employer prior to the end of the contract, they would be charged a substantial penalty fee (*Castellanos-Contreras et al v. Decatur Hotels, LLC and F. Patrick Quinn III "Plaintiffs' First" 9*).

Oscar Ricardo Deheza-Ortega, a thirty-five year old man from La Paz, Bolivia, testified that he was employed as a supervisor of a game room, earning approximately \$2,500 American dollars per year, when he heard of possible employment in the U.S. Deheza-Ortega states he sought the assistance of a known labor recruiting agency,

Educational Services, in an attempt to secure employment. Deheza-Ortega states that when he inquired at the agency he was asked for his resume and required to show "the receipt of my bank account and a deed of a property to see if I could apply for the job" (*Castellanos-Contreras et al v Decatur Hotels. LLC et al:* "First Declaration").

The plaintiff claims that once he was approved for a job working for the defendant, he was required to sign a contract with Decatur Hotels. The contract was written in English, which Mr. Deheza-Ortega does not read or speak and he indicates that he took a friend with him to translate the document. Deheza-Ortega was told he would be employed with Decatur Hotels cleaning rooms in the hotels and would be paid \$6.02 American dollars per hour for the first 40 hours of each work week and \$9.04 per hour for overtime work. He was also told that the total cost to process his application would be \$1,700. He further indicates that there were additional costs not included in the fee, such as a \$100 fee required to arrange an appointment with the American Embassy to obtain a visa. Finally, Deheza-Ortega was required to pay for all expenses related to travel. He testified that in total he paid approximately \$3,000 American dollars in order to come to the U.S. to work, which he indicates is "approximately fifteen months of my salary in my country." Deheza-Ortega further relates that it was a great hardship for him to leave his family in Bolivia and that he was forced to leave them in debt "because I knew that in turn I would have less money to send to support them" (*Castellanos-Contreras et al v Decatur Hotels. LLC et al:* "First Declaration").

Francisco Sotelo-Aparicio, a forty-four year old man from Perú testified that he left his wife and three children (the youngest born while he was in the U.S. and at the time of this testimony was three months old) in Lima in order to travel to the U.S. for

employment. Sotelo-Aparicio indicates that in Peru he was employed as a "civil construction teacher" and was the owner of his own teaching business. The plaintiff reports earning an annual salary of approximately \$4,400 American dollars annually. Sotelo-Aparicio relates that he was unable to support the financial needs of his family with his salary and felt he would be better able to care for them by traveling to the U.S. for work (*Castellanos-Contreras et al v Decatur Hotels. LLC et al*: "First Declaration").

The plaintiff testified that he found out about jobs with Decatur Hotels through a newspaper advertisement which he saw sometime in late March, 2006. He states that the advertisement indicated the need for masons to provide reconstruction labor in New Orleans. Sotelo-Aparicio relates that he is an experienced mason and contacted the agency indicated by the advertisement, InterJobs, a labor recruitment agency in Lima, to express interest in employment. Sotelo-Aparicio states that InterJob scheduled him to attend a group orientation designed to inform interested applicants about the positions available and the application process. The plaintiff claims that although it was extremely difficult for him to leave his family and go into debt, "I decided to go to the United States because the economy in Perú was bad. There was not enough work to provide the necessities for my family" (*Castellanos-Contreras et al v Decatur Hotels. LLC et al*: "First Declaration").

As in the case of Deheza-Ortega, Sotelo-Aparicio was told he would need to pay a fee for the application and visa processing as well as all travel costs. According to the plaintiff, application fees came to a total of \$2,000. The plaintiff states he was told by InterJobs that his work schedule would be from 6:30 AM to 3:00 PM Monday to Friday and that he would be paid \$7.79 per hour in bi-monthly payments. Sotelo-Aparicio

further claims that he was told he would have the opportunity to earn overtime (*Castellanos-Contreras et al v Decatur Hotels. LLC et al*: "First Declaration").

Sotelo-Aparicio states he signed a contract with Decatur in March of 2006 and that in total, he paid approximately \$4,500 American dollars in application, visa, and travel fees. In order to raise the funds for this venture he testified that he was forced to borrow money in Perú, as well as selling many of his personal possessions. The plaintiff records that the amount he paid in fees and travel is equal to one year of income for him in Perú. At the time of this deposition, Sotelo-Aparicio related that since his arrival in the U.S. he has worked for Decatur Hotels performing maintenance and earning \$7.79 American dollars per regular hours of work. He further states that due to the amount of expenses incurred through InterJobs he has been unable to pay off his debt from the income earned working for the defendants (*Castellanos-Contreras et al v Decatur Hotels. LLC et al*: "First Declaration").

Rodolfo Antonio Valdez-Baez, a forty year old man from the Dominican Republic, married with two children ages five years and one and a half years old, was a "professor in the Catholic University of Technology of Cabao of La Vega" before coming to the U.S. to work for Decatur. He also sold cosmetic products as a side job to earn income for his family. He states he was earning the equivalent of \$4,400 American dollars annually. Like the other plaintiffs who testified, he states it was extremely difficult for him to make the decision to leave his wife and young children in the Dominican Republic, but that he felt it was necessary in order to better provide for their economic needs. Also, like the plaintiffs previously discussed, Valdez-Baez sought out the services of a labor recruiter, UniverJobs, when he heard of the possibility of work in

the U.S. he was given similar information regarding fees, travel expenses, and hourly wage agreements. He testified that he paid approximately \$3,700 total to come to the U.S., an equivalent of nine months of work in his home country and that he was forced to borrow money in the Dominican Republic in order to raise these funds. At the time of this deposition the plaintiff stated that since his arrival in the U.S. he has worked for Decatur cleaning hotels rooms for an hourly wage of \$6.09 per hour (*Castellanos-Contreras et al v Decatur Hotels. LLC et al.*: "First Declaration").

Finally, Daniel Castellano-Contreras, a thirty-six year old Peruvian man married with two young children, testified that he left his family in Lima to come to the U.S. for work with Decatur. Castellano-Contreras indicated that he was employed as a cloth salesman and did construction work in his home country. He disclosed his annual income to be approximately \$5,500 American dollars. He states that he made the difficult decision to leave his family "because I had debts as a result of Perú's bad economy. I did not have enough work in Perú to provide the necessities from my family." Similar to the testimony of other plaintiffs, Castellano-Contreras made contact with a labor recruiting agency, the InterLatina Agency, and was told that he may be able to secure employment in the U.S. He was told that he would be required to pay \$2000 to InterLatina for application fees and visa processing, in addition to all expenses incurred for travel. The plaintiff relates he paid approximately \$4000 and that he was forced to obtain an interest-accruing loan in order to pay for the application, visa, and travel expenses. He further relates that this amount is equivalent to ten months of his earnings in Perú. Castellano-Contreras relates that he is still paying the loan and forced to refinance because his payment exceeded the low earning he received from work with Decatur. He states that

during his time of employment with Decatur he performed maintenance work in the hotel, earning \$7.79 per hour (*Castellanos-Contreras et al v Decatur Hotels. LLC et al: "First Declaration"*).

Luis Lopez, employed as a room service employee at the Astor Crowne Plaza, told the Associated Press that he has "spent most of the last two months without the work hours he was promised...[and that] his last paycheck was for just \$18 dollars" (Roberts). Lopez further claims his wife, in caring for their three children in the Dominican Republic is "getting desperate as debt collectors swarm in and she can't buy food" (Roberts). Lopez was housed in a Decatur-owned hotel for guest workers where he shared a room with three other men. Each of these four men paid \$50 per week to the hotel for housing, the same hotel chain to which they are contracted to work (Roberts).

The allegations in the testimony of these plaintiffs are similar to all members of the class action. They expose what became a desperate situation in which laborers became trapped in a state of debt peonage. They, furthermore, demonstrate one of the primary predicaments faced by H-2B workers and failings of the H-2B program as being the main issue of worker agency.

Within a larger context the experiences of these workers can be understood within the context of colonialist maneuvers of the Global North to exploit the Global South. Furthermore, an established historical relationship of highly exploitive labor tactics that began with the contract labor relationship that has existed between Mexico and the U.S. The contract labor system in this case extended into Central and South America, but in other contexts extends throughout the globe. Immigration scholars Gonzalez and

Fernandez discuss the earlier beginning of this relationship as the development of U.S. empire began to expand in the 1800s. They assert:

The investment of U.S. based corporations in Latin America, beginning at the turn of the twentieth century, in cooperation with archaic land-based elites and bolstered by the U.S. Military and the threat of annexation would transform the hemisphere into a series of neocolonial republics.

(31)

The authors refer here to the U.S. military maneuvers and aggression in Guatemala in the 1950s and investments by the U.S. in the last 1800s, under threat of military aggression, into the construction of railroads in Mexico. Once constructed, the advent of access resulted in investments in mining, "especially copper, cattle farming, and cotton production" (31). This early history of colonial actions then expose the impacts on the labor relations between Mexico, Central, and South America and aids our understandings of current economic conditions resulting in the impoverishment of the central and southern portion of the continent to make way for service to the north.

In the larger context of globalization, these testimonies further expose the overarching workings of capitalism in a neocolonial enterprise. Scholars Sackrey and Schneider engage Marxist theory of commodification as they state "To Marx , the most costly form of commodification occurs when capitalists buy labor power in labor markets. This commodity, labor power, is...the irreplaceable aspect of capitalist production because without hired laborers to produce the output capitalism cannot exist" (30). Within the context of the rebuilding of the devastation following the hurricane in

the Deep South, commodification of labor has been imperative to corporations, enabling the reaping of huge profits.

Part III: Rebuilding the Tourist Industry

Tourism and the Role of the H-2B Worker:

Of key importance in the rebirth of the economy in Louisiana is the rebuilding of the tourism industry, the primary site being New Orleans. This case exposes the inextricable links between tourism and state-sanctioned exploitation of immigrant labor. Furthermore it can be applied as a method to expand upon current understandings of tourism as an enactment of neo-colonial violence.

On August 25, 2006, the *USA Today* article "French Quarter Set to Roll," notified the American tourist that New Orleans was back and ready to receive visitors. The opening paragraph of the article reads:

On the river side of Jackson Square in the heart of the French Quarter, a dozen carriage mules stand in a line in the late-afternoon swelter, looking thoroughly bored from mane to hoof. Not clipping, not clopping, barely munching. Just standing there. Still. Mulishly underemployed. (Shriver)

A few days later Mitch Landrieu, the Lieutenant Governor of Louisiana, responded to *USA Today* in a written commentary expressing his appreciation of the article. Speaking of the need to rebuild New Orleans and the state of Louisiana following hurricanes Katrina and Rita, Landrieu insists:

Tourism is critical to the rebirth of Louisiana and, as the state's second largest industry, it employs more than 100,000 people. This is why

everyone can feel good about having fun while making a difference for those who make the Big Easy swing. My message to people across the country and round the world is to come visit Louisiana. While you are enjoying our culture, food and music, you are actually helping to stand up one of the country's most unique and world-famous destination.

(Landrieu)

Any acknowledgement or attention to another story released by the Associated Press on August 16, 2006, and carried in *USA Today* was absent from this discussion of having fun in the "Big Easy" and concern over "underemployed mules" (Roberts). This story documents the actions of the case examined in chapter three, *Daniel Castellanos-Contreras v. Decatur Hotels*; and its owner and president, F. Patrick Quinn III.

The lawsuit filed by the SPLC was marked with a protest by the guest worker hotel employees and took place outside the United States Federal Court building on Poydras Avenue in New Orleans. In photos taken of the protest the injustices experienced by the workers are clearly illustrated. Guest workers are pictured on the steps of the court buildings, workers, and their allies held up signs that read "Dignidad" and "Dignity." Some guest workers wear enlarged copies of H-2B visas on ropes around their necks or hold up enlarged signs of the visas, symbolizing the legal process that currently binds them to their employer. In an effort to expose the extreme economic injustice, in the background a man can be seen holding up a large sign which at the top indicates the amount of money owed to guest workers by Patrick Quinn's corporation as \$1,500,000 and the lower half of the sign documents the amount of wages earned by one guest worker in a two week period as \$18.08. Another man in the background can be seen

holding an enlarged copy of a check issued by Decatur Hotels Corporation for \$18.08. In the foreground of the picture is a man holding copies of the "legal documents Patrick Quinn filed with the state Labor Department stating that he contacted Katrina evacuees with job offers and that 'no one applied'." A careful examination of the picture further reveals guest workers wearing handcuffs, symbolic of bondage.

In the closing lines of the *USA Today* story on the French Quarter, business owners beckon tourists to come back to New Orleans, while the author declares "The mules are waiting" (Shriver). In contrast, guest worker Luis Lopez insists the labor recruiters for Decatur Hotels "brought us here, and they don't even treat us like human beings" (Roberts). As described throughout this document Luis Lopez's ordeal and the lawsuit against Decatur Hotels LLC is only one of a vast number of similar accounts involving harsh conditions and labor exploitation of a primarily Latina/o immigrant work force. It would seem that a visit to the French Quarter, including a stay at the Astor Crowne Plaza and a carriage ride from an "underemployed mule" obfuscates the reality of the super-exploited laborers who are integral to the creation and continued operation of this tourist site.

A study of tourism must interrogate the complex relationships between transnational labor, immigration and migration, labor market theory and racialization in its analysis of the Western Empire as colonial actor upon the global south. The multiple connections between tourism in the Global North to labor from Global South, the role of globalization and global financial institutions, the active encouragement of U.S. Government, immigration policy, as well the effects of environmental devastation on the

health and safety of laborers recruited from the Global North makes this a relevant area of inquiry

Current American Studies scholarship reflects the growing importance of the study of tourism as a significant site of inquiry into the ongoing understandings of empire. The growth of tourist industries globally, initiated by "First World North" countries (either by direct investment or as a result of structural adjustment programs), impacts countries of the "Third World South," on a massive scale. Sharon Bohn Gmelch asserts:

Tourism has enormous social implications globally. It represents the largest ever movement of people across national borders, eclipsing migration and immigration, refugee flight, pilgrimage, business and educational travel. (5)

The enormous growth of this industry makes tourism an increasingly important site for investigation. Gmelch notes that "the travel and tourism industry generates \$4.5 trillion (U.S.) in economic activity and provides over two million jobs globally" (4). Gmelch further reports "Worldwide, tourism employs one in every twelve workers and accounts for 11 percent of global gross domestic product" (4). This becomes a relevant concern to scholars when issues of labor in the tourist industry intersect with issues of subject position and imperial power. In this framework, tourists can be viewed as neo-colonial actors with the labor of production for tourist sites performed by neo-colonial subjects.

The role of the U.S. through government funding and corporate investment includes both the internal colonization exemplified by tourist sites within the country, as well as international sites of occupation. Tourism is a continuing location of colonial

enterprise and is an enactment of nation-state violence. E. San Juan Jr.'s articulation of the U.S. positioning in terms of the postcolonial and corporate and state violence provides a context for the consideration of tourism:

Postcolonialism then proved itself as the ideology of globalized capitalism—precisely because it does not know that it is, that is, in spite of and because of this ignorance. It offers a metaphysics of legitimation for those groups who stand to benefit from the predatory economics of uneven development, namely, transnational corporations and their compradors, including their retinue of postcolonial rationalizers. (14)

San Juan poses an argument here that seeks to expose the links between the postcolonial and the violence of globalized capitalism. In the case examined in this chapter, the legitimation the author speaks can be applied to an analysis of a practice of human trafficking as a policy that first world north countries can call guest worker programs.

The nation-state manipulates the use of immigrant labor as an exploitable and disposable workforce, especially in the maintenance of the tourist industry, following an established historical pattern. As noted throughout this text, the aftermath of the Katrina disaster is greatly influencing migration and demographic patterns in the Deep South, calling attention to the legal and civil and human rights needs of a disenfranchised population consisting mostly of Latina/o immigrants. The federally funded rebuilding of this major tourist enterprise has strategically promoted the recruitment of a large super-exploitable workforce of both documented guest workers as well undocumented immigrant laborers. This strategy included the Department of Homeland Security's deferment of I-9 employer inspections, which required employers to verify the citizenship

status of their employees and the Bush Administration's temporary suspension of the Davis-Bacon Act of 1931, "under which employers must pay prevailing wage rates on federally financed construction projects" (Barclay). Additionally, the failure of the EPA and OSHA to uphold and reinforce safety regulations further demonstrates a process whereby the nation-state actively creates the opportunity for labor contractors to recruit a super-exploitable labor in the service of capitalist enterprise. As previously discussed in this chapter, the rebuilding of tourist infrastructure has proved to be a financial windfall for a select number of primary contracting corporations, most with connections to the federal government, who received no-bid contracts from FEMA and now stand to collect enormous profits from the labor of immigrant workers. Also addressed previously is the trail of contracting and sub-contracting, which is quite difficult to trace. James Hale, a vice president of the Laborer's International Union of North America states "contracts let to the subcontractors are just plain invisible" and concludes that this environment creates "an open invitation for exploitation, fraud and abuse" (qtd. in Lovato).

The "rebirth" of a "tourist Mecca" demands this pool of underclass laborers, to both rebuild infrastructure and provide service work labor. Raymond Mohl has documented the ways in which the processes of globalization have resulted in changes in the southern economy. Mohl attributes the demand and growth of a transnational labor force in the south to "new economic investment poured into the region as American and foreign capital" in response to a post-industrial labor market (33).

Bonilla-Silva also examines the changes in labor brought about by globalization and a "new world-systemic need for capital accumulations" (935). Bonilla-Silva asserts that demand to maximize profits and drive wages down "has led to the incorporation of

'dark' foreigners as 'guest workers' and even as permanent workers...who are progressively becoming an underclass" (935). In the Deep South it seems that Latino populations recruited to the area for labor will join the ranks of this underclass.

Additionally, obfuscated by the media and current scholarship, is the presence of this workforce who are either made invisible or vilified. What requires illumination here is the commonality of racial oppression experiences by all communities of color now present in New Orleans and the Deep South. The rebuilding of New Orleans as a major U.S. tourist destination in the aftermath of hurricanes Katrina and Rita and the tactical use of immigrant laborers have directly resulted in the creation of an environment of labor competition that is currently successfully dividing communities of color in the region.

The influx of guest workers into the Deep South for labor in the tourist industry has become a source new racial and ethnic tension in the region. Prior to the hurricanes, the overwhelming demographic of the labor force working in the hotel industry was poor and working class Black and African American people. In a premeditated strategy to increase profits, Decatur, the largest hotel chain in the state, brought in guest workers to do the labor previously performed by poor and working class Black and African-Americans, thereby effectively shutting these groups out of their former source of employment and creating an environment of racial and ethnic friction. This friction, although perceived by many who suffered great losses resulting from the hurricanes and facing enormous obstacles in the process of rebuilding their former lives (and livelihoods), is in reality a result of vertical rather than horizontal factors.

Bonacich's theory of "ethnic antagonism" describes the consequences of globalized labor which speaks to the split between working class African Americans and the new workforce of immigrant laborers (51). The prevailing rhetoric that directs the focus to issues of immigration only serves to obscure the true issue. This claim is further supported by Krissman who cites neoclassical economics as providing an "academic fig leaf, behind which those who decry immigration can hide their nativist sentiments even as they dictate ever more punitive actions against immigrants"(Krissman 39).

Saket Soni, of the New Orleans Worker Justice Coalition, addresses this conflict by referring to guest worker programs as "wedge policies that divide African-Americans and immigrants" (SPLC "Center"). Guest workers brought into the area for exploitable labor in the service industry creates a "misperception of competition that positions labor issues as a wedge issue between communities of color" (Browne-Dianis et al.). Soni notes that in the post-Katrina economic crisis faced by African American communities in New Orleans, unemployment is "7.2 percent...[and] survivors are locked out of the hotel industry even as they struggle to return home and regain their lives a year after Katrina"(SPLC "Center").The need for alliance building across racial, ethnic and class lines is imperative in the fight for dignity, human rights, social and economic justice. Communities of color and allies, divided by vertical policy decisions, must find a way to organize across these artificially created divides in order to make change possible.

Conclusion:

This chapter provides an examination of the origins and evolutions of the H-2 Guest Worker Programs in the U.S. The strategic use and misuse of these programs has posed multiple levels of disenfranchisement and risk for those immigrants who are

recruited through engagement with these programs. Exposure to the multitude of risks and abuses endured by immigrant workers employed by these highly contentious programs was revealed in the *Daniell Castellanos-Contreras v. Decatur Hotels* case, litigated on behalf of the plaintiff by the SPLC. Examination of this case, as in the cases explored in Chapter Two, exposes once again the multiple human and civil rights violations visited upon a labor force that has been shut out of most avenues that would allow for a redress of grievances, and effectively forced into a category of a disenfranchised "sub-class" of people. Finally, an examination of the strategic use of immigrant workers to fill the labor needs of rebuilding and servicing a previously enormous and highly profitable tourist industry provides insight into the perception of job competition and horizontal antagonisms between populations of people of color, effective in many ways in preventing the building of alliances that could create strong opposition to horizontal political maneuvers directed at huge financial profits for the U.S. government and its corporate affiliates.

CHAPTER FIVE
SEXUAL EXPLOITATION IN POST-KATRINA DIASPORAS:
LEGAL ADVOCACY FOR IMMIGRANT WOMEN LABORERS
IN THE SOUTH

The next time you sit down to a fresh, healthy salad, consider this: the contents may have been picked by one of the 400,000 women toiling in U.S. fields, nurseries, and packing plants.... These women are frequent victims of sexual harassment and rape.... Workers in Salinas, California, refer to one company's land as the field de calzón, or "field of panties," because so many supervisors rape women there; in Florida, some workers call the farm where they work "the Green Motel," because they are expected to lie down between rows of plantings. (Clarren "The Green")

Introduction:

Throughout the body of this document the focus is centered on labor exploitation experienced by immigrant laborers in the Deep South. This chapter will shift to an examination of the larger effects on the south as a region and specifically on the impacts of low wage immigrant women workers. Although it is clear from the previous chapters that immigrant women are present and working in the Deep South as laborers, their numbers are much smaller than the male population and labor more difficult to uncover. This is a common problem in accessing recorded documentation of the role and activities of immigrant women workers in this region and contributes to the lack of attention given to this population.

The examination in this chapter reveals the presence of large populations of immigrant women living in the South and explains how the event of the hurricanes have created post-Katrina diasporas for immigrant women living in the Middle South, as a result of large migrations of male partners who were recruited to the Deep South for rebuilding. There is very little in academic literature to date that addresses this shift, however, research obtained from the SPLC's program of legal advocacy for immigrant women, Esperanza, reveals this significant shift in the labor demographic and describes how gender impacts the risks faced by women in the workplace.

Immigrant women face multiple barriers and risks in their efforts to support and keep their families together, and the impact of the hurricane has been a significant. In addition to lack of health care and exposure to pesticides, the strains of poverty and the need for frequent mobility would seem to pose the most urgent of concerns. However, according to Clarren issues of work-related sexual harassment and exploitation are equally significant but less visible. Clarren states "Despite all the burden they bear, the campesinas still say that sexual assault and harassment is often their heaviest" ("The Green"). The most prominent study of women agricultural workers, conducted in 1997 by Maria Elena Lopez-Trevino at California State University, Long Beach, indicates that about 90 percent of female farmworkers have problems with sexual harassment in the workplace (qtd. in Ontiveros). These abuses have escalated since that time, according to Dolores Huerta, who states, "Eleven years later, those who work with farmworkers say that abuse, which ranges from obscene jokes and sexual innuendo to rape, affects thousands of women" (Clarren "Female"). William Tamayo, regional attorney for the U.S. Equal Employment Opportunity Commission (EEOC) claims that "Sexual assault

and harassment is by no means unique to agriculture, but female farmworkers are 10 times more vulnerable than other workers" (Clarren "Female").

This paper explores issues of sexual harassment and assault of immigrant women laborers in the workplace. In particular, the risk to women agricultural laborers is a pressing concern in the south, as large numbers of immigrant women, primarily from Mexico, have joined the farmworker labor force as a result of the impact of post-Katrina labor migrations. By examining actions being taken by legal advocates in the post-Katrina south using Global Critical Race Feminism as a lens, it is possible to provide a preliminary analysis of this common and deleterious female immigrant experience.

Theoretical Framework:

Global Critical Race Feminism (GCRF) allows for an analysis that addresses interrelated components present in the victimization of female immigrant low wage workers who are sexually exploited in their workplaces and raises particular questions with regard to issues of white supremacy and the devaluation of people of color, such as the perception of female immigrant workers as disposable (Wing 4). The importance of a global focus becomes necessary as labor migrations become increasingly transnational and corporate-driven, making clear the subject positioning of low wage immigrant women in a larger context of imperialism and neocolonialism. The impoverishment of the Global South in the service of the Global North creates a high demand for migratory low wage workers. In addition to other highly industrialized countries, the United States utilizes low wage immigrant laborers, particularly women, as expendable workers. This struggle is compounded by the oppression of patriarchy and the need to negotiate and function in varying cultural contexts.

Part I: Migration History

From Early Latino/a Migration to the post-Katrina South:

As discussed in Chapter Three, the creation of the Bracero Program (1948-1964) is commonly acknowledged as the most significant migration of primarily male immigrants from Mexico to the U.S., however, people from Mexico began migrating into the U.S. much earlier, and tended to migrate as families rather than as individuals. Migrations into the U.S. increased most markedly during the 1920-1940s, prompted by the Mexican Revolution and the entry of the U.S. in WW I. By the 1930s the number of Mexican immigrants was "close to 1.5 million" (González 59). The Mexico-U.S. migration process differed in some distinct ways from other migrations: "It was a migration of families as distinct from the male Chinese and other Asian immigration into the Southwest which had preceded Mexican labor" (González 59). As landowners began to encourage sharecropping, González further notes that there was a preference for Mexican agricultural laborers as tenant sharecroppers in particular because the "wives and children of Mexican tenants worked in the fields" while immigrant women of other nationalities usually would not at this time (59). Mexican women were also valued particularly as the reproducers of the labor force due to the demand for a large number of agricultural workers (González 59).

González' discussion of Mexican migration, like many scholars, focuses on movement into the Southwest. However, there is evidence of similar migrations of Mexican, as well as Cuban and Honduran family migrations into the Deep South during this same time period. Immigration scholar Weise asserts that the largest populations in New Orleans during the decade of 1910-1920 were Mexican migrants (252). Mexican

families migrated primarily to New Orleans to escape the violence of the Mexican Revolution. They arrived in New Orleans by ship due to "extensive shipping connections with Mexican ports in the states of Tabasco, Veracruz, Campeche, and Yucatán" (Weise 252). Weise further notes that the heaviest time of immigration and migration occurred during the years 1916-1920. These were migrations in which entire families arrived in the U.S. from Mexico, indicating a long presence of women from Mexico and Latin America in the U.S. South.

The second most common site of migration into the Deep South was the Mississippi Delta. Families emigrating from Mexico to Texas were enticed to the Mississippi Delta by labor recruiters in the agricultural industry, spurred by the need for labor generated by WWI and the "Great Migration of blacks to Northern and Western cities" (253). Weise notes: "By the mid-1920's, Mexicans could earn more picking cotton in Arkansas, Louisiana, Alabama and Mississippi than anywhere else in the country" (253). This early history substantiates the existence of Mexican and Latina women in the south who have labored in agricultural industries. Mexican women also labored in other industries, most commonly as "domestics-maids, washerwomen, and servants" (Weise 256).

A large body of scholarship previously documented in Chapter One provides a discussion of the next wave of Mexican and Latino migrations from the Deep South and other parts of the country to the Mid-South for agricultural and industry-driven work in carpet production, meat processing, and the timber industry in the 1950s onward (Rothenberg; Mohl; and Murphy).

Hurricane Katrina marks the next large migration of Latino/a immigrants and migrants throughout the south. The considerable reconstruction needs and demand for revitalization of economies resulting from the destruction caused by the hurricanes continues to require a significant labor force to provide cleanup and rebuilding of devastated areas of the Deep South (Lydersen). This movement has forced more immigrant women into the agricultural labor force to fill in the gaps brought about by the demand for labor in Louisiana and Mississippi. Esperanza attorney, Mónica Ramírez states "The post-Katrina world has affected everything in the south." These effects are reflected in the demographic make up of immigrant laborers, particularly the rise in immigrant women farmworkers and a post-Katrina diasporas (Ramírez).

Part II: Litigation

Historical Legal Landmarks:

Legal scholar Maria Ontiveros offers an important contribution to the body of scholarship from her work with Latina farmworkers in California. Ontiveros substantiates the need for a multidimensional analysis of sexual harassment and exploitation of immigrant farmworkers. The author asserts:

The study of immigrant women workers demands an understanding that issues of work, class, gender, race, and immigration status are all inextricably intertwined. [They are] a combination and result of doing fieldwork, living in poverty, being a woman, having children, being a Mexican, and lacking work authorization.

(157)

Ontiveros documents the risks to female farmworkers with regard to sexually harassment. The author asserts that the overwhelming majority of female farmworkers face sexual harassment on a daily basis. These women are pressured for sex by supervisors who threaten to cut their wages, offer less desirable and low paying jobs, or fire them if they do not comply. Women are routinely violated by unsolicited touches, pinches, and pats. They are groped and assaulted with frequency and threatened if they complain. Ontiveros reflects a Global Critical Race Feminist perspective in her analysis of the multifaceted problems faced by female immigrant workers: "These women are targeted because of a combination of their sex, national origin, class, and immigration status. All of these documented factors are used to control how women behave in the workplace" (163).

The prevalence of sexual harassment and sexual assault of immigrant women has a long and hidden history; however, this issue has witnessed a growing presence in the public eye over the last several years primarily due to the actions of recently established legal advocacy groups. Ramírez began litigation on behalf of immigrant women in Florida in 2003. The decision to focus work in Florida was based on the need for and lack of services available to immigrant women in living in the state. Ramírez related that there were actions being taken in places like California, but "in Florida, there were 70,000 female farmworkers and there was nothing being done." The Florida program, the called the Farmworker Women's Legal Initiative, was focused on immigrant women farmworkers due to the large population female farm laborers in the state and was the first of its kind in the country.

The problem of sexual violence faced by female farmworkers in Florida was first brought to the attention of the public eye by Florida Rural Legal Services (FRLS) when

the organization filed a landmark case, *Milford v. Caulkins Indiantown Citrus Company*. FRLS represented women who testified to experiencing severe sexual harassment on the job. Five women alleged rape by various supervisors and some of the women testified to assaults that had occurred as long ago as the 1960s. Other women who were part of the class action testified to enduring frequent "sexual innuendos, obscene jokes, pats, pinches and rubs" (SPLC "Esperanza"). An investigation by the EEOC reveals that supervisors at the plant were demanding sexual favors from the women workers in exchange for continued employment. Those women who submitted were given "special favors not accorded to those who refused" (*Milford v. Caulkins Indiantown Citrus Company*). This class action suit, which represented forty-five women, was ultimately settled by the company for \$550,000. It is noteworthy that this 1989 case was one of the first to be successfully settled by legal action.

As Florida Rural Legal Services celebrated their victory in the courts, cases began to be filed by other legal agencies/advocates around the U.S. The first major case to be filed against the agricultural industry by the federal government on behalf of immigrant women farmworkers occurred in 1999 in California. The U.S. EEOC brought charges of sexual harassment against Tanimure & Antle, "one of the largest lettuce growers/distributors in the U.S." on behalf of employee, Blanca Alfaro. Alfaro, the lead plaintiff in the class action, testified that one of her supervisors made frequent demands for sexual favors in exchange for continued employment. Alfaro further discloses that she experienced frequent and unsolicited sexual advances by two managers (U.S. EEOC). Alfaro was eventually fired by the company in retaliation when she complained of sexual harassment. Other women who were a part of the class action had similar experiences of

sexual harassment and retaliation from the company (SPLC "Esperanza"). The case was settled in 1999 and the company paid damages to the plaintiffs of \$1,855,000, the largest consent decree to date. The EEOC also required non-monetary relief as part of the settlement, which mandated that Tanimura & Antle make changes in their policies, workplace environment, and management training. Included was the requirement that workers be advised of their civil and labor rights in writing and in the language in which they are fluent. The Chairwoman of the U.S. EEOC at the time, Ida Castro, states "This settlement represents a precedent setting effort by the U.S. EEOC with regard to sexual harassment in the agricultural industry in California. This is a fair and equitable settlement that helps create an agricultural workplace that is free of sexual harassment" (U.S. EEOC).

In January of 2005, the first case of sexual harassment of an immigrant female farmworker ever to be brought before a federal jury was successfully litigated on behalf of the plaintiff. This case, *U.S. EEOC v. Harris Farms* was a landmark victory for female farmworkers because it was "the first to receive a federal jury trial and therefore allowed a new level of exposure to be shed on this issue" (SPLC "Esperanza"). In the case of *U.S. EEOC v. Harris Farms*, the U.S. EEOC brought charges against the defendants for violation of Title VII of the Civil Rights Act of 1964, the act which prohibits employment discrimination based on race, color, religion, sex and national origin. Harris Farms, based in Fresno County, California, has been described as an "agricultural behemoth" (SPLC "Esperanza"). The company "annually raises 250,000 head of cattle and produces thousand of acres of tomatoes, cotton, and almond " (Clarren "Field").The

company employs vast numbers of immigrant laborers with "men generally outnumbering women 20 to 1 in the fields" (Clarren "Field").

In the case brought against Harris farms, the key plaintiff, Olivia Tamayo testified to her experience of egregious sexual harassment and assault suffered at hands of her direct supervisor. In court Tamayo disclosed that she had "experienced both physical and verbal harassment, including rape in the fields" (*U.S. EEOC v. Harris Farms*). Tamayo related to the court that between the years of 1993-1999 she was threatened by her direct supervisor on an almost daily basis. She recounted three occurrences of rape in which she was threatened with a gun and a knife. Tamayo stated "I was afraid for not only my life but for my children and my husband, what would happen if I told. [My boss] said 'No one will believe you if you tell anyway'" (*U.S. EEOC v. Harris Farms*). This quote reflects a common rhetoric reaffirming the disposable positioning and vulnerability of the status of immigrant women workers. Tamayo further testified that she brought the abuse to the attention of the company, reporting sexual assault, but states that her bosses said she had no proof and she was not believed. The resulting action taken by the company was to assign Tamayo to work alone in a field across from the alleged perpetrator's home. Tamayo told the court "They knew he was an abuser, but they covered for him. I didn't want anything more than to be protected. Honestly, I really thought the company was going to help me. When they didn't, I felt betrayed" (Clarren "Female").

The jury found that the employer failed to protect Tamayo's civil rights and awarded her damages in the amount of nearly \$1 million dollars. The verdict in the case received a great deal of media attention throughout the U.S. and served to educate and inform community members, as well as empower other women experiencing similar

abuses to take action (SPLC "Esperanza"). In regard to the settlement, Tamayo stated "What I earned, the money, didn't interest me. I only wanted justice" (Clarren "Female"). This common sentiment among women who have suffered similar abuses due to the disenfranchisement of human and civil rights is an acute and overarching injustice which has created a labor force frequently treated as sub-human. The interactions of race and gender within patriarchal structures of the U.S. and the country of origin from which the woman has emigrated intersect to create this particular dynamic. Global Critical Race Feminism provides a lens by which it is possible to view the intersections of gender, race, and the ability to confront legal institutions.

In another landmark case settled in 2006, the ACLU announced victory in the litigation of charges of sexual harassment and wage abuses filed in New York against a discount retail store. The case, *Espinal v. Ramco General Stores*, was a class action suit involving three immigrant women. The plaintiffs in the case, who were employed as cashiers and general assistants at a Ramco Discount Store in upper Manhattan testified that they experienced repeated and severe sexual abuses perpetrated by the store owner during the period of their employment, which was between the years 2002-2004. The women testified they received frequent demands for sexual favors in exchange for pay raises. The plaintiffs claimed that when they refused they suffered physical assaults. They further disclosed being forced to work "six or seven days a week for as little as \$30-\$40 dollars a day" (*Espinal v. Ramco General Stores*). Furthermore, one woman testified that she was forced to work as the owner's personal maid and cook. In one particularly egregious act, the owner transported two of the women to an abandoned apartment under the guise of a request for housekeeping labor. However, when they the arrived at the

apartment, the owner removed his clothing and demanded sexual favors. The women refused the owners demands and, in retaliation, he had their work hours reduced and began treating them with great hostility. In an act of ultimate intimidation, the women testified that the owner had a bed which was placed in the basement of one of the stores. The plaintiffs claimed that they were told by the owner that the bed was there "so that he could have sex with them" (*Espinal v. Ramco General Stores*). This hostile work environment created a climate of constant fear and intimidation for the female workers employed by the company.

A great many immigrant women have pursued legal actions against their employers with complaints of sexual harassment, however, numbers are difficult to determine. Due to the frequency of negotiated settlements without trial and confidential settlement agreements, some resolved at the administrative stages, it is impossible to know exactly how many immigrant women have filed claims of sexual harassment. There is clearly a call for for a nationwide needs assessment in order to determine the true scope of the problem (Ramírez). Ramírez is one of a growing group of legal advocates who are providing a vital link to an institution that has, until quite recently, unjustly disenfranchised a large group of individuals based on subject positionings. Through Esperanza: The Farmworker Women's Legal Initiative in Florida and now through Esperanza: The Immigrant Women's Legal Initiative, immigrant women in the South have access to legal representation.

Part III: Legal Advocacy for Immigrant Women

Esperanza: The Immigrant Women's Legal Initiative:

The SPLC added the IJP as a new legal initiative in 2004 to address "the unique legal needs of migrant workers, a group particularly vulnerable to workplace abuse" (Bauer). The IJP was one of the first major legal projects in the south to provide legal assistance to immigrants, regardless of documentation status. Mary Bauer, the director of the IJP, states that the Southern Poverty Law Center made the decision to add the IJP as a result of the growth of immigrant populations, particularly in the South, and the need for legal advocacy (Bauer). The IJP was established a year prior to Hurricane Katrina, after which the migration of immigrant laborers to the Deep South would significantly change the demographics of the region. The IJP has since proven to be of vital importance to immigrant laborers in the Deep South due to the extreme circumstances of labor exploitation in the wake of the hurricane.

In 2006, the IJP added Esperanza: The Immigrant Women's Legal Initiative. Esperanza, which began in Florida under the name "The Farmworker Women's Legal Initiative", was the first program of its kind in the country to provide a sole focus on the issue of sexual harassment of immigrant women and provide legal assistance to women in twenty-four states along the south. Since being adopted by the IJP, the project has become national in scope with an anti-sexual violence focus.

The goals of Esperanza are three fold. These goals include: 1) litigating cases that address the human, civil and labor rights of immigrant women in the South, 2) educating the community about their rights, as well providing training to social service agencies and Federal and State Government so that they may act of advocates and push

for the prioritization of funding for resources and 3) enacting the National Initiative to End Workplace Sexual Violence Against Farmworker and Other Low Wage Immigrant Women. The National Initiative is a network of "Working Groups" started in California because similar work was already being done there and immigrant advocates were visible. The Network has now expanded to include states in all regions of the U.S (Ramírez).

In 2005 while working for Florida Legal Services, Ramírez tried a case on behalf of immigrant woman factory workers employed by Gargiulo, Inc., a large tomato packinghouse in Florida. Ramírez defended five Haitian women who testified to being harassed on the worksite by their direct supervisor. The harassment "repeated unwelcome sexual advances, requests for sex, sexual propositions, offensive sexual remarks, and physical contact with their bodies; such as pressing his genitals against their buttocks and grabbing their buttocks" (*U.S. EEOC v. Gargiulo*). The women further disclosed that when they complained to the perpetrator's supervisor, retaliatory action was taken against them and they were fired from their jobs. The case against Gargiulo was settled in January 2007 for \$215,000 in damages paid to the plaintiffs, and several non-monetary actions were agreed to by the defendants in order to train supervisory staff and inform workers of their rights, although the defendants did not admit liability for the allegations (*US EEOC v. Gargiulo*).

In another case litigated by Esperanza, Guadalupe, an immigrant from Mexico was successfully assisted in filing suit against her employer after experiencing severe and violent sexual harassment at the hands of her supervisor. Prior to her encounter with Esperanza, she had a general lack of knowledge regarding her legal rights and expressed

fear of reporting the events, a situation which led her to leave her place of employment.

Guadalupe recounts her experience:

[I took action] because when my daughter would ask me why I was crying and I told her it was nothing, she would say that I should tell her dad and her because they love me a lot. Seeing my daughter, who was so little, telling me that, I knew that I had to do something...Speaking up is the most important. (Esperanza 7)

As an immigrant worker in the South, Guadalupe was in a vulnerable position to be exploited for her labor and her gender. The help from Esperanza was vital in providing Guadalupe the opportunity to be heard and a significant factor in sanctioning her former employer. Without such needed legal advocacy groups in the South, many Latinas will continue to be silenced.

Also in 2005 Ramírez filed suit against Vila and Son Nursery Corporation, a plant nursery in Miami-Dade County, Florida. The plaintiff, Guadalupe Valerio, was employed by the plaintiff from 2001 to 2004. The abuses suffered by the plaintiff took place from late 2003 to mid 2004, when the plaintiff left the company. The allegations in this case, *Guadalupe Valerio v. Vila and Son Nursery Corporation*, included multiple experiences of unwelcome sexual propositions, kissing, and touching. In two particularly egregious assaults the plaintiff testified to being raped at knifepoint and to being forced to masturbate the perpetrator, also at knife point. The plaintiff indicated that following the last assault, she terminated employment with the company. This case was also settled for an undisclosed amount for damages (Esperanza). These cases, although not brought by women working in the post-Katrina era, provide a context in which it is possible to

understand the gendered power relationships and particular risks that this new and growing labor force may face in their efforts to support their families.

Since many sexual harassment cases are settled with confidentiality agreements, they tend to be invisible to the public at large; however, Ramírez indicates that by far, sexual harassment is the most prevalent issue addressed by the National Initiative. She relates that in general, the agency prefers to take cases in which they can have the largest impact, which tend to be class action suits, but will take on individual cases if the circumstances are particularly egregious. She further asserts that defending one woman in a workplace provides safety for all of the women in that workplace, and that it is common to find that more women have been violated than originally came forward. Since joining the SPLC, Ramírez has litigated fourteen cases involving immigrant women. Eight of these cases have dealt with sexual harassment. Six of the women defended have been farmworkers. Ramírez relates that in the last three years the abuses have become much worse because of the increase of women in the workplace post-Katrina and anti-immigrant sentiment that has accompanied the demographic shifts of the entire South. Perpetrators tell immigrant women laborers they have abused "No one wants you here. No one is going to help you" (Ramírez), leaving women with a pervasive sense of complete vulnerability. Employers often make threats against the women's family members, an extremely powerful strategy that discourages women from coming forward. It is common in many cases that the women laborer may be documented but have family members in the home who are not. Employers have been known to use this knowledge to silence women who fear the ICE and deportation of their family members. In addition, some women fear retaliation from their husband or partners due to sexist

assumptions of the victim's role in the abuse. Finally, women sometimes fear for the safety of their husbands or partners, who may try to retaliate against the women's abuser (Ramírez). The particular positioning of the immigrant women in confronting the issue of sexual harassment is complex and multifaceted. This is the reason that Esperanza, and other programs springing up around the U.S. are so vital in the protection of the human and civil rights and empowerment of immigrant women who have suffered abuses in the workplace.

Esperanza Work Groups:

The first work group met in the Spring of 2006. The Working Groups are multidisciplinary networks that include farmworkers, community members, organizations and advocates. The goals of the Working Groups are to provide education to immigrant women, the community and organizations, and have knowledge of services in their area that may assist immigrant women so that they can ease the process should there be a woman in their region who needs assistance. The project has grown and expanded to include non-farm worker immigrant women, and Ramírez indicates that she has tried cases involving immigrant women factory workers as well as restaurant workers. It has also expanded in terms of focus and now includes cases that deal with equal pay, gender discrimination, pregnancy discrimination, and wage theft, as well as sexual harassment.

The first action of the Worker Groups was to organize a national conference to bring attention to the project and it took place in June of 2007. Their second action was to write a manual for attorneys on how to best represent immigrant women who have been victims of sexual harassment or sexual assault. This book was published in 2007, and is now in its second edition. This text emphasizes the holistic model, which Ramírez states

is necessary to assist women in coming forward with a complaint, and empowers them to follow-through with the litigation process. The expectation of the holistic model is that women are supported in securing all of the services they need, which may include a number of things such as housing, food, health care, safety planning, relocation assistance immigration assistance, and more. Ramírez states that "Sexual violence sometimes gets sublimated when women are working to meet their own and their family's needs." This is what makes the holistic model important. She relates that the event of disclosure is a critical time for exploited woman laborers, and that if things do not go as they should, the woman may never disclose to anyone again. The issue of privacy is also of high priority. Victims of sexual violence have multiple issues that include language barriers and community pressure (where the patriarchy and cultural norms sometimes result in the blaming of the victim). The need for community education is vital in order to make sure that services are in place and that appropriate referrals are made to social services and law enforcement when a woman calls for help. This is a functioning framework of Global Critical Race Feminism demonstrated by the holistic model, as it takes into account all of the subject positions that create a climate of risk and disenfranchise to immigrant women seeking legal advocacy.

Ramírez indicates that one of the largest barriers in securing resources for immigrant women is the challenges of language capacity,"Many times it is difficult to find a shelter with staff that possess knowledge and fluency of the language spoken by the client. A lot depends on the particular state. Some states are more prepared than others." Another issue with regard to services for immigrant women is access. Sometimes the closest services may be two hours away. The issue then becomes how do you get the

client to the services? This is where building community capacity becomes important; the more capacity in local communities the better chance that women will get services that truly meet their needs. Ramírez argues:

Most often women who have been victimized don't know how to access assistance. Ramírez stated "This means that we have to go to them, outreach is the only way to connect with these clients. I tell people who are interested in becoming involved" that "If you believe that it is the client's responsibility to come to you, then you don't want to help these women. You can't sit in your office and wait for them to come to you. For every woman who calls there are two other women who don't call." (Ramírez)

Esperanza was the first in the country to focus specifically on sexual violence of immigrant women. There are now other programs. Ramírez relates that part of the problems is that the invisibility of migration of female workers:

Sociologists didn't even admit that women were migrating for economic reasons until recently. The literature tended not to see women as economic migrants. The statistics do not reflect the reality, there are many more women farmworkers than the statistics indicate. The way the surveys are done is a problem because in some families men are the spokesperson in the family. The people doing the study ignored women for years. This has a great impact on advocacy. If the statistics indicate that the numbers of immigrant women are very small, then services are not focused in that direction. This then becomes a cyclical problem. (Ramírez,)

This is a common problem that can be documented by the frequent absence of immigrant women in academic scholarship. Although there are a growing number of scholars who are working to gather and document research regarding the presence and experiences of immigrant women in the U.S., there is much more work to be done.

The Bandana Project:

In an effort to raise awareness and communicate a message of hope and empowerment, Esperanza launched a sexual violence awareness program in June of 2007. The Bandana Project is a endeavors to educate and inform immigrant woman of their rights in the workplace and to build solidarity with community members, advocates from all disciplines, and allies. The project involves the dissemination of educational literature as well as active participation. Bandanas are the center and the symbol for the project because they are worn by women working in the fields to protect themselves from chemicals, insects, dust, and sometimes from sexual assault. In recognition of women who have come forward and woman who are experiencing sexual harassment in the workplace, Bandana decorating events take place in which concerned individuals have the opportunity to communicate messages of hope and empowering statements as a way to show their support. These bandanas, once created, are being cataloged and will be displayed in the Southern Poverty Law Center's Memorial Center. The project continues this year with educational programs and decorating events taking place all over the U.S., as well as Mexico, Panama, and Canada. Ramírez hopes to reach as many people as possible through these events and to send a message about the epidemic of sexual violence experienced by low wage immigrant women and states this is vital, "because no one should be forced to give up their dignity in order to feed their family" (Ramírez).

Conclusion:

Given the documented high prevalence of sexual harassment and violence in the workplaces of immigrant women, it is clear that the devaluation of immigrant woman as the most vulnerable women of color is an ideology actively at work here. Bosses tell their victims "No one wants you here, no one likes you, and no one will believe you." Bosses threaten to turn women or their family members into ICE if they refuse to be victimized (Ramírez). Clearly, an extreme devaluation of immigrant women as sub-human is at work here. With the growth of third wave feminism, the discipline has seen more attention paid to the struggles and daily realities of immigrant women. The need for more work and research continues and should be adopted in multiple disciplines.

The New York City Alliance Against Sexual Assault in conjunction with the New School University recently conducted a city wide pilot study focusing on the issue of sexual harassment of immigrant women in the workplace. This study completed in 2008, was designed to measure three components: (1) To study the scope and affects of sexual violence (2) Assess the "Help-seeking behaviors," a process which examines the level of knowledge women have about available services and how to access them, and (3) Create "Community Specific strategies to end sexual violence." This research study included thirty-four immigrant women, of both documented and undocumented status and between the ages of seventeen and fifty-two. The women in the study were from Central and South America, the Caribbean and Africa, and had all lived in the U.S. from two to thirty-five years. Results of the study indicates that sexual harassment for undocumented and recent immigrant to New York City was common, with "32.3 percent reporting the experiencing sexual violence on the job and several women reporting multiple

victimizations" (Paz and Fry 10). The need for proper legal representation of immigrant women who suffer sexual harassment in the workplace has recently motivated the ACLU to publish a new guide book intended to assist attorneys who are interested in taking on this work. This publication *No Free Pass to Harass: Protecting the Rights of Undocumented Immigrant Women Workers in Sexual Harassment Cases* was created through the efforts of the ACLU Women's Rights Project and the National Employment Law Project and was published in 2007 (Paz and Fry).

The Esperanza Project was the first in the nation to provide a sole focus on the issue of sexual violence in the workplace. Through use of strategies aimed at legal advocacy and litigation, education, and alliance building, this program has accomplished a great deal and continues to grow both nationally and internationally. Esperanza is a model for the possibilities that legal advocacy can hold for low wage immigrant women. Dolores Huerta, co-founder of the United Farm Workers Union states "Most of us when we sit down to eat our good food, don't ever consider what these women go through to ensure that all of us can feed our families. It's almost like sexual harassment is part of the job" (Clarren, "The Green").

The following quote is taken from a publication of Esperanza titled *Voices for Justice: Immigrant Women Claiming Their rights in the Workplace*. The publication contains interviews with low wage immigrant women laborers who are survivors of sexual harassment and assault in the workplace. The women who tell their stories did so in an attempt to let other women who are suffering know that they are not alone:

We are women and we are Latinas. We believe union is strength and we hope the stories of what we went through can help other people to know

that someone is out there listening and that there is help. No women should be abused physically or morally. (Esperanza "Voices" 17)

It is important for academics to be informed of these legal cases and advocacy groups, so as to have insight and a point of entry into these issues. Engagement by the academic community with legal advocates is a vital support to increase awareness and attention to the brutal reality endured by immigrant women made invisible in the academic scholarship. More work is needed to grow the connections between academics, allies, and advocates of all types in order to properly address this most serious of issues faced by women immigrating to the U.S. spurred by the need to support their families and deceived by labor recruiters and employers. Esperanza and the programs that will be inspired by it are vital to the health and wellbeing of women who have historically been denied access to legal redress due to the intersections of their subject positions and particular vulnerabilities. With proper support, these women can be empowered to take action on their own behalf and be offered an opportunity to redress their grievances and restore their dignity. For immigrant women forced into the agricultural workforce in the post-Katrina South, the availability of legal advocacy to assist with the multiple challenges they face in the newly configured South are critical.

CHAPTER SIX

CONCLUSION

"Until Justice Rolls Down Like Water And Righteousness Like A Mighty Stream."

Martin Luther King Jr.

In the four years since the disaster occurred, a swell of scholarship providing analysis of race and the aftermath of Hurricane Katrina as it applied to large communities of poor and working class Black, African-American, and white populations has appeared (Dyson; James; Giroux) . Several scholars have examined governmental policy and response to the storm and aftermath (Brash; Miskel; Birkland). Environmental racism has been another focus of scholars who are examining the long-term environment consequences for those who returned after the hurricane and live in the impacted areas (Bullard and Wright; Tidwell). A major goal of this work is to, in part, fill the conspicuous chasm in the Katrina scholarship with regard to the strategic racist practices employed by U.S. government agencies in their facilitation of super-exploitive labor practices that targeted a highly vulnerable labor force of immigrant workers. The contribution, then of this work has been to provide an analysis and critical scrutiny of the process and results of U.S. government-sponsored labor exploitation of immigrant workers. This work has examined some of the multifaceted impacts precipitated by the need for rebuilding and revitalization of the South following the devastation caused by hurricanes Katrina and Rita. This work further examines the highly significant demographic shifts that have resulted from the massive labor recruitment of immigrant laborers to a region that historically maintained quite small immigrant populations. This

analysis has provided the necessary context to expose such discriminatory practices of the State as a longstanding historical pattern, now newly extended into the Deep South. The results of government funding to large corporations as it applies to the use of immigrant labor have allowed these corporations to obfuscate their illegal labor practices through a long chain of sub-contractors, providing enormous profits from the cleanup and reconstruction of the region. In addition, the larger region of the South has been examined here by way of investigating the diasporas and changes in demographic make-up created by massive migrations of primarily male Latino laborers to the hurricane effected regions. The resulting shifts in labor demands have pushed an increasing number of immigrant women into the workplace in several industries, with a large population moving into the agricultural labor force in the Middle South, resulting in a major increase in the most prevalent of workplace abuses for immigrant women, that being sexual harassment and rape.

Finally, the resistance of immigrant laborers and the use of the legal system were employed as the primary methodology for this investigation. Legal action and advocacy has not only been successful in defending the civil and human rights of vast numbers immigrant laborers, but in addition, has exposed the strategic and highly exploitive labor practices employed by a multitude of government agencies and large corporations that would otherwise be rendered invisible.

Theoretical Analysis/Implications:

Throughout this text, multiple theoretical perspectives have been applied including theories of immigration and migration, transnational labor, labor market theory, racialization and citizenship as well as an examination of global financial institutions and

the impact of global capitalism. However, an additional theoretical framework of Critical Race Theory (CRT) must be considered here, necessitated by the utilization of the legal system. Derrick Bell, one of the most prominent of the early CRT scholars whose work has historically focused on the intersections of racism faced by African-Americans and legal institutions, describes the primary underpinnings of his work as concerned with "racism initiated by whites [and the] extent to which racial discrimination is legitimated by the law, as well as many of the efforts to utilize the law to remedy racial bias" (63). Bell does address, to a limited extent, the legal injustices of "racism faced by other 'nonwhites'" in which the author cites the historical context, primarily of Mexican peoples, as it intersects with the legal system (106). Bell's work on this topic illuminates the role of activism among disenfranchised and exploited Mexicans beginning in the late 1800s and the racist responses of legal institutions historically situated.

Patricia J. Williams equally a prominent to the early work in the field of CRT, is vital to this analysis. The author's work has, as its primary focus, the intersections of racism experienced by African-Americans and legal institutions. Williams' work, however, is relevant to the experience of the Latina/o populations examined here due to the legal implications for all non-whites. Williams notes:

Race-neutrality in law has become the presumed antidote for race bias in real life... Blacks are the objects of a constitutional omission which has been incorporated into a theory of neutrality. It is thus that omission is really a form of expression, as oxymoronic as that sounds racial omission is a literal part of original intent; it is the fixed, reiterated prophecy of the Founding Fathers. (48-50)

The "racial omission" that Williams speaks of here is pertinent to the understanding of the positioning of Latina/o populations who endeavor to confront legal institutions. This becomes clear when examined in connection with Bell's discussion of the historical context and positionings of populations of people who have emigrated from Mexico. Bell documents multiple attempts at engagement with the legal system including early agricultural worker organizing in the 1910-1920s: the "Zoot-Suit Riots" of 1943, the Delano grape strikes, and the "Brown Beret" protests for equal education in the 1960s (104-105). This historical context is necessary in order to trace the trajectory to which these struggles have now shifted.

The implications of my study impact the field of CRT at a few critical points. Ian Haney López makes the argument in his early work that Latina/o populations as an ethnic group were targeted for violence and exploitation. This claim was not readily acknowledged by legal institutions in the past, and remains a significant point of argument in the fight for civil and human rights of Latina/o populations. In the cases discussed here litigated by the SPLC, the attorneys built cases to show that the plaintiffs constituted a "class" who experienced particular labor abuses by the defendants, and as such, there was no need to first establish the plaintiffs as a legally disenfranchised group. The evidence before the court established a context in which these particular populations of immigrant laborers were targeted for exploitation; however, it was not the goal of the litigation. Enforcement of civil and labor rights was the goal of these successful litigation. It would seem that the work of Haney López has been successful in mitigating, at least in the cases examined here, the exploited Latina/o populations as "objects of a constitutional omission" (Williams 50).

Carl Gutiérrez Jones examines how narrative functions in the courtroom and would seem to offer another point for consideration. The author asserts that in order to confront the racial injustices that present themselves when people of color interact with legal institutions "greater attention to competing narrative and interpretive practices offers the best opportunity for addressing the legacy of racism in the United States"(3). Gutiérrez Jones refers to "narrative and interpretive practices" as an argument against the notion of color-blindness and the law. Rather, the author's project seeks to understand the ways in which the narratives of plaintiffs and defendants are used and understood differently by white communities and communities of color. The rhetorical strategies that defendants frequently use are constructed in a way to escalate the dominate racists constructions and fears of whites in order to rhetorically manipulate the narrative. These tactics have a history of being quite successful and the author notes several high profile cases, including beating of Rodney King, the murder of Amadou Diallo, and the rape of Abner Louima. In the case of Rodney King Gutiérrez Jones maintains in the verdict was won though a rhetorical use of "strategic narrative reconstruction that excluded all but the defendants' perspective and focused on particular isolated moments...[that] became the foundations for stories which validate the preexisting assumptions and fantasies of [the] officers" (5). These "isolated moments", the author claims, allowed the narrative of the defendants to be separated from the full context of the beating, thereby manipulating the jury to evoke an empathic response toward the defendants.

It can be argued that the examination of the successes demonstrated by the SPLC in litigating charges of human and civil right violations for large groups of Latina/o immigrant labors provides a space in which a shift in the prevailing racist rhetorical

strategies can (and did) occur. The rhetorical strategies used by the defendants in the cases examined in the body of this work, specifically the cases of labor exploitation, although never tried in an open courtroom, were clearly not persuasive to the judges. The defendants' primary claim in these cases was that of ignorance. Multinational corporations who received large sums of money for reconstruction and rebuilding utilized a system of extensive chains of subcontractors, who, in turn engaged in extreme labor exploitation. The strategy of the corporations was to claim lack of knowledge of the abuses, and therefore, lack of responsibility. The arguments presented by the SPLC in these cases disrupted this narrative and successfully laid bare the racist motives engaged in by the U.S. government-funded contractors, making it impossible for the plaintiffs to be "objects of a constitutional omission."

The cases discussed in Chapter Four of this project are also examples of litigation in which the dominant narrative of defendants was disrupted and unsuccessful. The strategy employed by the defendants was one that has historically relied upon discrediting the plaintiff, a common gendered strategy in cases of sexual assault, and was unsuccessful. Testimonies by the plaintiffs once again were able to disrupt this rhetorical narrative, one based on racist and sexist strategies.

Finally, the implications of bringing to light the successful legal advocacy litigated by the SPLC on behalf of immigrant laborers may be used as a model for legal advocates of immigrant laborers throughout the U.S. The Deep South has been a region which historically, with few exceptions in the early 1900s has been the home to a quite small number of immigrant populations. Immigrant worker populations in the Middle South have been growing over the last several decades, however, still have never reached

the demographic of California and the states of the southwest region of the U.S. The recognition and initiative on the part of the SPLC in the creation of specific projects committed to legal advocacy and litigation made accessible to all populations and communities of immigrants is a model of success that holds possibility for the creation of similar projects nationwide. Gutiérrez Jones acknowledges that "simply making power and injury visible in no way guarantees a more liberated society, although of course recognition of these injustices can be a crucial initial step" (74). The final implications of this work then, suggests that by making the multitude of injustices suffered by immigrant laborers in the post-Katrina South, the SPLC may provide a crucial initial step that can be used as a model for those legal advocates committed to the protections of the human and civil rights for populations that have historically been treated as disposable commodities of the Global South in the service of capitalist demand of the Global North.

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