



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT
C.J.'S SEAFOOD/WAL-MART STORES, INC.
(BREAUX BRIDGE, LA)**

FINDINGS AND RECOMMENDATIONS

June 20, 2012

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I. Introduction

This report details the findings of an investigation by the Worker Rights Consortium (WRC) of alleged labor and human rights violations at C.J.'s Seafood ("C.J.'s"), a company that is located in Breaux Bridge, Louisiana and supplies crawfish to the Sam's Club division of Wal-Mart Stores, Inc. ("Walmart"). The WRC initiated this assessment in June 2012, on an expedited basis, in response to an urgent complaint alleging violations of the rights of temporary guest workers from Mexico employed at the company's processing plant.

As reported herein, it is the WRC's finding that this Walmart supplier has committed grave and systematic abuses of the rights of this highly vulnerable workforce, including grossly excessive hours of work, severe and constant harassment and psychological abuse, wages far below the legal minimum, oppressive living conditions, and threats of violence aimed at preventing workers from reporting these abuses to regulatory and law enforcement agencies. Taken as a whole, these conditions subject workers to a situation that constitutes forced labor – an extremely troubling finding, in any circumstance. The WRC also concludes that the threats of violence made by C.J.'s management for the purpose of deterring workers from reporting the company's actions to law enforcement authorities, including actions that represent violations of criminal law, constitute obstruction of justice under U.S. law. This report concludes with recommendations for corrective action by Walmart, which has failed to enforce its own labor standards (the Walmart "Standards for Suppliers")¹ at this facility, thus leaving workers vulnerable to the abuses documented herein.

C.J.'s primary business is the processing and wholesale supply of crawfish. The company, which is privately owned, is legally incorporated under the name C.J.L. Enterprises, Inc. Breaux Bridge, Louisiana, where C.J.'s is located, is known as the "crawfish capital of the world." The company reportedly sells the majority of its output to Sam's Club. Day-to-day management of the company is under the direction of Michael LeBlanc, son of its founder and reported principal owner, Cleus LeBlanc.

C.J.'s employs 50 to 60 workers. Of these employees, all except a dozen are migrant workers from Mexico, who are employed at the factory on a temporary seasonal basis under the United States government's H-2B non-agricultural guest worker visa program. This long-standing program has as its official goal to help U.S. employers temporarily fill unskilled positions for which there is a shortage of U.S.-resident applicants even at locally-prevailing wages.

¹ Walmart Standards for Suppliers (Jan. 2012), www.walmartstores.com/download/5109.pdf.

As the conditions at C.J.'s graphically illustrate, however, the H-2B program can enable an unscrupulous employer, in the absence of adequate oversight and monitoring by government and by major companies like Walmart that do business with such employers, to subject workers to extremely harsh and demeaning conditions – conditions that would be far more difficult to impose on U.S. workers. The remainder of this report discusses (a) the complaint which led to the WRC initiating its investigation of labor conditions at this Walmart supplier, (b) the WRC's investigative methodology in researching these conditions, (c) the findings reached, and (d) specific recommendations for Walmart.

II. Allegations Assessed

On June 5, the WRC received a complaint, submitted on behalf of C.J.'s Seafood workers, from the National Guestworker Alliance (NGA), a New Orleans-based non-profit membership organization of workers employed in the United States under federal guest worker visa programs. The complaint alleged that the company had subjected Mexican guest workers at its seafood processing facility to the conditions listed below, in violation of one or more of the following standards: U.S. labor, civil and human rights laws, Louisiana state laws, international labor standards (ILO Conventions), and Walmart's Standards for Suppliers, its code of conduct for vendors and suppliers. The specific violations alleged are in the areas of:

- A. Wages – including failure to pay overtime premiums, work performed off-the- clock, failure to pay minimum wages and/or prevailing wages as required under the H-2B program, and improper wage deductions;
- B. Working Hours – including excessive mandatory overtime and denial of breaks and rest time, including through physical restraint and intimidation of employees;
- C. Discrimination – including disparate treatment and creation of a hostile work environment on the basis of workers' national origin;
- D. Harassment and Abuse – including numerous forms of verbal and psychological abuse, surveillance and invasion of privacy, and restriction of personal freedom;
- E. Health and Safety – including violations of applicable standards with regard to conditions in both the workplace and onsite housing provided by the company;
- F. Freedom of Association – including threats of violence, termination of employment, and blacklisting in retaliation for workers raising complaints regarding their treatment and working conditions to regulatory and law enforcement agencies and labor rights advocates;
- G. Forced Labor – including use of the above practices to force employees to work under the conditions dictated by company management; and

- H. Obstruction of Justice – including use of threats of violence, termination, and blacklisting, to prevent workers from reporting forced labor conditions to government authorities.

The WRC did not assess, nor does it reach any findings, regarding other conditions at the company.

III. Methodology

The WRC initiated its assessment of labor practices at C.J.'s Seafood on June 8, 2012. Because the violations alleged included a number with immediate implications, including apparent threats of violent retaliation by the employer, and because the workers currently are present in the United States on temporary work visas, the investigation was conducted on an expedited basis. On June 10, the WRC assessment team travelled to Louisiana and on June 10-13 conducted its field research, including interviews with C.J.'s employees.

On June 11, the WRC sent a letter via email to C.J.'s management and telephoned the company urgently requesting to meet with company management and to review documents relevant to the workers' allegations. C.J.'s did not respond to the letter and its managers declined to speak with the WRC. On June 13, the WRC, having been informed that Walmart had initiated its own inquiry into reported labor rights violations at the factory, also sent a letter to Walmart Vice-President for Ethical Standards Rajan Kamalanathan urgently requesting information about Walmart's prior monitoring of labor conditions at C.J.'s and its business relations with the company. Mr. Kamalanathan did not respond to the WRC's communication.

While the lack of response from C.J.'s and Walmart is unfortunate, the WRC was nevertheless able to conduct substantial research and gather ample evidence concerning the company's labor practices, including:

- A. Offsite interviews with eight Mexican guest workers currently employed by C.J.'s as crawfish peelers, packers, and boiler operators at its processing facility. These workers included employees with a wide range of experience working at the company, with some having worked as many as eight years in seasonal employment at the company and some for whom the current season is their first year working at the company. The guest workers interviewed by the WRC were employees who are on strike, protesting retaliatory threats made by company management, as well as other labor rights violations at the company. The company's remaining guest workers both work and, with the exception of one worker, are housed on company property and were, therefore, inaccessible to the WRC's assessment team.

- B. Interviews with three persons who had worked previously as guest workers at C.J.'s between 2004 and 2009.
- C. Interviews with staff of the NGA and other local community members who were knowledgeable about working conditions at C.J.'s.
- D. A review of documents relevant to the alleged labor rights violations, including:
 - 1. Workers' own written records of the hours they have worked at the company, as well as pay stubs for each worker interviewed;
 - 2. The Department of Homeland Security's January 18, 2012 approval of the issuance of guest worker visas to C.J.'s;
 - 3. An agreement dated December 16, 2011, signed by company manager Michael LeBlanc and certain guest workers, regarding their terms of employment at C.J.'s; and
 - 4. Complaints filed with the Wage and Hour Division of the U.S. Department of Labor ("DOL") and the U.S. Equal Employment Opportunity Commission ("EEOC"), by the NGA on behalf C.J.'s workers, on June 6, 2012, regarding, respectively, violations of federal wage and hour laws and H-2B visa program regulations, and national origin discrimination by C.J.'s Seafood.
- E. A review of the applicable labor and human rights standards implicated by the violations reported by the C.J.'s workers, including relevant U.S. and Louisiana laws, ILO Conventions, and the Walmart Standards for Suppliers.

IV. Findings

Based on the research detailed above, the WRC has reached the following findings concerning labor practices at C.J.'s Seafood:

A. Wages and Hours

1. Findings

a. Hours

Workers interviewed by the WRC consistently reported extremely long and grueling work schedules, with minimal breaks for rest or nourishment.

Employees who peel and pack crawfish stated that, during weeks when production is at its peak, they are required to start work during the middle of the night at 2:00 a.m. and typically do not finish their work day until 5:00 or 6:00 p.m., a shift of fifteen to sixteen hours. This shift is

worked six days per week, with slightly fewer hours on Saturday. The total workweek for these workers ranges from 84 to 90 hours per week.²

Employees whose job is primarily to boil the crawfish reported working an equally exhausting schedule during peak periods. There are three boilers who rotate taking twenty-four hour shifts. The following schedule is typical of the hours worked by these employees: a twenty-three to twenty-four hour shift from 2:00 a.m. to 1:00 or 2:00 a.m. the following day, followed by an eight to ten hour shift beginning that morning at 7:00 a.m., followed by a shift of fifteen to twenty hours starting the following day at 2:00 a.m. and ending between 5:00 and 10:00 p.m., followed by another twenty-three to twenty-four hour shift starting the following morning at 2:00 a.m., concluding the week with an additional seven or eight hour shift – for a total workweek of up to eighty-six hours. When boiling crawfish, workers must stand throughout their shift; this is also true of packers.

It is important to note, in particular, the shocking lack of time for sleep inherent in this schedule. In some cases, workers boiling crawfish are compelled to work for twenty hours straight and then allowed only four hours off before they must return and begin a twenty-four hour shift. Thus, they work a total of 44 hours over a 48-hour period, all of these hours involving strenuous manual labor. The C.J.'s workers interviewed by the WRC report multiple instances in which they fell asleep out of sheer exhaustion while working and also report other workers routinely lapsing into unconsciousness at the crawfish tables and packing area.

One worker stated: “People are sleepwalking. Some people fall asleep while peeling and one guy fell onto the table asleep he was so exhausted. And in the break room people fall asleep right away. There is no time to sleep. He [General Manager Michael LeBlanc] gets angry because he says he wants people to work, that’s why we’re here. He wants robots who don’t go to the bathroom, don’t eat and don’t sleep.”³ Another stated, “People fell asleep working. While you are peeling, your eyes close on their own because of the exhaustion. You drink coffee or try to wash your face with cold water. This happened constantly. I slept three or four hours every night – very, very little for the work we are doing. How can we sleep three hours and be working for sixteen hours?”

This extreme work schedule is exacerbated by management’s refusal to allow workers to take reasonable breaks during their shifts. Workers who pack crawfish reported receiving one 30 minute lunch break in a fifteen or sixteen hour shift, with no additional breaks. Some workers who peel crawfish reported their rest time during fifteen or sixteen hour shifts consisted of, at

² The peak production period runs from early April to late May.

³ Quotes from workers appearing in this report have been translated by the WRC from the original Spanish.

most, a twenty minute lunch break, with two or three additional breaks of less than five minutes, taken while the crawfish they peel are being weighed. Others reported that when doing this work they received no lunch or dinner break at all and that their only rest time consisted of breaks of three to five minutes, taken every two hours. These workers consistently testified that whenever they sought to break breaks longer than five minutes, management demanded their immediate return to work. Workers explained that company management uses video cameras installed at the work place to monitor workers' breaks and demand their cessation before they exceed five minutes. A measure of the priority that C.J.'s places on limiting workers' rest time is top manager Michael LeBlanc's habit of monitoring workplace video by cell phone when away from the factory. Workers traveling with Mr. LeBlanc have observed him reacting angrily to images of workers on breaks and then calling junior managers to demand that these employees be forced back to work.

Some guest workers also testified that they are required to perform, from time-to-time, a variety of duties for the company in addition to their work shifts, including both company work unrelated to seafood processing, such as welding, and personal services for company managers, such as cleaning managers' automobiles and babysitting their children (the top company management lives on the company premises). One worker reported an incident that took place when he had returned to his room after working a twenty-four hour shift followed, after only four hours' rest, by another fifteen hour shift. According to this worker, shortly after he fell asleep, exhausted, in his room, he was woken by a coworker who had been sent by Michael LeBlanc and was told that he had to get out of bed and come weld a part in the plant's boiling apparatus. After the worker declined to go, an irate Mr. LeBlanc appeared at his trailer and demanded that he come to the plant. The worker quotes Mr. LeBlanc as stating: "I sent for you. Why didn't you go? You are going to go!" The worker says that he felt he had no choice but to comply.

b. Wages

Pay for guest workers is set according to their contract with C.J.'s Seafood, which specifies a wage of \$8.53/hour.⁴ This rate is the "prevailing wage" for local workers in the industry, which C.J.'s is required to pay to the guest workers as a condition of its participation in the H-2B program.⁵ Workers in the packing section and boiler operators are paid at this hourly rate, or

⁴ See, Agreement dated December 16, 2011, signed by company manager Michael LeBlanc and certain guest workers, regarding their terms of employment at C.J.'s ("Agreement").

⁵ 20 CFR § 655.22 ("Obligations of H-2B employers. An employer seeking H-2B labor certification must attest as part of the *Application for Temporary Employment Certification* that it will abide by the following conditions of this subpart: . . . (e) The offered wage equals or exceeds the highest of the prevailing wage, the applicable Federal minimum wage, the State minimum wage, and local minimum wage, and the employer will pay the offered wage during the entire period of the approved H-2B labor certification.").

slightly higher, up to a reported maximum of \$9/hour. Workers who peel crawfish are paid \$2 per pound they peel.

Peelers are not paid any additional compensation for time spent cleaning their work areas, which takes place mid-morning and at the end of each shift. Nor are other employees reportedly compensated consistently or completely for time spent performing non-seafood processing work, such as welding, car-washing or babysitting.

Very significantly, workers reported that company managers, including General Manager Michael LeBlanc, stated that C.J.'s "does not pay overtime," a fact that is clear from a review of the hours and pay of individual workers. Workers testified that supervisor Manuel Mendoza and Michael LeBlanc's wife, Doracely Covarrubias (known as "Doris"), also both stated, on multiple occasions, that "Mike doesn't pay overtime" and that workers "knew what they were getting into" when they came to work at C.J.'s.

Out of their wages, workers pay the company for both rental of the quarters in which they are housed, which consist of trailers located on the company premises, and certain types of protective apparel, including aprons, gloves, boots and hairnets, which are sold in the company's office. Workers pay \$45 per week for housing in the trailers, \$0.50 each for hairnets, \$4.50 for each apron, \$25 for each pair of boots, and \$15 per box of gloves. While workers are not required to purchase these items from C.J.'s, the company makes it very difficult for workers to shop off site, with the result that most workers buy these items from the company store.

2. Violations

a. Failure to Pay "Prevailing Wage" / Minimum Wage

Under DOL regulations, companies which employ H-2B guest workers must offer and pay a wage rate that "equals or exceeds the highest of the prevailing wage or federal minimum wage."⁶ If the offered wage is based on incentives, as it is for workers at C.J.'s who are paid on "piece rates," the employer must "guarantee[] a wage paid on a weekly, bi-weekly, or monthly basis that equals or exceeds the prevailing wage, or the legal Federal, State, or local minimum wage, whichever is highest."⁷ As noted, the offered wage at C.J.'s Seafood for the current season's guest workers is \$8.53/hour.⁸ H-2B workers are also covered by the federal Fair Labor Standards Act (FLSA),⁹ which requires that employers pay workers, at minimum, the federal minimum

⁶ Ibid.

⁷ 20 CFR § 655.22(g)(1).

⁸ See, Agreement, *supra*, n. 3.

⁹ 20 CFR § 655.22 (d) ("During the period of employment that is the subject of the labor certification application, the employer will comply with applicable Federal, State and local employment-related laws and regulations . . .").

wage of \$7.25 for each hour worked and, “for a workweek longer than forty hours,” a wage rate “for his employment in excess of the hours above” that is “not less than one and one-half times the regular rate at which he is employed.”¹⁰ Therefore, to comply with federal law, for all hours worked above 40 in a single week, guest workers at C.J.'s must be paid no less than one-and-a-half times the offered rate of \$8.53 per hour, which is \$12.80 per hour.

The WRC reviewed the pay records of six guest workers employed by C.J.'s for the period from April 4 to May 30, 2012 and compared the amounts they were paid to the minimum amounts owed under federal law for the hours these employees reported working. The WRC looked at cases where data was available both from pay statements provided to workers by C.J.'s and from workers' own detailed records of their own hours of work.

In every one of the 44 workweeks examined, the wages paid for the week were less than the minimum amount required by federal law. Moreover, in 41 cases, 93% of the total, the amount paid was below the amount workers would have been owed even if C.J.'s were paying only the federal minimum wage of \$7.25 per hour, rather than the required prevailing wage of \$8.53 per hour. It is important to note that the workers' pay statements give no indication that they are receiving any sort of premium rate for overtime hours, much less the legally required time-and-a-half rate.

The gap between the wages required by law and the wages paid by C.J.'s is extremely large. The records reviewed by the WRC show underpayment ranging from 30 to 60 percent of the wages actually due, with an average of nearly 42%. This figure does not include, moreover, wages that some workers are legally owed for non-seafood processing work that they performed on direction from company managers, such as car-washing and babysitting, but for which they were not compensated.

Finally, that it is the company's policy and intentional practice not to pay legally required overtime compensation is confirmed by workers' consistent testimony that top company managers have said, on repeated occasions, that the company does not pay overtime.

b. Uncompensated Work / Non-Visa-Permitted Work

As discussed, in addition to the job duties which they are contracted to perform at the company's processing facility, some C.J.'s guest workers also have been required to perform other work for the company's top managers, including car-washing and babysitting, sometimes without any

¹⁰ 29 U.S.C. § 207 (a) (1).

compensation. These workers reported cases in which the wife of Mr. LeBlanc directed workers, during their off-hours, to wash Mr. LeBlanc's car and to babysit their children while she and Mr. LeBlanc went out at night to a nearby casino.

In the case of the car-washing, Mr. LeBlanc's spouse promised the worker that he would be paid, but this did not occur. In the case of the babysitting, the employee was paid on some previous occasions when this work was required, but not on the most recent ones. On occasions when the worker tried to decline the request to babysit, stating that she was tired or that she had to clean her living quarters, Mr. LeBlanc's wife told her that, "It's not 'if you want to;' it is an order."

Requiring employees to do this work without compensation violates the FLSA, which requires that "Every employer shall pay to each of his employees who . . . is employed in an enterprise engaged in commerce or in the production of goods for commerce," no less than the federal minimum wage rate.¹¹ While private domestic work is, in some cases, exempt from the FLSA,¹² in this case the employees performing this work are actually employed in the commercial enterprise of the person directing them to do this work. The employees babysitting Mr. LeBlanc's children and washing his car are doing so in the course of employment by Mr. LeBlanc's company: were it not for this employment they would not be subject to these demands.

This practice also violates federal regulations governing the H-2B visa program. The program requires firms seeking to employ guest workers to accurately describe in the job order, which is the basis of a firm's application, the duties of the positions the company is seeking to fill.¹³ Babysitting and car-washing do not appear in the description of the jobs that C.J.'s offered to its guest workers.¹⁴

c. Denial of Reasonable Breaks and Rest Time / Excessive Overtime

Neither the FLSA nor Louisiana state laws place any limits on the amount of overtime which an employer can require of a worker, nor do they set any specific requirement for employers to

¹¹ 29 U.S.C. § 206.

¹² 29 U.S.C. § 206(f).

¹³ 20 CFR § 655.22 ("An employer seeking H-2B labor certification must attest as part of the *Application for Temporary Employment Certification* that it will abide by the following conditions . . . (1) The employer will not place any H-2B workers employed pursuant to this application outside the area of intended employment listed on the *Application for Temporary Employment Certification* unless the employer has obtained a new temporary labor certification from the Department.").

¹⁴ See, Agreement, *supra*, n. 3.

provide rest breaks to employees. Walmart's own vendor code of conduct, its Standards for Suppliers, does, however, set such a limit, and explicitly states that "Suppliers must ensure" that "working hours are . . .not excessive."¹⁵

In its "Standards for Suppliers Manual," in which Walmart details the "expectations and obligations" its code imposes on vendors, the company explains that to comply with this requirement, a company's "working hours should not exceed 60 hours per week."¹⁶ Moreover, the manual also states that this standard requires that "[o]vertime should be voluntary" and that "[s]uppliers shall provide reasonable meal and rest breaks."¹⁷

As discussed above, the work schedule that C.J.'s requires of its guest workers during peak production periods clearly violates these requirements. From its interviews with workers, the WRC found that C.J.'s required its guest workers to work far in excess of 60 hours per week for many weeks consecutively, from early April through late May 2012. According to workers, these hours included considerable amounts of overtime that was worked neither voluntarily nor with the benefit of reasonable rest and meal periods.

Workers consistently testified that C.J.'s management made clear to them that the extremely long hours that they worked were a requirement of their employment at the company. To cite several examples:

- Workers reported that at a meeting with employees on May 23, 2012, General Manager Michael LeBlanc told them "You knew when you came that it would be two months of fifteen to sixteen hours [per day] and that I don't pay overtime. If you don't like it you can just say so, there are more people who want to come to work and are waiting for the opportunity to come."
- A worker who had worked a twenty-four hour shift operating a boiler, followed by a few hours off and then fourteen hours peeling crawfish, sought to leave work to rest, but was ordered to return his job by Mr. LeBlanc, who stated, "if I let you go [i.e., leave work], then I have to let everyone go."

¹⁵ Walmart Standards for Suppliers, 3. Labor Hours.

¹⁶ Walmart, Walmart Standards for Suppliers Manual 8 (Jan. 2012), www.walmartstores.com/download/5133.pdf.

¹⁷ Ibid.

- On occasions when employees left the facility and returned to their living quarters because they were ill or too exhausted to work, managers went to the workers' quarters to insist that they return to work.

In addition, company managers consistently placed unreasonable restrictions on workers' ability to take rest and meal breaks during these long and grueling shifts.

In order to determine what might constitute "reasonable" meal and rest breaks, the WRC surveyed U.S. state laws and regulations on this subject. Among the eighteen states identified by the WRC that mandated a meal and/or rest period for workers, the average minimum break time required for an employee working a shift of fifteen hours was one hour.¹⁸ For states that mandate rest breaks, nearly all require periodic rest breaks of at least ten minutes' duration.¹⁹

As discussed above, interview testimony by C.J.'s workers revealed that the breaks they were afforded fell far short of this, and cannot, by any standard, be considered reasonable. Whether peeling, packing or boiling, the cumulative break time available to workers at C.J.'s was no more than 35 minutes during fifteen to twenty-four hour shifts. Employees testified that when they packed crawfish, they were able to take only one 30 minute lunch break with no additional rest breaks throughout the entire shift. Some workers who peel crawfish stated that they received a twenty-minute meal break and were allowed only two to three additional rest breaks of no more than five minutes' duration. No workers reported being able to take even one ten minute rest break.

Workers reported that when they sought to take rest breaks of more than five minutes they were consistently subjected to pressure and harassment from the company to return to work. They testified that Michael LeBlanc and other managers told them explicitly and repeatedly that they could take breaks of only five minutes and not any longer. Worker testimony shows that the plant employs seven surveillance cameras which management regularly utilizes to monitor and curtail workers' break time. Employees also stated that company supervisor Manuel Mendoza told workers on multiple occasions that their breaks were for no more than five minutes and that

¹⁸ Cal. Lab. Code §§ 512, 1030; Cal. Code Regs. tit. 8, §§ 11010, 11170; 7 Colo. Code Regs. §§ 1103-1(7)-(8)'; Conn. Gen. Stat. Ann. §§ 31-51ii, 31-40w; Del. Code Ann. tit. 19, § 707; 820 Ill. Comp. Stat. §§ 140/3, 260/10; Ky. Rev. Stat. Ann. §§ 337.355, 337.365; Me. Rev. Stat. Ann. tit. 26, § 601; Mass. Gen. Laws ch. 149, §§ 100, 101; Neb. Rev. Stat. § 48-212; Nev. Rev. Stat. Ann. § 608.019; N.H. Rev. Stat. Ann. § 275:30-a; N.Y. Lab. Law §§ 162, 206-C; N.D. Admin. Code § 46-02-07-02; Or. Admin. R. §§ 839-020-0050, 839-020-0051; 43 Pa. Cons. Stat. Ann. § 1301.207; R.I. Gen. Laws § 28-3-8, 28-3-14, 23-13-2.1; Tenn. Code Ann. §§ 50-2-103(d), 50-1-305; Wash. Admin. Code §§ 296-126-092, 296-131-020; W.Va. Code § 21-3-10a; W.Va. Code St. R. § 42-5-2(2.6).

¹⁹ Ibid.

if workers did not understand this, he “would make them understand with a shovel” (implying, workers believed, that he would physically assault them). In addition, workers reported that management would harass them if they were away from their post for more than a few minutes, even if they were using the bathroom, and workers reported that some workers postponed relieving themselves until absolutely necessary.

d. Illegal Pay Deductions

Both DOL regulations and the FLSA permit that employers may deduct money from workers’ pay for “the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities,”²⁰ provided to employees, unless the cost brings workers’ wages below the minimum wage and the facilities are primarily provided for the benefit of the employer itself. In the present case, as discussed, during the peak production period, most guest workers at C.J.’s are paid less than the legal minimum wage, so that all such deductions constitute violations of the law – unless the facilities provided are primarily for the benefit of the employee and not the employer.

In the case of employees’ aprons, hairnets and gloves, these are items whose purpose is to promote the safety and sanitation of the workplace, both of which are understood under U.S. labor law to primarily benefit the employer.²¹ Therefore, by requiring employees to pay for these items, when they are already receiving less than the legal minimum pay, C.J.’s violates workers’ rights under federal labor standards.

While rental of company-provided housing is generally considered to be a cost that is deductible from workers’ wages, the use of company housing by the employee must be voluntary and not coerced by the employer.²² This requirement is typically met either by use of company housing being specified as a term of accepting the position (so that the employee has the choice to decline the position if company housing is not an acceptable condition) or by the employer letting the worker know that the latter has a choice between accepting company housing with the deduction or finding his or her own housing but not paying the deduction.²³

In this case, workers’ testimony indicated that there had been only one case where a guest worker had lived outside of company housing and that this employee had been castigated for doing so by Michael LeBlanc. According to worker testimony, Mr. LeBlanc constantly harassed

²⁰ 29 U.S.C. § 203(m).

²¹ 29 C.F.R. § 531.32(c) (stating that items like “safety caps” and “uniforms” are provided “primarily for the benefit or convenience of the employer”).

²² 29 C.F.R. § 531.30 (“The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where . . . his acceptance of the facility [is] voluntary and uncoerced.”).

²³ See, *Lopez v. Rodriguez*, 668 F.2d 1376, 1379-81 (D.C. Cir. 1981).

this worker for refusing to live on site, demanded to know where she had been when she arrived for work, and told her that he had no intention of bringing her back to work the following year. Mr. LeBlanc told this worker and other workers that he needed to know their whereabouts at all times and that they must be available to him “100%.” Yet the contracts which the workers signed did not mention any requirement they live in company housing.

While Mr. LeBlanc claimed, in response to escalating worker protests in May of 2012, that workers were not required to live in company housing, their use of such lodging prior to this announcement cannot be said to have been wholly voluntary and uncoerced. In addition, the regulation requires that workers “receive the benefits of the facility for which he is charged.”²⁴ As discussed below in the portion of this report which concerns health and safety issues at the company, given the conditions under which workers are housed, this standard cannot be said to have been met. Therefore, the WRC concludes that the deductions made for this expense also violated the federal standards.

Finally, the guest workers incurred some expenses when they initially travelled from their hometowns in Mexico to Nuevo Laredo at the border, where they were met by Mr. LeBlanc and brought to the company’s processing facility in Louisiana. While the company paid their visa fees, the workers paid for their own transportation to Nuevo Laredo and for the cost of food and lodging while waiting for their visas to be issued.

Federal courts are split on the issue of whether guest workers’ expenses related to immigration and travel to their place of employment in the United States are ones incurred primarily for the benefit of the employer or the employee. At least one federal circuit court has ruled that these expenses primarily benefit the employer and therefore should be reimbursed by the employer if failing to do so would cause an employee’s wages for the first week to fall below the legal minimum; the DOL shares this position.²⁵ The Fifth Circuit Court of Appeals, which includes Louisiana, has reached the opposite conclusion, however, holding that these expenses primarily benefit the employee.²⁶

Complicating matters, in this case, is the fact that the guest workers were not able to provide highly detailed information concerning their hours during their first week on the job. Workers did report that their hours were limited, and, therefore, it seems highly likely, if one adopts the DOL’s viewpoint on this issue, that the expenses incurred by workers in transit reduced their

²⁴ 29 C.F.R. § 531.30.

²⁵ See, *Arriaga v. Fla. Pac. Farms, L.L.C.*, 305 F.3d 1228, 1244 (11th Cir. Fla. 2002), and DOL WHD Field Assistance Bulletin No. 2009-2.

²⁶ See, *Castellanos-Contreras v. Decatur Hotels LLC*, 622 F.3d 393, 403 (5th Cir. 2010) (also noting that the Eleventh Circuit’s decision in *Arriaga* concerned H-2A guest workers, rather than H-2B holders).

initial earnings below the legal minimum. However, the WRC lacks information that is definitive enough to support a firm finding on this issue.

B. Discrimination

1. Findings

Guest workers who were interviewed reported a pervasive pattern and practice of discrimination at the company, wherein Mexican guest workers both were subjected to worse working conditions and treatment than similarly situated U.S. resident workers and were verbally denigrated on account of their national origin, all contributing to an extremely hostile environment in the workplace.

Specifically, Mexican guest workers reported they were required to both work much longer schedules – as discussed, regular work shifts beginning at 1:00 to 2:00 a.m., of fifteen to as many as twenty-four hours – and to perform additional uncompensated work duties – i.e., cleaning up the peeling area after daily production work was ended – which are not required of similarly-situated U.S. resident workers. While, reportedly, some of the latter start work around the same time as the Mexican guest workers, some start work much later at 7:00 a.m.,²⁷ and none are required to work shifts of equivalent length or to clean-up the production area at the end of the work day.

Moreover, U.S. resident workers do not have as many restrictions placed on their ability to take breaks and are not asked to perform additional uncompensated work for company managers, such as babysitting or car-washing. Nor are U.S. resident workers compelled to live in company housing at the worksite or, as discussed later, subjected to the many restrictions on their personal freedom that the company imposes on the guest workers who are housed there.

Workers reported that this discriminatory treatment was also reflected in the language which General Manager Michael LeBlanc used towards them. According to worker testimony, Mr. LeBlanc referred to Mexican guest workers, on multiple occasions, as “fucking Mexicans” and to female Mexican guest workers as “bitches.” In contrast, workers did not report any instances of Mr. LeBlanc referring to U.S. resident workers as “fucking Americans” or to female American workers as “bitches.”

²⁷ While *some* Mexican guest workers were able to start work at this time on *some* days – after having previously worked a twenty-three hour shift -- none had 7:00 a.m. as their regular starting time.

2. Violations

As some of these employees have since alleged in a complaint filed with the U.S. Equal Employment Opportunity Commission, the company's treatment of its Mexican guest workers constitutes discrimination on the basis of national origin, which violates Title VII of the federal Civil Rights Act. Title VII explicitly makes it unlawful for an employer "to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . national origin."²⁸

C.J.'s imposition of harsher working conditions on its Mexican guest workers than on U.S. resident workers and its requirement that the former perform additional uncompensated work not demanded of the latter constitutes disparate treatment on the basis of national origin. Open and repeated statements of hostility toward, and denigration of, Mexican workers by top company managers, during the same time that these policies were pursued, constitutes evidence that this discriminatory treatment was intentional.²⁹

In cases where disparate treatment of similarly situated workers in a protected class is alleged, and evidence of intent to discriminate is present, the burden is on the employer to provide a valid nondiscriminatory justification.³⁰ As yet, the company has not met this burden. The only explanation that C.J.'s management has, thus far, provided to its Mexican guest workers for why they are treated in such a fashion – that, if the workers don't like their conditions, "there are more people [in Mexico] who want to come to work and are waiting for the opportunity to come" – is, in essence, simply an assertion that the company imposes such conditions on its Mexican guest workers because it *can*. The company's recruitment of guest workers from Mexico through the H-2B program is, conversely, also an acknowledgement of its inability to impose similar conditions on local American workers.

This pattern and practice of inferior treatment, taken together with the denigrating language to which top company management subjects them, have resulted in a hostile work environment for the Mexican guest workers on the basis of their national origin. The creation of such an environment is, in itself, a form of discrimination that is prohibited under federal civil rights

²⁸ 42 U.S.C. § 2000e-2(a)(1).

²⁹ *Rubinstein v. Administrators of Tulane Educ. Fund*, 218 F.3d 392, 400-01 (5th Cir. 2000) (stating that for comments to offer sufficient evidence of discrimination, they must be "1) related [to the protected class of persons of which the plaintiff is a member]; 2) proximate in time to the [complained-of adverse employment decision]; 3) made by an individual with authority over the employment decision at issue; and 4) related to the employment decision at issue").

³⁰ Even if the employer does meet this burden, discrimination may still be established by showing that the justification is pretextual. *See, McCoy v. City of Shreveport*, 492 F.3d 551, 557 (5th Cir. 2007).

law.³¹ As discussed below, the abusiveness of this environment is further intensified by the restriction on the personal freedoms of the Mexican guest workers which the company imposes on them outside of the workplace,³² restrictions which it is unimaginable that the company would seek to impose on workers who are U.S. residents.

Finally, it is worth noting that the wife of Michael LeBlanc, Doracely Covarrubias, reportedly is herself a former guest worker of Mexican origin and that company supervisor Manuel Mendoza is one of her in-laws and also of Mexican national origin. However, the existence of such personal relationships, particularly within a family business, is not, in itself, evidence of whether or not a manager, in his or her labor practices, engages in discriminatory treatment of same class of persons as employees.

C. Harassment and Abuse

1. Findings

In addition to the discriminatory treatment just described, the company subjects its guest workers to a series of practices that demean workers and degrade their dignity, invade their personal privacy, and severely restrict their personal freedom. This conduct on the part of company management constitutes a consistent pattern and practice of severe emotional and psychological abuse.

Guest workers reported numerous examples of such abuse, in addition to the regular use of racial and sexual epithets referenced above.

Of particular note:

- Workers testified that Mr. LeBlanc has told them that when they are speaking to him, they must not look him in the eye but must look down at the ground. Workers quote Mr. LeBlanc as stating, on multiple occasions, “Don’t look me in the eye, look down” and “I want people to look down when they talk to me,” and other words to the same effect. Several workers reported an incident in which Mr. LeBlanc made this demand of a particular worker in a group meeting, after she had expressed concern about working conditions. According to this worker, it was clear that Mr. LeBlanc’s purpose in demeaning her in this manner at the meeting was to make an example of her. The only

³¹ See, *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21, (1993) (stating that a violation of Title VII can be established by “discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment”).

³² *Chellen v. John Pickle Co., Inc.*, 446 F. Supp. 2d 1247, 1285-86 (N.D. Okla. 2006) (stating that [along with] discrimination in job assignments,” that “restrictions on ... freedom, privacy, communications... along with [restrictive and substandard] living conditions” can create “a hostile and abusive working environment”).

way to interpret this bizarre practice by Mr. LeBlanc is as a means of demonstrating, and compelling workers to accept, that they are beneath him and entirely subject to his dictates and commands. It should be noted, with reference to the prior discussion of discriminatory treatment of Mexican guest workers, that there is no indication that Mr. LeBlanc has ever attempted to impose this demeaning practice on members of his U.S. resident workforce.

- As already mentioned, guest workers also testified that company supervisor Manuel Mendoza threatened to “make them understand” with his shovel if they did not “get back to work” quickly enough from their breaks. Use of physical threats by a supervisor to compel obedience by workers is an especially egregious form of workplace abuse.

The workplace environment at C.J.'s is thus one where supervisors feel free to compel workers' labor through comments that threaten physical assault, while employees are not even allowed to look the top manager in the eye.

A similar attempt to maintain dominance and control over workers can be seen in the restrictions that the company places on guest workers during their scant hours away from the workplace – nearly all of which are still spent on the company premises, in employer-supplied housing.

Workers who owned automobiles reported that General Manager LeBlanc asked them for the keys, and required them to ask his permission when they were leaving the premises and to tell him where they were going and when they would return. Mr. LeBlanc also pressured workers not to provide transportation to other guest workers; specifically, he directed car owners to charge their co-workers significant sums for providing transportation, up to \$50 per trip.

A similar lack of respect for workers' personal privacy and attempt to restrict their individual freedom is apparent in the conditions imposed upon employees in the company's housing. Keys to the trailers in which the workers are housed are retained by company managers, so that they have access to workers' living spaces and personal property, but workers have no way to limit such access. Michael LeBlanc's wife, Doracely Covarrubias, enters the trailers both when workers are present and when they are at work, and, on occasion, orders them to clean-up their living areas. Such orders are issued despite the fact that the trailers are dilapidated and very poorly maintained by the company, suggesting that the purpose of her visits is to assert control, rather than maintain sanitation.

Mr. LeBlanc's disdain for workers and obsession with controlling the minutiae of their daily lives is exemplified by a reported incident involving a worker who borrowed a fan from another worker for use in his room because he found it too hot to sleep. According to testimony from

multiple workers, Mr. LeBlanc got extremely angry when he found out about this and told the worker that the worker had “no right” to borrow the fan. He said “Things have to be done my way, don’t you understand?” The worker invited Mr. LeBlanc inside his room to show how hot it was, in order to explain why he had borrowed the fan. Mr. LeBlanc became enraged that the worker had “talked back” to him and said “Are you fucking stupid? You deserve to be killed.” The worker understood this as a threat, and left that same night to take a bus back to Mexico.

Company managers also placed restrictions on workers’ ability to associate with each other or with other persons when away from the workplace, requiring workers to stay in their own trailers and not to visit each other after 9:00 p.m. Moreover, workers are required to provide the name of any outside person visiting them in the trailers along with the person’s automobile license plate number. Workers recounted various instances in which Mr. LeBlanc and his wife sought to restrict workers’ ability to socialize outside of work hours.

In one case, Mr. LeBlanc falsely accused a man of spending the night in a women’s trailer and demanded to know which woman he had slept with. This worker stated, “When Mike went by the women’s trailer, he saw me and asked why I was knocking on a women’s trailer door. I said I had gone to ask for a DVD.” Immediately after this, the worker received a call from Mr. LeBlanc’s wife, who questioned him, and then called one of the woman workers demanding to know which woman the man had slept with.

Another worker reported that Leblanc had said at beginning of the season: “I don’t want to see men and women walking together; never in couples. It is not permitted.”

Another male worker was called into the management office by Mr. LeBlanc after watching television in a women’s trailer. According to the worker, Mr. LeBlanc told him that “it’s not right for men to be in the women’s trailer because I want people 100% the next day.” He reportedly told women workers not to let any men in their trailers because “you can’t be exhausted” for work.

Multiple workers also reported that Mr. LeBlanc opened and inspected their personal mail without their permission. These workers testified that Mr. LeBlanc regularly engaged in this practice and openly acknowledged doing so.

2. Violations

The abusive and degrading treatment to which C.J.’s has subjected its Mexican guest workers violates its obligations under Walmart’s Standards for Suppliers. Walmart’s compliance manual for its suppliers states that “[s]uppliers shall treat all workers with dignity and respect” and “shall

not engage in or tolerate bullying, harassment or abuse of any kind.”³³ Moreover, Walmart directs that its suppliers “must never physically . . . delay workers from leaving the facility or its grounds unless for reasonable safety reasons.”³⁴

Clearly, neither telling workers that they must look down while speaking to managers, nor threatening “to make them understand” with a shovel, constitutes treating workers with “dignity and respect.” Instead both represent forms of bullying and abusive treatment and the latter conveys at least the threat of physical punishment.

Moreover, denying workers personal privacy and seeking to control and monitor their activities during their off-hours also conveys a lack of respect for employees. In addition, retaining workers’ automobile keys, so that these must be retrieved from company managers before the worker can leave the premises represents a form of “physical . . . delay” imposed on workers before they are able to leave the company’s grounds.

Finally, opening another person’s mail not only demonstrates a lack of respect for the employee, but is also a violation of federal law. Federal statutes make it a crime to open mail addressed to another person, before it has been delivered, with the intent “to obstruct the correspondence, or pry into the . . . secrets of another.”³⁵ This is the case whether the person improperly opening the mail is a postal employee or person employed at the place of business where the mail has been brought.³⁶

D. Health and Safety

1. Findings

In interviews with the WRC, guest workers described both their working environment in the company’s processing plant and their living conditions in company-supplied housing. Due to the company’s failure to respond to the WRC’s request to meet with company management and visit the facility and premises, the WRC was unable to conduct a first-hand physical inspection of either the work areas or the employees’ housing. Our findings, therefore, are based on testimony

³³ Walmart Standards for Suppliers Manual, Standard 4, Hiring and Employment Practices.

³⁴ Walmart Standards for Suppliers Manual Standard 2, Forced Labor.

³⁵ 18 U.S.C. § 1702.

³⁶ *See*, 18 U.S.C. §§ 1702-1703(b) (mandating criminal penalties for “[w]hoever, without authority, opens . . . or any mail . . . not directed to him;” *also* 72 C.J.S. Postal Service § 78 (stating that “anyone, not just a USPS employee, who without authority opens or destroys any mail . . . not directed to him or her, is guilty of a misdemeanor”).

provided by workers and photographs and video taken by workers on the premises and shared with the WRC.

With regard to conditions inside the company's processing facility, the guest workers described in interviews certain conditions that indicated significant risks to their health and safety. The WRC's practice is to make detailed assessments of health and safety conditions after an investigative team is able to physically inspect a facility. The reason for this approach is that health and safety standards are an area where technical in-person assessments are highly useful in identifying and evaluating hazards that may not be either salient or readily apparent to workers. As a result, our findings here are partial and preliminary.

First, it appears likely that workers in the peeling area face risks of repetitive strain injuries. At least one worker reported experiencing painful throbbing at night in the fingers, most likely resulting from the repetitive strain caused by peeling crawfish for fourteen to fifteen hours per days with very limited rest time. In addition, workers engaged in boiling and packing of crawfish must work while standing. Given the extremely long shifts to which these workers are subjected, and the lack of any indication from worker testimony that the plant employs any ameliorative measures, this circumstance is likely to pose significant hazards to workers' health.

Second, it appears that the company is not requiring, or making sufficiently available to workers adequate personal protective equipment. At least one worker reported suffering repeated infections on the fingers, most likely a result of peeling crawfish with inadequate hand protection. Likely causes are pressure to work quickly, both from supervisors and as a result of the piece-rate compensation system, and the company's practice of requiring workers to purchase protective equipment with their own funds.

Third, the company's practice of requiring extensive overtime and restricting rest breaks may be contributing to workplace accidents. A worker in the boiler room³⁷ reported having suffered a severe burn on his leg as a result of hot water spilling on him from a clogged sink. The incident occurred after the worker had worked eighteen hours straight. The worker missed two or three days of work, and the burn required three weeks to heal.

Fourth, the practice of blocking some exits from work areas during peak production periods presents a hazard to employees as it restricts their ability to evacuate in case of an emergency. This hazard is created when boxes or pallets are placed behind doors to prevent employees from taking breaks.

³⁷ Workers also reported that gas lines in the boiler room are loose and some sheet metal is very deteriorated.

During their off-hours, the guest workers live in trailers and sheds located within the factory compound. There are twelve housing units, which workers described as dilapidated and poorly-maintained. The trailers, where most workers live, are each occupied by four to six employees, who share a single bathroom and a single cooking stove, making for crowded housing conditions.³⁸

The conditions workers reported indicate that these trailers are not fit for human habitation. Workers described leaking water pipes, walls covered with mold, filthy and worn-out mattresses, appliances and light fixtures that barely function or do not function, and infestation by vermin.

Workers reported that, because many of the units lack effectively functioning air conditioners, the living quarters are extremely hot – hotter, they report, than in their home towns in Mexico. These conditions persist even at night, which makes it difficult and uncomfortable for the occupants to sleep, even after their long and grueling workdays.

In one trailer, workers reported, the toilet does not flush and the kitchen plumbing is broken, causing water to seep onto the floor. There are black worms in the sink, moisture and mold on the walls and floors, and no working air conditioning in the sleeping area.

In another unit, according to workers, the bedroom walls have holes, there are no functioning lights in the bathroom, and a hole in the bathroom floor allows iguanas and other animals to crawl into the trailer. Through the hole in the bathroom floor, workers can also hear and see other animals, including armadillos, crawling underneath the unit. Another unit where workers live is infested with rats and has no functioning hot water.

In a trailer that houses six men, some rooms lack any functioning light fixtures, others have walls covered with mold, and, in the bedroom, workers have had to cover a hole with cardboard to keep animals from entering. The bathtub is cracked, and the floor is in such poor condition that workers fear that if they step in the wrong location they will fall through it.

According to one worker, “The conditions are horrible. . . it is much hotter than Mexico. I am sweating all night. The mattress is stained and dirty. . . The floorboards are old and your feet can fall through, and if you go the bathroom, your feet can fall through the floor . . . you have to walk

³⁸ Such trailers are intended to accommodate, on average, three occupants. *See*, “Three Types of FEMA Housing,” *Washington Post* (May 25, 2008); <http://www.washingtonpost.com/wp-dyn/content/graphic/2008/05/25/GR2008052500118.html?sid=ST2008052500124>.

lightly. Just one bathroom for six people, so we had to have a line, when we all wanted was to go to sleep. There were *tlacuaches* (opossums) [in the trailers], like rats . . . and lots of [other animals] below the trailers. You have to close the doors or they would go in.”

Another worker added, “The beds were very ugly, and very, very, dirty. There were rats - I have seen them. . . . And you can’t sleep. . . . My bed was worn out -- the padding was worn away so you could feel the springs through the fabric.” Workers report that when they complained to C.J.’s General Manager LeBlanc about the conditions, he replied by asking them, “Are you really any better off in Mexico?”

2. Violations

The federal Occupation Safety and Health Act (OSHA Act) requires employers to “furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees [and] . . . comply with occupational safety and health standards promulgated” under the Act’s authority.³⁹ With regard to the company’s compliance with OSHA standards, the findings in this report are, as noted, partial and preliminary due to the fact that the company as yet has not responded to the WRC’s request to visit the facility.

However, the WRC observes, from its preliminary research, that C.J.’s has not complied with the following OSHA standards:

First, OSHA requires that with regard to personal protective equipment, that employers provide “personal protective equipment for . . . extremities” wherever “it is necessary by reason of hazards of processes or environment” and that this equipment “shall be provided by the employer at no cost to employees.”⁴⁰ As noted, workers who peel crawfish may require protective gloves to shield their hands from skin infections, but C.J.’s currently requires them to purchase these at their own cost.

Second, OSHA standards mandates that, in general, “at least two exit routes must be available in a workplace to permit prompt evacuation of employees and other building occupants during an emergency,”⁴¹ and that these “[e]xit routes must be free and unobstructed.” The regulations clearly state that “No materials or equipment may be placed, either permanently or temporarily,

³⁹ 29 U.S.C. § 654.

⁴⁰ 29 C.F.R. § 1910.132(a)(h).

⁴¹ 29 C.F.R. § 1910.36(b)(1).

within the exit route.”⁴² This standard was violated when boxes and pallets were placed behind one of the exit doors to the peeling area.

Third, with regard to the employees’ living quarters, the WRC notes that conditions in these facilities, as described by the guest workers, fail to comply with OSHA’s standards for “Temporary Labor Camp[s].”⁴³ This standard, which covers housing for H-2B workers,⁴⁴ applies to employer-provided housing that, due to company policy or practice, workers are required to use.⁴⁵ As discussed previously, by strongly discouraging use of offsite housing, C.J.’s has made use of company housing, in effect, a requirement of employment for its guest workers.

The standards require that “floors shall be kept in good repair.” Workers reported that their housing units had holes in the floors and were hazardous to work on.⁴⁶ Workers also testified that refrigerators and stoves in some units were nearly inoperable. Also, while the OSHA standards require that “toilet rooms shall be kept in a sanitary condition,”⁴⁷ workers reported that in some units, toilets were frequently broken.

Moreover, workers reported that some rooms in their living quarters lacked functioning light fixtures. The OSHA standards state that “each habitable room in a camp shall be provided with at least one ceiling-type light fixture.”⁴⁸ And while OSHA requires that “effective measures shall be taken” in labor camps “to prevent infestation by and harborage of. . . animal[s],”⁴⁹ workers reported that lizards, opossums and rats were able to enter their living quarters.

Lastly, the standards establish a minimum living space of 50 square feet per occupant.⁵⁰ Because the company has failed to respond to the WRC’s request to visit the company’s premises, the WRC is unable to determine whether this requirement is being met. The fact, however, that some trailers house up to six occupants gives reason for concern that it may not be.

⁴² 29 C.F.R. § 1910.37(a)(3).

⁴³ 29 C.F.R. § 1910.142.

⁴⁴ Brennan Ctr. for Justice et al, Responses to Questions of NAO of Mexico re Public Communication MEX 2005-1 (Rights of Migrant Workers with H-2B Visas) Under the NAALC 38 (Aug. 13, 2008).

⁴⁵ See, *Frank Diehl Farms v. Sec’y of Labor*, 696 F.2d 1325 (11th Cir. 1983).

⁴⁶ 29 C.F.R. § 1910.142(b)(4).

⁴⁷ 29 C.F.R. § 1910.142(d)(10).

⁴⁸ 29 C.F.R. § 1910.142(g).

⁴⁹ 29 C.F.R. § 1910.142(j).

⁵⁰ 29 C.F.R. § 1910.142(b)(2).

E. Freedom of Association

1. Findings

Guest workers who were interviewed by the WRC consistently testified that workers' attempts to raise complaints about their working conditions and treatment at the company have almost uniformly been met by company managers with open threats of retaliation. These retaliatory threats have included not only threats of discharge, deportation and blacklisting – which are themselves very serious violations of workers' right of freedom of association -- but more recently, and even more disturbingly, threats of violence against workers and their families.

Workers reported that over the past several years, when guest workers would complain to General Manager LeBlanc concerning the excessive hours they worked, Mr. LeBlanc would threaten to “send them back to Mexico,” and that he would not re-hire them in future seasons. When workers threatened to leave the company because of the grueling work schedule, Mr. LeBlanc reportedly told them that he would ensure that other crawfish processing plants would not hire them in the future. Workers testified that Mr. LeBlanc often cited, as a means of demonstrating his ability and willingness to make good on these threats, the case of a worker who he considered to have been a complainer and who he had refused to rehire and who had therefore been unable to return to work in the United States.

On May 21, 2012, one of the guest workers, who reportedly was upset about both the working conditions in the plant and the restrictions the company placed upon workers in their off-hours, tried to call the number for a help line that was listed on an informational form concerning workers' rights provided to H2-B workers by the U.S. government. However, the worker inadvertently dialed the local “911” emergency service instead (911 was also listed on the same form as a number workers could use). Police officers were dispatched to the company and the worker, as well as Mr. LeBlanc, explained that the call was a mistake.

On May 22, however, Mr. Leblanc called a mandatory meeting with the Mexican guest workers, from which U.S. resident workers were excluded. At the May 22 meeting, Mr. LeBlanc made several retaliatory threats to the guest workers. The WRC interviewed several guest workers who were at the meeting and who gave consistent and detailed accounts of Mr. LeBlanc's statements.

According to the workers, Mr. LeBlanc stated that the company was a family business, that he was aware that “three or four” people were attempting to harm his business, and that doing this meant harming his family. Mr. LeBlanc then stated that workers “would not want to know him as an enemy.” He stated that he knew where all of the workers and their families lived in Mexico, that he had their addresses, and that he could and would find them. He stated that he knew a lot

of people in Mexico, both “good people and bad people.” He stated that this retaliation “might not be today or tomorrow,” but that he would find them “no matter how long it takes.”

Mr. LeBlanc’s wife then asked the workers if they understood what Mr. LeBlanc was saying. She told the workers, apparently by way of explaining the kind of people that Mr. LeBlanc knows in Mexico, that her brother once had been missing in Mexico for several weeks and that the police were unable to locate him, but that Mr. LeBlanc, “through his contacts,” had been able to locate her brother in a matter of hours.

Workers interviewed by the WRC stated that they understood these statements to be a clear threat of violent retaliation, that if they complained about working conditions at the plant to outside parties, LeBlanc would ensure that physical harm came to their families, drawing on the assistance of persons involved in organized crime (“bad people”) in Mexico.

The workers stated that they found these threats to be credible. They noted that LeBlanc did have access to their addresses in Mexico through copies of their visa records, and that, in the case of several workers, he had, on previous occasions, personally visited their homes in Mexico. Several workers added that LeBlanc had previously made a point of shown them a handgun that he kept in his office.

Adding to the impact of these threats is the fact that the area of Mexico where many of the guest workers live, the state of Tamaulipas is one where violence by organized crime is pervasive. Workers confirmed this, as did media and government reports reviewed by the WRC. In particular, portions of the state have become a battleground between the Gulf Drug Cartel and the *Zetas*, two of Mexico’s most powerful and violent criminal organizations.⁵¹

Mr. LeBlanc went on, at the meeting, to make further statements that confirmed that his threats had been directed at the guest workers as a group, and that these threats were in response to his concerns that workers were contacting outside parties about working conditions at the company. These statements also contained additional threats to workers of loss of employment at the company and blacklisting with other employers.

⁵¹ See, e.g., “The Wave of Violence in Tamaulipas,” *Borderland Beat: Reporting on the Mexican Cartel Drug War* (Apr. 17, 2010) (“Not a day goes by that we don't hear of yet another execution in the state of Tamaulipas. There are so many killings, that we have a hard time determining who is doing the killing, one day is the Zetas and then another day is the Gulf cartel (CDG) . . . [T]he trauma of watching death on a daily basis is taking a toll on all the people here. I have been driving around and I see the fear in the people.”), <http://www.borderlandbeat.com/2010/04/wave-of-violence-in-tamaulipas.html>.

Mr. LeBlanc stated that if the company was “reported,” then only four of the guest workers could stay working at the company, because to qualify to stay a worker would have to peel 4.5 pounds of crawfish per hour, and only four workers at the company could do this. Mr. LeBlanc added that workers who did not comply with his wishes would not be hired in the future, and that “there are many people in Mexico who want to work and [he] could bring more people.”

Mr. LeBlanc reportedly told the workers that “just as he had brought [them], he could make sure they didn’t come back,” that “no other boss brings you here in the future.” Finally, Mr. LeBlanc also warned that, if he wished, he could simply close the plant and open it with another name.

The following day, May 23, 2012, Mr. LeBlanc held another meeting with employees where he made additional threats of retaliation against workers who did not wish to accept the working conditions at the plant. Mr. LeBlanc reportedly told workers,

You knew when you came that it would be two months of fifteen to sixteen hours [per day] and that I don’t pay overtime. If you don’t like it, you can just say so, there are more people who want to come to work and are waiting for the opportunity to come.

According to employees who were present, LeBlanc went on to tell them that, “If you are not willing to work the way I say, and as fast as I want, you should let me know, so that I can send the product to another plant and send you back to Mexico.”

On June 4, 2012, a group of the guest workers met with Mr. LeBlanc and asked him to disavow his prior threats of retaliation. Mr. LeBlanc refused. Following this refusal, these workers announced that they would go on strike, a job action that, at the time of this report’s release, is still ongoing.

2. Violations

The right of freedom of association, established under U.S. federal labor law by the National Labor Relations Act, protects workers’ right to engage in concerted activity regarding workplace issues, without fear of employer retaliation.⁵² Freedom of association also encompasses the right of an individual worker to raise, either directly with the employer or with third parties, whether government agencies or labor rights advocates or organizations, issues of mutual concern to that

⁵² 29 U.S.C. §§ 157-9 (“Employees shall have the right to . . . engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . . It shall be an unfair labor practice for an employer--(1) to interfere with, restrain, or coerce employees in the exercise of the [se] rights.”). This right is also protected under Louisiana state law. La. R.S. § 23:822 (stating that “[i]t is necessary that the individual workman . . . be free from the interference, restraint, or coercion of employers of labor, or their agents” in “concerted activities for the purpose of collective bargaining or other mutual aid or protection”) (emphasis added).

employee and her co-workers.⁵³ Other U.S. labor laws also protect the rights of employees to assert the rights protected under those statutes, free from the threat of employer retaliation. For example, the federal FLSA, which protects workers' rights to overtime compensation and minimum wage, makes it unlawful for an employer to "discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act."⁵⁴

The right to "file[] a complaint" under the FLSA, may include not only the right to complain to government agencies, but also to complain orally to company managers.⁵⁵ Similarly, Title VII of the Civil Rights Act makes it unlawful for an employer to retaliate against an employee for having opposed practices by the employer that violate that statute, including its protections against discrimination on the basis of national origin.⁵⁶

C.J.'s Seafood violated these rights when it threatened its workers with retaliation – through discharge, through deportation, through plant-closing, through blacklisting, and, most significantly, through the threat of harm to themselves and their families – for raising complaints about conditions at the company. In his statements to workers, General Manager LeBlanc made clear that the threats he issued were of retaliation against workers for complaining to him, and reporting to outside authorities the excessive hours guest workers were required to work without the payment of legally-mandated overtime premiums and other problems at the facility.

By calling workers together to issue these threats, and by stating that "three or four" employees were trying to damage the company, Mr. LeBlanc made clear that he viewed these complaints as ones that multiple workers were raising together, the definition of concerted activity.

F. Forced Labor

1. Findings

Viewed as a whole, the conditions, restrictions, and treatment to which C.J.'s has subjected its guest workers adds up to a picture of a company where, for this group of employees, their labor

⁵³ See, *In re Air Contract Transp., Inc.*, 340 NLRB 688 (2003). (ruling that a worker who asks questions about compensation on behalf "of myself and my co-workers," after having discussed the same issue with coworkers, is engaged in protected concerted activity). These rights also pertain to complaints about workplace concerns that are made to third parties. See, e.g. *Sierra Publishing Company v. NLRB*, 889 F.2d 210 (9th Cir. 1989).

⁵⁴ 29 U.S.C. § 215(a)(3).

⁵⁵ See, *Kasten v. Saint-Gobain Performance Plastics Corp.*, 131 S. Ct. 1325 (U.S. 2011) (oral complaint to company managers about practice which violated FLSA is protected under statute's anti-retaliation clause).

⁵⁶ 42 U. S. C. §2000e-3(a) (stating that it is "an unlawful employment practice for an employer to discriminate against any of his employees ... because he has opposed any practice made an unlawful employment practice by this subchapter").

is not so much freely chosen as forcibly compelled by their employer. While a significant amount of the evidence to support this finding consists of testimony from workers concerning the various forms of compulsion the company used on workers through its managerial practices in the workplace and its restrictive policies on worker's off-hour activities, some of the compulsion of workers consisted of physical restraint as well. The evidence from both settings, concerning whether C.J.'s engaged in a practice of forced labor towards Mexican guest workers is discussed below.

First, it is worth noting that the WRC did not find evidence that the guest workers' decision to come to work at C.J.'s was involuntarily imposed by the employer or third parties. C.J.'s workers testified that there is significant lack of employment in their home areas of Mexico that can enable them to adequately support their families and that this was the reason they sought work with the company. Some of the employees had, in fact, worked at the company during prior years, during which conditions reportedly were, at most, only somewhat better than during the current season.

Once working at the facility and housed in the company's trailers, however, the workers found themselves, as described, subjected to conditions under which they were compelled by the company to work excessive hours without receiving legally required compensation. At the workplace, this compulsion ranged from the restrictions on break time – during which, as described previously, when they wanted to a rest break of longer than five minutes, their supervisor threatened to “make them understand” to go back to work with a shovel – to a direct order to return to work made to an employee who attempted to leave the workplace after working 38 out of the previous 48 hours.

A worker testified: “It was forced work. They would come to the trailers and made us go back to work...[After a while] I didn't feel anything anymore. I felt like I couldn't think about it. We were screamed at and had to go to work. I felt like a slave...”

As just discussed, this compulsion also included threats of termination, blacklisting and violence, should workers protest their employer's demand that workers perform this labor without the benefit of overtime compensation. The company's efforts, at the workplace, to compel workers to comply with its demands also include abusive and degrading treatment of employees and management, including use of demeaning language when referring to guest workers (e.g., “bitches” and “fucking Mexicans”) and attempts to communicate and impose subordinate status (forcing employees to look down when they speak to top managers).

Finally, workers also reported that during the peak of the current season, company managers had physically restrained workers from leaving their work areas to take breaks by blocking the only

authorized exit from the facility. Workers employed peeling crawfish reported that, on several occasions, they found that someone had blocked the exit door from their work area by attaching a wooden pallet to the other side of the door, or, at other times, stacking many cardboard boxes behind the door. While there is another exit, employees had been specifically instructed not to use it, as it opened into an area for waste storage, and exposing the peeling employees and their work area to the waste kept there created a risk of contamination.

In short, workers were placed in a situation where they were given a choice between forgoing breaks or leaving the work area through a route they had been specifically ordered not to use. The workers stated that they believed company supervisor Manuel Mendoza was responsible for blocking the exit. They also testified that the location where the boxes and pallets had been placed behind the door was not one where these items are regularly stored and that there was not any production related reason for such items to be placed there. One worker stated: "When I saw the boxes, I got angry. I felt like I was being treated like an animal, like a mule being penned in."

As discussed, the company also imposed significant restraints on workers' freedom during their off-hours. These restrictions, like those imposed at the workplace, were both managerial and, to a certain extent, physical. As discussed, the company did not give employees a free choice whether or not to live in the company-supplied housing. Moreover, once living in the company's trailers, workers were subject to numerous restrictions, including a requirement that they be in their respective trailers after 9:00 p.m. Moreover, General Manager LeBlanc physically restricted their ability to leave the company's premises by holding their car keys and requiring workers to ask permission before leaving.

Finally, the guest workers were systematically denied, by the company management, any real degree of personal privacy. The keys to the trailers in which they stayed were held by the company management, which retained and exercised the right to enter the workers' living spaces without prior notice. Company management opened and inspected workers' mail without their permission. And General Manager LeBlanc required workers to inform him in advance anytime they went off the premises, and to notify him of any visitors they might have.

2. Violations

Use of forced labor is prohibited to employers under U.S. law, international labor and human rights standards, and corporate codes of vendor conduct, including the Walmart's Standards for Suppliers.⁵⁷ Federal law makes it illegal to "obtain[] the labor or services of a person by any one of, or by any combination of, the following[:]" "[f]orce, threats of force, physical restraint, or

⁵⁷ Walmart Standards for Suppliers, 2. Voluntary Labor.

threats of physical restraint[;]" or "[s]erious harm or threats of serious harm," either to that person or another, or "[a]buse or threatened abuse of law or legal process."⁵⁸ The latter is defined under the law as "the use or threatened use of a law or legal process . . . in any manner or for any means for which the law was not designed, in order to exert pressure on another person to cause that person to take some sort of action or refrain from taking some action[.]"⁵⁹

The federal statute also makes it a crime to obtain the labor of another "[b]y means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person would suffer serious harm or physical restraint," with "serious harm" defined as "any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or continue performing labor or services in order to avoid incurring that harm."⁶⁰ While U.S. courts, interpreting the law's reach, have made clear their view that while forced labor necessarily involves an element of "use or threat of physical restraint or physical injury, or . . . coercion through law or the legal process" to compel another's work, other aspects of the employment relations are relevant to a determination that forced labor has occurred, including both "extremely poor working conditions" and "other forms of coercion."⁶¹

Similarly, the International Labor Organization's Forced Labor Convention (Convention 29) defines the term to include, "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." The ILO's Director-General has stressed that "[f]orced labour cannot be equated simply with low wages[,] poor working conditions, [or] absence of employment alternatives," but instead "represents a severe violation of human rights and restriction of human freedom."⁶²

Under international labor law, then, forced labour has "two basic elements," (1) "work . . . exacted under the menace of a penalty" and "[that] it is undertaken involuntarily."⁶³ According to the ILO Director-General, the "menace of a penalty . . . can take many different forms."⁶⁴

⁵⁸ 18 U.S.C § 1589(a)(1)-(3).

⁵⁹ 18 U.S.C § 1589(c)(1).

⁶⁰ 18 U.S.C.A. § 1589 (a)(4), (c)(2).

⁶¹ *United States v. Kozminski*, 487 U.S. 931 (1988); *see also, United States v. Alzanki*, 54 F.3d 994, 1000-01 (1st Cir. 1995) (stating that liability under statute involves, at minimum, "(i) actual physical restraint or physical force or (ii) by legal coercion or (iii) by plausible threats of physical harm or legal coercion").

⁶² ILO, *The Cost of Coercion*, Report of the Director General, 98th Int'l Labor Conf. (2009); http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_106268.pdf.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

Significantly, the Director-General notes that “its most extreme form involves physical violence or restraint, or even death threats addressed to the victim or relatives.”⁶⁵ However, the ILO has also explained that such can “take many physical and/or psychological forms,” including “[p]hysical violence against the worker, his or her family or close associates;” “physical confinement;” “[d]enunciation to the authorities [and] deportation;” “[e]xclusion from future employment;” and “[e]xclusion from community and social life.”⁶⁶

The WRC finds that C.J.'s Seafood's treatment of its guest workers constitutes forced labor under both the U.S. and international standards. As discussed, employees have been subjected to both physical restraint – of their ability to leave both the workplace and their employer's premises – and threatened serious harm. The harms with which they have been threatened are both physical – through the threat of violence not only against their own persons, but also their families in Mexico, and “financial [and] . . . reputational” harm, through General Manager LeBlanc's threats to them of blacklisting (i.e., “exclusion from future employment),” plant-closing and shifting of production to other facilities.

As discussed, these threats are highly credible to workers and the harms threatened are quite serious indeed. With regard to the threats of physical harm, the guest workers are aware that General Manager LeBlanc knows where they and their families reside. They have been told by him that he possesses connections with “bad people” in their home country. These workers live in an area of Mexico where such “bad people” operate with impunity, where “[n]ot a day goes by [without] . . . hear[ing] of yet another execution” and “[t]he trauma of watching death on a daily basis is taking a toll on all the people . . .”⁶⁷ These workers have been told that, if they attempt to report the conditions to which they are subjected, Mr. LeBlanc, with the “help” of such “bad people,” will “find them” and retaliate against them for “hurting his family.” Such a threat cannot help but be taken seriously, as it has been by these workers.

Moreover, these employees also have been subjected by Mr. LeBlanc to the threat of abuse of legal process, through his threat to have them deported and “sen[t] back to Mexico,” and to blacklist them with other employers. Both of these threats are also highly credible. If C.J.'s terminates a guest worker, the H-2B regulations require the company to contact DHS and the terms of the visa require the worker to leave the country.⁶⁸ Moreover, the crawfish processing

⁶⁵ Ibid.

⁶⁶ ILO, *Combating Forced Labour: A Handbook for Employers and Business* 8 (2008), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_101171.pdf.

⁶⁷ See, “The Wave of Violence in Tamaulipas,” *supra*, n. 20.

⁶⁸ 20 CFR 655.22(f).

industry is highly concentrated in the Breaux Bridge area (“the Crawfish Capital of the World”), and Mr. LeBlanc is the director of an important industry association, the Crawfish Processors Alliance.⁶⁹

Under the circumstances, such threats are certainly serious enough to compel a reasonable worker to continue working at the company, to perform the work that the company requires -- at least through the remainder of the season -- and to forgo complaining, or attempting to contact outside authorities, about either the excessive working hours or the lack of overtime compensation, in order to avoid incurring the threatened harms.

It is true, however, that despite these various forms of compulsion, eight of the guest workers ceased providing labor to this employer and, while not abandoning their employment, have since carried out a work stoppage. Nevertheless, the majority of the guest workers employed at C.J.'s, have remained on the job. While some workers may be moved, out of a sense of injustice or mistreatment, to take action to improve their working conditions, it is certainly not unreasonable, under the circumstance, for other workers to decide that the potential harms to themselves, their families and their current and future employment prospects are too great to justify the risks that refusing the company's demands entail.

G. Obstruction of Justice

1. Findings

As discussed, General Manager LeBlanc threatened workers with harm to themselves and their families in Mexico, with blacklisting, and with deportation and loss of employment at a May 22, 2012 meeting with company employees. This meeting directly followed a call to local law enforcement, by a worker who was seeking to raise concerns about working conditions and treatment of guest workers at the company and restrictions placed upon their activities during their off-hours.

At the meeting with guest workers on May 22, General Manager LeBlanc made clear that his threats were intended to inform workers of the consequences if they “reported” the conditions at the factory to outside parties, including law enforcement authorities. Mr. LeBlanc told workers at the meeting, “you knew when you came that it would be two months of fifteen to sixteen hours

⁶⁹ See, Susan Buchanan, “Feds Check Out Firm Supplying Crawfish to Sam’s Club,” *Louisiana Weekly* (Jun. 18, 2012)1, <http://www.louisianaweekly.com/feds-check-out-firm-supplying-crawfish-to-sam%E2%80%99s-club/>.

[per day] and that I don't pay overtime," and informed them that if the company was "reported," only four of the guest workers could stay working at the company.

2. Violations

Both the timing and substance of Mr. LeBlanc's statements indicate that he issued his threats to workers, at least in part, in order to dissuade them from "report[ing]" the company's actions, and, in particular, to dissuade them from reporting this conduct to government authorities. Making threats for the purpose of preventing workers from informing government authorities about conditions that violate the law constitutes obstruction of justice,⁷⁰ which is a criminal offense under both federal and Louisiana statutes.⁷¹

The WRC finds that Mr. LeBlanc's statements represented an obstruction of justice because they threatened employees with harm – including physical harm to both the employees themselves and their families, and denial of employment – to prevent them from reporting conduct that the WRC has concluded violated state and federal criminal law.

Louisiana law prohibits "attempt[ing] to intimidate or impede, by threat of force or force, a witness," including any "person who is a victim of conduct defined as a crime under the laws of this state, another state, or the United States" with "intent to influence . . . his reporting of criminal conduct."⁷² The WRC finds that General Manager LeBlanc violated this prohibition when he threatened the guest workers, who, as discussed, were subjected to illegal conditions of forced labor, assault⁷³ (Supervisor Mendoza's threats to "make them understand" with his shovel if they took breaks of more than five minutes), and interference with their mail,⁷⁴ with retaliation against themselves and their families by himself and "bad people" in Mexico, in order to prevent them from "reporting" these conditions.

State law also makes it illegal to "[u]s[e] or threaten[] force toward the person . . . of another with the specific intent to: . . . [c]ause the hindrance, delay, or prevention of the communication

⁷⁰ Black's Law Dictionary 1107 (2004) (defining obstruction of justice as "[i]nterfer[ing] with the orderly administration of law and justice, as by . . . withholding evidence from a police officer or prosecutor, or by harming or intimidating a witness").

⁷¹ 18 U.S.C. §§ 1501, *et seq.*; La. R.S. §§ 14:129-130.

⁷² La. R.S. § 14:129.1(A)(1)-(2).

⁷³ La. R.S. § 14:36 ("Assault is an attempt to commit a battery, or the intentional placing of another in reasonable apprehension of receiving a battery."); *Brown v. Diversified Hospitality Group*, 600 So.2d 902, 906 (La.App. 4th Cir.1992) ("Battery is a harmful or offensive contact with a person, resulting from an act intended to cause him to suffer such a contact. The intention need not be malicious, nor to inflict actual damage. The intention is sufficient if the actor intends to inflict either a harmful or offensive contact without the other person's consent. An assault is a threat of such a harmful or offensive contact.")

⁷⁴ 18 U.S.C. §§ 1702-1703.

to a peace officer . . . relating to the commission or possible commission of a crime.”⁷⁵ Federal law, likewise, prohibits “[k]nowingly use [of] intimidation [or] threats” in order to “cause or induce any person to . . . hinder, delay, or prevent the communication to a law enforcement officer . . . information relating to the commission or possible commission of a federal offense . . .”⁷⁶ The WRC finds that Mr. LeBlanc violated these statutes when he responded with such threats to the guest workers after one of them called local law enforcement to report conditions and conduct that, in the assessment of the WRC, constituted forced labor, assault and mail tampering.

Louisiana state law also makes it an offense to “[r]etaliat[e] against any . . . victim” by “knowingly engaging in . . . the communication of threats” of “conduct which results in bodily injury” for “giving [] information” concerning “the commission or possible commission of . . . any crime under the laws of any state or of the United States.”⁷⁷ Similarly, federal law prohibits “threaten[ing]” to “engage in any conduct and thereby caus[ing] bodily injury to another person” in order to “retaliate for[giving] information relating to the commission or possible commission of a Federal offense.”⁷⁸ The WRC finds that Mr. LeBlanc’s statements to the guest workers on May 22 e violated these statutes as he threatened these workers with their being sought out and found with the help of “bad people” in Mexico by Mr. LeBlanc if they should “report” – give information – about the conditions at his factory, conditions that the WRC found to violate criminal laws against forced labor, assault and mail tampering.

Finally, the federal obstruction of justice statute also make it illegal to “knowingly, with the intent to retaliate, take any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense . . .”⁷⁹ The WRC finds that Mr. LeBlanc violated this prohibition as well when he threatened the guest workers with blacklisting in response to one of their co-workers contacting law enforcement authorities regarding conditions which, the WRC has concluded, constituted forced labor and conduct that, the WRC has found, tampered with workers’ mail.

V. Walmart’s Responsibility

Walmart had both the obligation and the wherewithal to monitor C.J.’s labor practices and ensure compliance by C.J.’s with Walmart’s Standards for Suppliers. Walmart represents to its customers, its investors and the general public that it recognizes its responsibility to ensure

⁷⁵ La. R.S. § 14:130.1.A.(2)(e).

⁷⁶ 18 U.S.C. § 1512 (b)(3).

⁷⁷ La. R.S. § 14:130.1.A.(3).

⁷⁸ 18 U.S.C. § 1513(b)(2).

⁷⁹ 18 U.S.C.A. § 1513(e).

lawful labor practices in its supply chain, that it operates a program to monitor and enforce such compliance, and that this program is effective. Walmart is also the primary buyer of C.J.'s products and has been in a position to exert enormous influence over the company's labor practices.

The violations documented in this report are proof that Walmart failed to fulfill its obligation to protect the rights of the workers at C.J.'s who peel, boil and pack seafood for Sam's Club, in violation of Walmart's own policies and public commitments. Moreover, when asked by the WRC to provide information concerning any past efforts by Walmart to monitor working conditions at C.J.'s, Walmart failed to respond.

Walmart's failure to ensure respect for worker rights and compliance with the law in this piece of its supply chain has been compounded by the company's response to complaints from workers. After embarrassing allegations of grave labor rights abuses at this supplier became public, Walmart claimed that it had launched an investigation. Incredibly, Walmart concluded that investigation without making any attempt to speak to any the workers who made the allegations. Walmart stated publicly on June 14, 2012 that it "could not substantiate" the workers' allegations of forced labor, yet the workers, and their representatives at the National Guestworker Alliance, report that they have received no communication whatsoever from Walmart or from any investigator acting on its behalf. Dismissing allegations of labor rights violations, particularly violations as grave as those alleged at C.J.'s, without communicating with the workers who report that their rights were violated, is not the act of a responsible corporation.

It is also important to bear in mind that the labor practices employed by C.J.'s have the clear purpose, and undoubtedly the effect, of reducing C.J.'s production costs well below what those costs would be if the company complied with applicable labor law and regulations. Given the nature of relationships in large corporate supply chains, and given Walmart's worldwide reputation for squeezing suppliers extremely aggressively on price,⁸⁰ it is highly likely that those reduced costs have been, at least in part, passed on to Walmart in the form of reduced prices for the seafood it procures for sale at Sam's Club stores. The WRC asked Walmart to provide information on orders and prices so that we could assess the relationship between the prices paid by Walmart to C.J.'s and the labor practices at the facility. Walmart failed to respond to this request.

⁸⁰ See, e.g., Tom Van Riper, "The Wal-Mart Squeeze," *Forbes*, (Apr. 24, 2007), http://www.forbes.com/2007/04/23/walmart-suppliers-margins-lead-ex_tvr_0423walmart.html.

VI. Recommendations

In view of the findings outlined above, the WRC recommends that Walmart act with urgency to take the following steps:

- A. Place no new orders for product from C.J.'s until and unless C.J.'s demonstrates that it can and will operate as a responsible employer, as verified by independent observers.
- B. Negotiate with the National Guestworker Alliance and worker representatives a settlement under which Walmart will compensate current and former workers for the abuses they have suffered as a result of C.J.'s actions and Walmart's failure to enforce its own Standards for Suppliers. Such compensation must cover back wages with interest and appropriate damages for the psychological and physical humiliation, degradation and abuse to which workers have been subjected.
- C. The WRC recognizes that C.J.'s may be unwilling to undertake the sweeping reforms necessary to qualify as a lawful and responsible employer and that, if Walmart follows the recommendations outlined in this report, this may result in the closure of C.J.'s operations. In circumstances this grave, the refusal of an employer to undertake effective remedial action and to demonstrate a commitment to respect the rights of workers and the rule of law would leave no alternative to permanent discontinuation of the business relationship. If this circumstance arises, it is the WRC's recommendation that Walmart ensure that offers of employment are extended for the 2013 crawfish season, and for subsequent years, to all current employees of C.J.'s, including the eight striking workers, at other Walmart suppliers in the United States. Such employment should be subject to rules and protections established through the process outlined in point 4 below.
- D. Negotiate with the National Guestworker Alliance a comprehensive, binding and enforceable agreement establishing rules and protocols to ensure that guest workers employed in Walmart's domestic supply chain are not subjected to forced labor, wage and hour violations, threats and acts of retaliation for lawful exercise of associational rights or any other form of labor rights abuse and are treated with dignity and respect in the workplace. Such an agreement should address the need for proper grievance procedures, establish a dignified living wage as a minimum wage standard, provide robust protections for workers' associational rights, and should include a commitment by Walmart that the prices it pays to suppliers, and other terms of the buyer-supplier relationship, will be commensurate with the suppliers' ability to comply with all applicable laws and standards.