

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NEW ORLEANS WORKERS')	
CENTER FOR RACIAL JUSTICE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 20-1825 (RBW)
)	
UNITED STATES)	
DEPARTMENT OF LABOR, <u>et al.</u> ,)	
)	
Defendants.)	
)	

**DEFENDANTS’ ANSWER TO COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Please Come Defendants, United States Department of Labor (“DOL”), Eugene Scalia, in his official capacity as the Secretary of Labor, and Cheryl M. Stanton, in her official capacity as Administrator for the DOL’s Wage and Hour Division (“WHD”), by their undersigned counsel of record, and, for their answer to Plaintiff’s Complaint for Declaratory and Injunctive Relief (“Complaint”), state as follows in response to each of the numbered paragraphs, using the numbering of the paragraphs from the Complaint:

RESPONSES TO NUMBERED PARAGRAPHS IN COMPLAINT

1. This paragraph characterizes reports cited in this paragraph for which no response is required. To the extent a response is required, Defendants admit that this paragraph accurately characterizes the reports cited in this paragraph. Defendants further admit to the extent that the assertions in this paragraph are consistent with the National Strategy to Combat Human Trafficking, available at <https://www.justice.gov/humantrafficking/page/file/922791/download>; otherwise Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in this paragraph.

2. Defendants admit that DOL “has an important role to play in combatting trafficking in persons through [its] civil enforcement of federal labor laws,” but otherwise deny the allegations in this paragraph.

3. Admit to the extent that the assertions in this paragraph are consistent with the National Strategy to Combat Human Trafficking, available at <https://www.justice.gov/humantrafficking/page/file/922791/download>; otherwise Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in this paragraph.

4. Admit.

5. Admit.

6. Defendants admit that DOL began processing U visa certification requests related to specific workplace crimes in 2011, explaining that this would “significantly help qualifying victims of [workplace] crimes receive immigration relief from [DHS] and access the range of victim services that they need to recover and rebuild their lives.” Defendants further admit that DOL began processing T visa endorsement requests in 2015. Defendants otherwise deny the allegations in this paragraph, especially given that the term “robust” is undefined and vague.

7. Admit to the extent that the assertions in this paragraph are consistent with the National Strategy to Combat Human Trafficking, available at <https://www.justice.gov/humantrafficking/page/file/922791/download>; otherwise Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in this paragraph.

8. Defendants admit that WHD’s U and T visa certification procedures were intended to create a transparent and relatively safe process through which workers can report qualifying

criminal activity or instances of severe trafficking and that the formalization of this program led to an increase in such reports, but deny to the extent that Plaintiff is implying that Defendants' procedures no longer provide a transparent and safe process. Likewise, Defendants admit that some workers who received U or T visa certifications from WHD received immigration relief or other protections, but otherwise deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the second sentence of this paragraph; Defendants aver that WHD generally does not learn whether particular applicants ultimately receive U or T visas from USCIS and that WHD is not a criminal law enforcement agency with the authority to investigate or prosecute workplace crimes.

9. Defendants admit that, on July 1, 2019, Administrator Stanton issued the second addendum to Field Assistance Bulletin (FAB) No. 2011-1 (FAB 2011-1, Addendum 2), which discusses guidelines and procedures for WHD to follow to determine when and whether to issue U and T visa certifications. Defendants further admit that this guidance requires WHD, to the extent that criminal law enforcement is not already involved, to refer reports of qualifying criminal activity or trafficking to the appropriate criminal law enforcement agencies and to attempt to obtain such agencies' concurrence in WHD's identification of the qualifying crimes before issuing a certification. Defendants deny that the issuance of this guidance constitutes a reversal in course or that its issuance places unnecessary burdens on victims, especially given that those terms are undefined and vague. Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the individualized allegations set forth in the fourth sentence of this paragraph.

10. This paragraph states the legal opinions and conclusions of Plaintiff, as to which no answer is required. To the extent that an answer to this allegation is deemed required, Plaintiff has

not fully and accurately described the standard for whether an agency action is considered final under the APA and, accordingly, Defendants deny Plaintiff's allegations.

11. This paragraph states the legal opinions and conclusions of Plaintiff, as to which no answer is required. To the extent that an answer to this allegation is deemed required, Defendants admit that WHD is uniquely positioned to detect qualifying workplace crimes, but otherwise deny the allegations in this paragraph.

12. Deny.

13. Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in this paragraph.

14. Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in this paragraph.

15. Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in this paragraph.

16. Admit.

17. Admit.

18. Admit that Defendant Cheryl M. Stanton, in her official capacity as Administrator of the WHD, is responsible for promoting and achieving compliance with certain Federal labor standards to protect and enhance the welfare of the nation's workforce; otherwise deny as to the first sentence. Admit the second sentence.

19-23. Paragraphs 19-23 state the legal opinions and conclusions of Plaintiff as to whether this Court has jurisdiction, as to which no answer is required. To the extent an answer is deemed required, Defendants note that a party cannot concede jurisdiction. Defendants are not presently

challenging jurisdiction but reserve the right to do so if Defendants deem such a challenge warranted.

24. This paragraph states the legal opinions and conclusions of Plaintiff, as to which no answer is required. To the extent an answer is deemed required, Defendants note that they are not presently challenging venue.

25. Paragraph 25 describes and quotes certain statutory provisions of the Administrative Procedure Act (“APA”), as to which no answer is required. To the extent an answer is deemed required, Defendants deny that Plaintiff’s selective quotations provide a complete representation of the statutory provisions of the APA and their application.

26. Paragraph 26 states the legal opinions and conclusions of Plaintiff as to whether Defendants’ actions constitute final agency actions under the APA, as to which no answer is required. To the extent an answer is deemed required, Defendants are not presently challenging whether there is final agency action but reserve the right to do so if Defendants deem such a challenge warranted.

27. Admit.

28. Admit to the extent that the assertions in this paragraph are consistent with the National Strategy to Combat Human Trafficking, available at <https://www.justice.gov/humantrafficking/page/file/922791/download>; otherwise Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in this paragraph.

29. Admit the first sentence. Admit the second sentence to the extent consistent with the cited regulations; otherwise deny.

30. Admit.

31. Admit the first two sentences. Defendants admit the third sentence to the extent consistent with the information provided by USCIS at <https://www.uscis.gov/tools/information-for-law-enforcement-agencies-and-judges> (last visited Sept. 10, 2020); otherwise deny.

32. Admit to the extent consistent with the cited statutory sections; otherwise deny.

33. Admit.

34. Admit the first sentence. With respect to the second sentence, Defendants admit to the extent that the assertions are consistent with U Visa Filing Trends: Analysis of Data through FY 2019 (Apr. 2020), *available at* https://www.uscis.gov/sites/default/files/document/reports/Mini_U_Report-Filing_Trends_508.pdf; otherwise Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in this sentence.

35. Admit.

36. Admit.

37. Admit.

38. Admit to the extent consistent with the cited regulations; otherwise deny.

39. Admit.

40. Admit.

41. Admit.

42. Admit.

43. Admit.

44. Admit.

45. Admit.

46. Defendants deny that WHD investigators necessarily have expertise regarding workplace crimes and aver that WHD is not a criminal law enforcement agency; otherwise admit.

47. Admit.

48-52. Paragraphs 48-52 quote extensively from FAB 2011-1 (Apr. 28, 2011) and Defendants aver that this document speaks for itself. To the extent an answer is deemed required, Defendants admit to the extent that the assertions are consistent with FAB 2011-1; otherwise Defendants deny the allegations in these paragraphs.

53-55. Paragraphs 53-55 quote extensively from the addendum to FAB 2011-1 (Apr. 2, 2015) (FAB 2011-1, Addendum) and Defendants aver that this document speaks for itself. To the extent an answer is deemed required, Defendants admit to the extent that the assertions are consistent with FAB 2011-11, Addendum; otherwise Defendants deny the allegations in these paragraphs.

56. Deny.

57. Admit to the extent that the assertions in this paragraph are consistent with the National Strategy to Combat Human Trafficking, available at <https://www.justice.gov/humantrafficking/page/file/922791/download>; otherwise Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in this paragraph.

58. Admit that Stanton became the WHD Administrator on April 29, 2019, and that shortly thereafter she provisionally revoked delegated authorities pending a programmatic review to provide her and her staff an opportunity to study and, ultimately, to issue revised delegation procedures. Defendants aver that during this period of review WHD staff continued to review and process incoming certification requests, but that WHD did not issue U and T visa certifications. Defendants otherwise deny the allegations in this paragraph.

59. Admit except to the extent that Plaintiff is suggesting that Defendants violated the APA.

60. Admit.

61-66. Paragraphs 61-66 characterize Plaintiff's perception of FAB 2011-1 and FAB 2011-1, Addendum 2, which speak for themselves and as to which no answer is required. To the extent that an answer is deemed required, Defendants admit to the extent that the assertions are consistent with these documents; otherwise, Defendants deny the allegations in these paragraphs.

67. Deny.

68-69. These paragraphs characterize Plaintiff's perception of FAB 2011-1, which speaks for itself and as to which no answer is required. To the extent that an answer is deemed required, Defendants admit to the extent that the assertions are consistent with FAB 2011-1; otherwise, deny.

70. Defendants admit that the implementation of FAB 2011-1, Addendum 2, has delayed WHD's processing of certifications requests in some instances, but, otherwise, deny Plaintiff's characterization of that delay.

71. Deny.

72-102. Paragraphs 72-102 state the legal opinions and conclusions of Plaintiff as to whether Plaintiff is able to establish standing in this action such that this Court has jurisdiction, as to which no answer is required. Further, to the extent that paragraphs 72-102 contain factual allegations concerning Plaintiff, Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in these paragraphs. To the extent a further answer to these paragraphs is deemed required as to whether Plaintiff is able to establish standing, Defendants note that a party cannot concede jurisdiction. Defendants are not presently

challenging jurisdiction but reserve the right to do so if Defendants deem such a challenge warranted.

With respect to paragraph 78, Defendants admit as to the third sentence and admit as to the fourth sentence to the extent that the assertions in this sentence are consistent with the National Strategy to Combat Human Trafficking, available at <https://www.justice.gov/humantrafficking/page/file/922791/download>. With respect to paragraphs 83-84, Defendants admit that WHD conducted an investigation of CJ's Seafood, finding violations of the Fair Labor Standards Act and H-2B program requirements and assessing back wages in excess of \$76,000 (though this case eventually settled for a lower amount); under 8 U.S.C. § 1367(a)(2), Defendants are precluded from making admissions or denials in response to the allegations concerning Ms. Uvalle. Defendants deny as to the second sentence of paragraph 99 and the first sentence of paragraph 100.

Defendants otherwise deny knowledge or information sufficient to form a belief of the truth or falsity of the allegations set forth in paragraphs 72-102.

103. Defendants repeat and incorporate their above answers to paragraphs 1-102.

104. This paragraph states the legal opinions and conclusions of Plaintiff, as to which no answer is required. To the extent that an answer to these allegations is deemed required, Defendants admit that Plaintiff has described legal doctrine but deny that these allegations represent a complete and accurate statement of the law.

105. This paragraph states the legal opinions and conclusions of Plaintiff, as to which no answer is required. To the extent that an answer to these allegations is deemed required, Defendants admit that Plaintiff has described legal doctrine but deny that these allegations represent a complete and accurate statement of the law.

106. This paragraph states the legal opinions and conclusions of Plaintiff and contains a characterization of Plaintiff's legal conclusions in this action, as to which no answer is required. To the extent that an answer to this allegation is deemed required, Defendants deny the allegations in this paragraph.

107. This paragraph states the legal opinions and conclusions of Plaintiff and contains a characterization of Plaintiff's legal conclusions in this action, as to which no answer is required. To the extent that an answer to this allegation is deemed required, Defendants deny the allegations in this paragraph other than to aver that they did not undergo notice-and-comment to issue the challenged second addendum.

108. This paragraph states the legal opinions and conclusions of Plaintiff and contains a characterization of Plaintiff's legal conclusions in this action, as to which no answer is required. To the extent that an answer to this allegation is deemed required, Defendants deny the allegations in this paragraph.

109. Defendants repeat and incorporate their above answers to paragraphs 1-108.

110. This paragraph states the legal opinions and conclusions of Plaintiff, as to which no answer is required. To the extent that an answer to these allegations is deemed required, Defendants admit that Plaintiff has described legal doctrine but deny the allegations to the extent Plaintiff is suggesting that the actions Plaintiff challenges in this matter should be set aside or be considered arbitrary or capricious.

111. This paragraph states the legal opinions and conclusions of Plaintiff, as to which no answer is required. To the extent that an answer to these allegations is deemed required, Defendants admit that Plaintiff has described legal doctrine but deny that these allegations represent a complete and accurate statement of the law.

112. This paragraph states the legal opinions and conclusions of Plaintiff and contains a characterization of Plaintiff's legal conclusions in this action, as to which no answer is required. To the extent that an answer to this allegation is deemed required, Defendants deny the allegations in this paragraph.

113. Deny.

The remainder of the allegations in the Complaint constitutes a prayer for relief, to which no answer is required. To the extent an answer is deemed required, the allegations are denied.

All allegations not specifically admitted or denied in the foregoing numbered responses are hereby denied.

WHEREFORE, based on all the foregoing, the Defendants, DOL, Secretary Scalia, and Administrator Stanton, request judgment dismissing the Complaint in its entirety with prejudice and granting such other and further relief as the Court deems just and equitable.

Dated: September 11, 2020

Respectfully submitted,

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

BRAD P. ROSENBERG
Assistant Branch Director

/s/ Adam D. Kirschner
ADAM D. KIRSCHNER
IL Bar No. 6286601
Senior Trial Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW, Room 11020
Washington, DC 20530
Tel.: (202) 353-9265
Fax: (202) 616-8460
E-mail: adam.kirschner@usdoj.gov

Mailing Address:

Post Office Box 883
Washington, D.C. 20044

Courier Address:

1100 L Street NW, Room 11020
Washington, D.C. 20005

Counsel for Defendants