

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

NEW ORLEANS WORKERS' CENTER
FOR RACIAL JUSTICE,

Plaintiff,

v.

U.S. DEPARTMENT OF LABOR, *et al.*,

Defendants.

Case No. 20-cv-1825 (RBW)

DECLARATION OF URSULA PRICE

I, Ursula Price, declare as follows:

1. I am the Executive Director of the New Orleans Workers' Center for Racial Justice and its project, the Seafood Workers Alliance ("SWA"). The statements made in this declaration are based on my personal knowledge, materials I have reviewed, and information made available to me pursuant to my duties at NOWCRJ.

2. I submit this declaration in support of Plaintiff's Motion for Summary Judgment in *NOWCRJ v. DOL*, Case No. 20-cv-1825 (DDC). The lawsuit challenges a policy issued by the Wage and Hour Division ("WHD") of the Department of Labor ("DOL") on July 1, 2019 (the "New Certification Policy") conditioning certification of U and T visas on criminal law enforcement referral and approval.¹

3. NOWCRJ is a member-based 501(c)(3) non-profit that advocates for immigrant rights, racial justice, and economic equity. It was founded by a group of black and immigrant

¹ Field Assistance Bulletin 2011-1 Addendum 2, available at <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2011-1-addendum-2>

workers as a workers' rights and racial justice response to Hurricane Katrina. NOWCRJ's principal office is in New Orleans, Louisiana.

4. NOWCRJ furthers its mission through direct worker organizing, strategic campaigns, policy advocacy and coalition building. Much of its work involves advocating for and representing immigrant workers. Its projects include the New Orleans Congress of Day Laborers, an organization of immigrant workers and families, and the Seafood Workers' Alliance, which includes guestworkers and immigrant workers.

5. As part of its work supporting immigrants, NOWCRJ has frequently applied for and obtained U and T visas on behalf of its clients. Prior to the July 1, 2019 policy change, NOWCRJ was able to rely on WHD's U and T visa certification program as an effective avenue of redress for immigrants experiencing abusive working conditions.²

6. The Prior Certification Policy provided a transparent and relatively low-risk option for immigrant workers to report workplace crimes. It is NOWCRJ's experience that employees with temporary guestworker visas or no visas at all face significant barriers to reporting abuses, for fear of losing their jobs, being blacklisted from other employment, and/or being deported. Under the Prior Policy, NOWCRJ observed that immigrant workers were often much more comfortable engaging with WHD in the first instance because it is not a traditional criminal law enforcement agency. WHD's transparent U and T visa certification process provided sufficient assurances to those workers regarding their immigration status and safety to

² WHD established the prior policy with Field Assistance Bulletin 2011-1 and Addendum 1 to that Field Assistance Bulletin. Available at <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2011-1> and <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2011-1-addendum>.

encourage them to report and cooperate. NOWCRJ was able to assist over 50 immigrant workers obtain their certification or endorsement from WHD under the Prior Certification Policy.

7. NOWCRJ's work with the Seafood Workers Alliance is an example of how essential the Prior Certification Policy was for protecting immigrant workers from exploitation.

8. SWA's mission is to improve working conditions in Louisiana's seafood industry and communities by addressing, among other things, forced labor, community and workplace health and safety issues, and unfair wages. SWA has hundreds of members in seafood plants across Louisiana. These members are seafood farmers, harvesters, and processing workers, and include guestworkers, immigrant workers, and local workers.

9. Seafood processing work is hazardous. Workers risk debilitating injuries ranging from lost limbs on the industry's high-speed assembly lines to carpal tunnel syndrome from repetitive hand movements.

10. Many immigrants work in Louisiana's seafood processing industry, including undocumented immigrants and workers who are sponsored on employer-based temporary visas. Seafood processing work is often located in rural and isolated parts of Louisiana. NOWCRJ and SWA members have observed that these workers are especially vulnerable to retaliation by their employers. Termination results in the loss of any employer-sponsored visa, which forces the worker to return to his or her home country (if they can afford to do so) or stay in the United States without lawful status. Recruiters and employers may retaliate against complaining workers by effectively blacklisting them for future seasons and threatening that workers will never be able to return to work in the industry or the United States again.

11. Compounding this problem, NOWCRJ and SWA members have observed that owners and managers of large seafood processing companies often have a personal relationship

with local law enforcement and immigration enforcement. Immigrant employees live with the fear of their employers retaliating against them by calling the police or immigration authorities to have them removed from the country.

12. Through SWA and its other projects, NOWCRJ conducts campaigns throughout the region to organize workers. It was through one of these campaigns that NOWCRJ began working with Martha Uvalle, a guestworker from Mexico, and assisted her in organizing against her abusive employer. Ms. Uvalle's well-documented ordeal³ exemplifies the perils of being an immigrant worker, the protections afforded by the Prior Certification Policy, and the harm caused by the New Certification Policy to immigrant workers and allied organizations.

13. Ms. Uvalle, a temporary guestworker with an H2-B Visa, migrated from Mexico to Louisiana every year to peel crawfish for CJ's Seafood beginning in the mid-2000s. In 2009, the working conditions became unbearable after CJ's Seafood won a contract with Walmart. Workers were forced to work 16- to 24-hour days, and 80-hour weeks, at illegally low rates, sometimes locked in the plant, peeling crawfish until their hands were numb. CJ's Seafood management threatened some workers with beatings and crammed employees into squalid trailers which served as living quarters.

14. In May 2012, the situation reached a breaking point when Ms. Uvalle and her coworkers were warned by CJ's Seafood management that if they continued to complain about working conditions, they would lose their jobs and be sent back to Mexico. They were even threatened with violence against themselves and their families in Mexico. Working with

³ Adam Serwer, *24-hour Shifts and Deportation Threats: The World of US Guest Workers*, Mother Jones (Apr. 25, 2013), <https://www.motherjones.com/politics/2013/04/guest-worker-immigration-visa-gang-eight/>; see also Mike Elk, *Louisiana's undocumented seafood workers unite to fight workplace abuses*, The Guardian (Oct. 12, 2018), <https://www.theguardian.com/us-news/2018/oct/12/louisiana-seafood-workers-union-undocumented-abuse>.

NOWCRJ, Ms. Uvalle and some of her coworkers decided to organize a strike in protest. CJ's Seafood rejected their demands and immediately fired the workers who protested. Loss of their jobs also meant the loss of their temporary guestworker status.

15. Ms. Uvalle was not forced to leave the country following CJ's Seafood's retaliation against her because, with NOWCRJ's assistance, she had contacted WHD to report the workplace violations. She was eligible for a U visa based on the qualifying criminal activity of witness tampering—namely CJ Seafood's threats of violence against her and her family intended to deter her from cooperating with an investigation of illegal labor conditions. Relying on the Prior Certification Policy, she received a certification of her U visa application.

16. Ms. Uvalle's and her coworkers' actions also triggered a series of positive workplace changes. Walmart dropped CJ's Seafood as a supplier. DOL initiated an investigation and fined CJ's Seafood for safety violations and for violations of wage and hour rules. It was also ordered to pay \$76,000 in back pay to its workers.

17. Ms. Uvalle obtained her U visa, has remained in the United States, and as an SWA and NOWCRJ member, organizes other immigrant workers experiencing exploitation.

18. The New Certification Policy now makes it much more difficult for NOWCRJ to use the WHD certification and endorsement process. NOWCRJ must now pursue costly, time consuming, and less effective alternatives. The requirement of immediate referral to criminal law enforcement has discouraged workers with whom NOWCRJ works from pursuing planned reports to WHD regarding workplace crimes and requests for U visa certifications.

19. For example, one group of workers organized by SWA and NOWCRJ was ready to report abusive working conditions to WHD last spring and to request U visa certifications. They abandoned those plans following the announcement of the New Certification Policy due to

their fear of WHD's required referral to criminal law enforcement and retaliation by their employer.

20. After several months spent reconsidering whether to report to WHD, this group decided in September 2019 to make the report to WHD because there were few safe alternatives. They did not request U visa certifications at that time because they were afraid of employer retaliation following a law enforcement referral. They have not received any relief yet.

21. As a result, those workers, with SWA's assistance, redirected their efforts to the National Labor Relations Board—the workers' complaint is now pending at the NLRB. Redirecting the complaint to the NLRB required new fact gathering and legal research, requiring significant NOWCRJ staff time, and not all workers were eligible for relief from the NLRB.

22. Another group of workers organized by SWA was preparing to file a complaint about workplace violations with WHD and request U visa certifications but abandoned that plan after implementation of the New Certification Policy. The workers feared retaliation by their employer if the employer learned of a WHD report following a referral to local law enforcement. With SWA's assistance, that group pursued other options for reporting the violations, but have not yet found an effective alternative.

23. As a result of the change in policy, NOWCRJ must now counsel workers differently on their options for responding to workplace violations because reporting to WHD may no longer be a safe option, depending on the law enforcement agency to which the underlying crime would be referred. Even if a worker were to decide to report to WHD with NOWCRJ's assistance, conditioning the certification decision on the concurrence of a criminal law enforcement agency slows down the process and makes obtaining a certification for qualifying applications less likely.

24. The harms caused to NOWCRJ by the change in certification policy are compounded by the lack of alternative law enforcement options to obtain U and T visa certifications. NOWCRJ has observed that state and local criminal law enforcement agencies are not effective alternatives to the WHD certification program because those agencies are unfamiliar with the U and T visa certification process and lack the resources or interest to determine their certification authority, are unfamiliar with identifying workplace-based crimes, or are simply hostile to immigrants. NOWCRJ has observed that it is significantly more difficult, if not impossible, to obtain certifications for qualified applicants from state and local law enforcement agencies.

25. NOWCRJ has been forced to respond to the New Certification Policy by spending scarce staff time and resources informing immigrant workers about their remaining options for responding to workplace violations now that an effective avenue for redress has been lost. For example, this has required (and continues to require) NOWCRJ staff to take numerous additional trips to locations in rural Louisiana to meet with those workers, to spend time rebuilding trust with them following the change in policy, informing them of their currently available options for reporting workplace crimes, and planning what, if any, steps to take to respond to abusive working conditions given the effective loss of the U and T visa certification path.

26. For both groups of workers described above who abandoned or delayed planned reports of abusive working conditions to WHD, NOWCRJ staff spent the intervening months counseling those workers on their remaining options for seeking workplace protections. This has diverted NOWCRJ staff from other core work, such as organizing additional workers, conducting outreach and know-your-rights education across the industry, meeting with worker

members, engaging in leadership development, and building worker-led accountability and worker power across the industry to monitor and improve labor standards.

27. The increased time that NOWCRJ has had to spend working with the workers who had planned to report to WHD but decided to explore other options following the New Certification Policy was time that NOWCRJ was not able to spend organizing other workers. The New Certification Policy therefore limits the number of workers NOWCRJ may serve as part of its organizational mission.

28. NOWCRJ's travel expenses for SWA organizing work have increased as a result of the need to meet more frequently with workers to counsel them on their options for reporting workplace violations (aside from seeking a U or T visa certification from WHD).

29. NOWCRJ had decided that it had to open a new office in rural Louisiana to facilitate meeting with workers more frequently, in part because of the increase in staff time required to counsel them as discussed above. NOWCRJ budgeted for this opening, which was planned to happen in the summer of 2020. Due to the ongoing coronavirus pandemic, these funds have been rerouted. In the meantime, NOWCRJ has purchased a vehicle and is trying to find temporary housing to facilitate more staff travel.

30. The New Certification Policy makes it less likely that NOWCRJ's members will seek a certification or endorsement from WHD. Such declines in visa applications and hesitance to participate in the reporting process through WHD directly threaten and frustrate NOWCRJ's mission and purpose.

31. Even if a worker were to decide to proceed with a visa certification or endorsement request, NOWCRJ's mission remains frustrated. The New Certification Policy makes beneficial outcomes less likely for workers, since the outcome is contingent on the

additional step of a law enforcement agency concurring with the request. Failure to obtain a U or T visa through WHD would require NOWCRJ to then pursue other more burdensome routes to obtain protections for its clients, such as seeking another certifying entity or creating another strategy to obtain the necessary workplace protections. It also makes the workers vulnerable to retaliation, which in turn requires additional time and staff resources.

32. The New Certification Policy no longer requires WHD to resolve certification or endorsement requests in a timely fashion, and NOWCRJ is aware of a growing and unmanageable certification request backlog. WHD has failed to provide any information to NOWCRJ about pending certification requests NOWCRJ submitted. Delays at WHD not only harm immigrant workers, but also require that NOWCRJ spend additional staff time and resources explaining the process and alternatives to workers.

33. NOWCRJ has also had to devote staff time to reviewing and understanding the New Certification Policy in order to advise members and advocate on their behalf. This use of time has decreased the already scarce amount of time that it has available to provide legal services in other programmatic areas.

34. If WHD were to eliminate the New Certification Policy and return to the Prior Certification Policy, NOWCRJ, SWA, and their members would be more likely to seek U and T visa applications from WHD because the Prior Policy was transparent and effective.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing declaration is true and correct to the best of my knowledge, information, and belief.

Executed on December 4, 2020, in New Orleans,
Louisiana.

Ursula B. Price

Ursula Price