



UNITED STATES DEPARTMENT OF LABOR

SOLICITOR OF LABOR **ENFORCEMENT REPORT**

FISCAL YEAR **2023**

The Office of the Solicitor's (SOL) mission is to provide legal services necessary to help achieve the Department's goals of promoting the welfare of wage earners, job seekers, and retirees, improving working conditions, advancing opportunities for profitable employment, and providing and protecting work-related benefits and rights. The Solicitor's Office enforces over 180 federal statutes and their implementing regulations.

As reflected in last year's enforcement report, as Solicitor of Labor, I worked with our leadership in 2021 to set enforcement priorities to strategically deploy our limited resources and effectively protect workers, focusing on the most vulnerable. Those priorities focus on combatting retaliation and worker misclassification, tackling difficult issues of law to contribute to the positive development of the law, fully utilizing the tools available to us under the statutes we enforce, and prioritizing the most vulnerable. We do all of this in close collaboration with our client enforcement agencies to build the strongest cases and intervene early to obtain relief where necessary.

This report highlights some of our most impactful work in fiscal year 2023, as we work to ensure that we are utilizing our limited resources in the most strategic way possible. We recognize that as the government, we play a unique role in the federal labor enforcement landscape. This year, we have gone deeper into many of these strategies first outlined in 2021. Accordingly, this report will focus on three key aspects of our work: building out our retaliation priority across program areas; utilizing our litigation tools and our amicus and appellate practices to build positive developments in the law, such as combatting misclassification and coercive employer tactics; and deepening our use of all the tools in our toolbox, from warrants, to enhanced compliance agreements, to criminal enforcement coordination.

Undergirding all our work is a recognition that Solicitor's Office cases generally start with investigations performed by our client agencies. Pre-referral legal assistance to client agencies from the Solicitor's Office often proves useful for both the investigation and the success of any related litigation. We know from experience that complex investigations are far more effective when our attorneys are involved early and often. Our training and support help investigators understand key legal issues. When necessary, our early legal interventions make sure that investigators can do their jobs despite potential resistance.

In furtherance of our priorities, we are also engaging stakeholders at the regional and national level to learn about new developments, hear from attorneys in private practice, and disseminate information about the actions our office has taken. This has included national office listening sessions with the private bar, engagements with dozens of stakeholders at the regional level, and collaborations with the U.S. Equal Employment Opportunity Commission and the National Labor Relations Board on preventing and addressing retaliation against workers. These engagements have helped to inform our enforcement strategies and have offered an opportunity to more widely share the actions our office has taken to promote compliance with the laws we enforce.

This report primarily focuses on SOL's enforcement efforts, which is just one component of our work. SOL also performs extensive and vital work in other areas, including supporting Department rulemaking, providing legal advice on development and implementation of Department policies and programs, and advising the Secretary of Labor and Departmental officials on a full range of legal issues.

Seema Nanda
Solicitor of Labor

I. Developing Deeper Strategies to Combat Retaliation

Our labor and employment laws are only as effective as the ability to enforce them. Retaliation undermines the ability of the Department of Labor to conduct investigations and enforce the law, lowering workplace standards for all workers. The Solicitor's Office, along with our client agencies, focused FY2023 efforts on combatting retaliation in all its forms and utilizing all our tools to do so. Thus, the Solicitor's Office worked to communicate with investigators about strategies to stop retaliatory conduct early. When informal strategies did not yield results, we successfully obtained temporary restraining orders (TROs) or preliminary injunctions related to retaliation in 19 cases; we filed 13 cases to reinstate miners terminated for protected activities like raising safety concerns or refusing to do unsafe work; we obtained enhanced compliance agreements to better protect workers; and we built out our retaliation work across program areas.

Retaliation against workers for exercising their right to speak out against unfair or unsafe practices unfortunately affects the most vulnerable workers the most—such as those who earn the least or can least afford to leave their jobs. We saw employers last year threatening workers with consequences like terminations, demotions, or even physical violence. Many workers face retaliation based on immigration status.

The Solicitor's Office works with our client agencies to identify other appropriate responses to ensure workers can come forward without fear of retaliation, from informal actions—such as issuing cease and desist letters to employers engaged in retaliation—to seeking immediate relief in court to stop retaliation from continuing, to including retaliation claims in litigation over underlying violations of the laws enforced by the Department. The Solicitor's Office also takes action to prevent retaliation based on immigration status, to ensure that workers can participate in Department investigations and proceedings regardless of their immigration status.

Early intervention to stop retaliation

SOL continued its early intervention strategy, winning preliminary injunctions in cases from Mississippi to Vermont. The Department **successfully obtained a preliminary injunction** against Mississippi employers, Battle Fish North and Magnolia Processing, which attempted to frustrate a Wage and Hour Division (WHD) investigation by intimidating their migrant workers by **threatening to physically harm, terminate, and cause the deportation of workers and their families if they cooperated with the Department's investigation**. SOL moved quickly to file a motion for a TRO and preliminary injunction, initiating the action just two weeks after investigators first visited the worksite. The judge in the Northern District of Mississippi granted the Department's motion enjoining Battle Fish, its related company Magnolia, and three related individuals from violating both the anti-interference and anti-retaliation provisions of the Fair Labor Standards Act (FLSA). SOL also **obtained a TRO against a Colorado Blackjack Pizza** franchisee, ZDN Inc., in the District Court of Colorado, enjoining the company and its owner from threatening and interfering with a WHD investigation just one month after the two employees who spoke to WHD investigators were fired.

The Solicitor's Office also **obtained a preliminary injunction** against a heating and air conditioning company, P&B Heating & Air Conditioning, which, after agreeing to pay \$144,000 in back wages to resolve an overtime investigation, schemed to recover those wages from employees by threatening and dissuading them from cooperating with the Department. SOL successfully combatted similar kickback pressures in a case involving Sunrise Home Care Inc., **where SOL obtained a TRO and preliminary injunction** prohibiting investigatory interference and retaliation in March 2023 after the company told home health aide employees to disclose their communications to WHD and to lie to WHD, pressured them to return or kick back any wages due, and threatened to close the business if the company's owner was required to comply with the law on overtime premiums.

Seeking all available remedies to combat retaliation

In addition to reducing the time between learning of unlawful conduct and seeking relief, SOL has also sought all available remedies to combat retaliation, focusing on both meaningful relief for workers and relief that dissuades the employers from engaging in such conduct. SOL, for instance, **obtained \$50,000 in punitive damages and a permanent injunction** against a New Hampshire-based home care company named Your Comfort Zone that interfered with WHD's investigation and sought kickbacks or return of back wages from employees. SOL's rapid response to the employers' retaliation and interference facilitated the WHD's investigation and a subsequent administrative settlement of nearly \$1 million in back wages, liquidated damages, and civil money penalties.

The Department has also used powerful tools like debarment where available to combat retaliation. After WHD obtained a video that showed the now former owner of a farm, Glynn Rivet, pointing guns at H-2A workers, yelling profanities at them, and discharging the guns at least twice, including once into the ground directly in front of the employees, SOL initiated a lawsuit and sought immediate action to protect these farmworkers. SOL **obtained preliminary relief shortly after filing suit** in 2021, and on April 20, 2023, the U.S. District Court for the Middle District of Louisiana **issued a consent judgment** against the former owner of the company. The judgment debars Mr. Rivet and prevents him from filing future applications to participate in the H-2A program and prohibits him from communicating with or being within 1,500 feet of employees, carrying any firearm within 1,500 feet of employees, and entering property where H-2A employees are housed. It also required Mr. Rivet to pay \$75,000.00 to three H-2A workers for lost wages and damages.

Building our anti-retaliation work across program areas

SOL's anti-retaliation focus has not been limited to Wage and Hour statutes. The Department achieved significant wins across its enforcement areas. SOL continued to resolve significant COVID-19 retaliation cases, obtaining **a consent judgment in federal district court in Idaho**, in September 2023, providing for \$50,000 in damages to two Idaho dog daycare workers who were fired for expressing COVID-19 workplace safety concerns. The Department also obtained a public apology, an injunction against future violations of the Occupational Safety and Health Act's 11(c) anti-retaliation protections, and training and notices to prevent future retaliation.

SOL obtained a noteworthy decision in May 2023, when the U.S. District Court for the Western District of Washington granted DOL's motion for summary judgment **against the United States Postal Service (USPS)**, agreeing with DOL that USPS unlawfully terminated a worker for filing an injury report. The Occupational Safety and Health Act protects employees' right to report injury without fear of reprisal. USPS had stopped conducting performance evaluations for a probationary employee after he filed his injury report and then terminated him before the end of his new hire probation period.

SOL has used its early intervention retaliation strategies in Mine Safety and Health Administration (MSHA) cases as well. SOL, for instance, filed a complaint against Sunrise Coal under Section 105(c) of the Mine Act after the company terminated a truck driver for complaining about slick road conditions at the mine. Just two months after his unlawful termination, an Administrative Law Judge granted temporary economic reinstatement to the worker. SOL also filed a complaint against American Tripoli, a Missouri mine that terminated a miner after he raised safety issues to MSHA and mine management. A complaint was filed with MSHA by former production supervisor, who alleges he was terminated because he made various safety complaints to management and MSHA and served as a miner's representative. In the two months leading

up to Baumann's termination, the miner acted as a miner's representative during several MSHA inspections, raised safety issues to MSHA and mine management, and spoke about miner's rights. The Department added an interference claim after learning that the company had also been telling miners not to talk to MSHA during MSHA inspections.

SOL also aided the Office of Federal Contract Compliance Programs (OFCCP) in obtaining relief for a worker who suffered retaliation and future protections for other employees in a pay transparency case. An OFCCP investigation found that Matsys, Inc., an industrial machinery manufacturer and contractor for the U.S. Army, had fired an employee for discussing pay, and had attempted to intimidate other employees to prevent disclosure of their pay, in violation of OFCCP's pay transparency regulations. SOL aided OFCCP [in reaching an agreement](#) in March 2023 with the company that required the payment of \$45,000 in back pay to the worker who suffered retaliation and training and extensive dissemination of information regarding pay transparency requirements to prevent future retaliation against employees lawfully discussing their compensation.

For additional examples of the Department's retaliation work in FY2023, read about other cases here: [an order obtained against an auto shop operator in Georgia](#), [punitive damages and back pay obtained for an illegally fired worker in Vermont](#), [an injunction barring a Popeyes franchisee from threatening workers during an investigation](#); [an order prohibiting a Massachusetts restaurant from further retaliation and requiring punitive damages be paid to impacted employees](#); [an order stopping a New York plant nursery from threatening workers](#); and [a suit against a Kentucky restaurant that fired a worker for contacting a state labor agency](#).

II. Utilizing Litigation and Amicus Work to Build Positive Developments in the Law, Particularly for Vulnerable Workers

SOL recognizes that it plays a special role in the labor and employment landscape. At times, SOL is the only entity that can enforce federal law, either because workers are subject to mandatory arbitration agreements or because no private right of action exists. Other times, SOL might have the ability to play a unique role in existing litigation or appellate cases by offering the Department's view related to a law under the Department's jurisdiction. Throughout FY2023, SOL sought to use its unique position, and its limited resources, to bring strategic cases.

SOL's unique role in protecting workers from misclassification as independent contractors, particularly where subject to mandatory arbitration

Misclassifying employees as independent contractors deprives workers of core protections on the job. The law often guarantees basic protections like minimum wages, overtime compensation, family and medical leave, and even workplace safety standards only to people who are "employees." Employers across a wide range of industries—including home care, janitorial services, trucking, delivery services, construction, personal services, hospitality, and the restaurant industry—too often try to get around the law by misclassifying workers as independent contractors, rather than employees. Misclassification harms not only the workers impacted, but also law-abiding employers who are put at a competitive disadvantage by employers who violate the law.

The problem of misclassification is compounded by the now widespread use of mandatory arbitration agreements. Today, **over 60 million workers** are subject to mandatory arbitration. What was once a relatively rare employer practice that only affected about 2% of workers in the early 1990s has grown to include 56% of all non-union private sector employees and 65% of employees making less than \$13 per hour. The Department of Labor is not bound by employer arbitration agreements. Because mandatory arbitration and class action waivers are on the rise, there are more workplaces where the Department's Office of the Solicitor provides the only viable avenue for meaningful legal recourse—particularly where state and local laws are weak. As part of our focus on equity, we seek opportunities to enforce the rights of workers who often cannot do so themselves, including workers subject to mandatory arbitration agreements and class action waivers.

SOL brought significant misclassification cases this year to obtain relief for workers subject to mandatory arbitration agreements. For instance, on June 29, 2023, SOL **filed one of the agency's largest ever misclassification cases** in the U.S. District Court for the Southern District of Florida. SOL's complaint alleges that Florida-based customer service provider Arise Virtual Solutions, Inc.—which provides services for major national brands like Disney, Home Depot, and Carnival Cruise Line—misclassified employees as independent contractors and denied them their rightful minimum wage and overtime pay; at the same time, Arise required all workers to sign mandatory arbitration agreements, thereby preventing workers from seeking relief directly in court. SOL's case is seeking to recover back wages and liquidated damages for at least 22,000 workers.

The Solicitor's Office also filed suit this year **against California food manufacturer Romero's Food Products** for misclassifying delivery drivers, many of whom had to sign arbitration agreements, creating a barrier to workers seeking to recover their wages without SOL's action. The U.S. District Court for the Central District of California quickly approved a consent judgment, in which Romero's agreed to reclassify drivers as employees, pay \$650,000 in unpaid overtime back wages to the delivery drivers, and comply with the FLSA.

Finally, in [*Secretary of Labor v. Arizona Logistics dba Diligent Delivery Systems*](#), the Solicitor's Office obtained [a consent judgment](#) requiring the employers to pay \$5.75 million in back wages, damages, and penalties for violations of the FLSA stemming from misclassifying their delivery drivers as independent contractors. One employer tried to force the Department into arbitration because of the clauses they put into their workers' contracts. But the District of Arizona and then the [Court of Appeals for the Ninth Circuit](#) affirmed our independent authority to recover unpaid wages and damages in court for employees who signed private arbitration agreements.

Actions to protect workers from coercive employer practices

As the Solicitor's Office has deepened its retaliation work, it has grown increasingly concerned with other employer tactics that chill or curtail employees in exercising their rights under the laws that the Department enforces. In FY2023, the Solicitor's Office, working closely with our client agencies, found opportunities to utilize our unique position to combat this conduct and promote employee rights.

One of those concerning practices is the growth of punitive contracts that seek to require workers to pay back lost profits, wages, and/or the cost of arbitration. In March 2023, SOL [filed a complaint](#) in the U.S. District Court for the Eastern District of New York [seeking an injunction](#) to prevent Advanced Care Staffing, LLC (ACS) from violating the FLSA by pursuing arbitration to demand that a registered nurse—who resigned after raising repeated safety concerns—pay the company more than they ever earned to subsidize the company's future profits. The complaint further alleges that ACS's contracts and arbitration demands have a chilling effect on employees' ability to exercise their rights, including the protection to be free from an unsafe or hazardous workplace, and to obtain the wages they are owed. SOL also [filed an amicus brief](#) in the Second Circuit in private FLSA litigation brought against ACS to oppose the company's use of a "loser pays" arbitration provision that would abridge worker rights under the FLSA. ACS's contracts contained a provision requiring employees to pay their employer's attorney fees if they lost in arbitration, counter to the FLSA's provisions that only allow prevailing employees to recover their attorney fees from an employer. If enforced, "loser pays" provisions could chill workers' exercise of their rights under the FLSA by forcing them to face the daunting prospect of paying their employer's attorney's fees if their case is unsuccessful. SOL's amicus brief seeks to build appellate court case law holding that such provisions are unlawful.

Similarly, in [*Provencher v. Bimbo Bakeries*](#), SOL took innovative action to protect workers and develop the law to prevent employers from undermining the FLSA's protections with unlawful counterclaims. In that case, distribution drivers for Bimbo Bakeries (Bimbo), one of the nation's largest baking companies, had filed a lawsuit alleging that they had been misclassified as independent contractors and were owed overtime compensation. Bimbo filed a counterclaim demanding that workers be required to pay money earned working for the company back to the company if the workers prevailed and the court found they were owed back wages and liquidated damages. SOL filed to intervene in that case to dismiss Bimbo's counterclaim, arguing that such counterclaims could undermine the Department's ability to enforce FLSA protections. [The court agreed with SOL's argument](#) that Bimbo's counterclaim was not permissible because it would contravene the central, worker protection purpose of the FLSA and dismissed Bimbo's counterclaim.

Building positive developments in the law

Beyond combatting misclassification and practices that chill workers' rights to exercise their rights under the law, SOL has sought to develop other positive advancements in the law through its enforcement, litigation, and appellate and amicus practice. SOL, for instance, along with the Employee Benefits Security Administration (EBSA), utilized a multi-prong strategy to combat a harmful insurance industry practice, whereby insurance companies were denying life insurance claims after participants died, claiming that the participant failed to provide evidence of insurability when applying years earlier even though the company collected premiums from these participants for long periods. In many cases, participants were never informed in their lifetime that they had to provide such evidence of insurability and the lack of paperwork was only discovered upon their death by their loved ones. The Solicitor's Office filed two amicus briefs arguing that workers who have paid for supplemental life insurance benefits through an employer plan can access those benefits. Through briefs filed in [***Skelton v. Reliance Standard Life Insurance Company***](#) in the Eighth Circuit and [***Shields v. United of Omaha Life Insurance Company***](#) in the First Circuit, SOL argued that insurers must collect premiums from workers only when coverage is actually in force, and so the workers were entitled to coverage despite the fact that the insurer did not establish evidence of insurability. In both cases, the courts of appeals issued [***favorable decisions***](#), finding that the insurers had a duty to determine workers' insurance eligibility before collecting premiums for yearslong periods.

Following these successful courts of appeals decisions, in April 2023, SOL [***negotiated a settlement***](#), following an investigation by EBSA, that required New Jersey-based Prudential Insurance Company of America to change practices that had led the company to deny more than 200 claims where the company cited participants' failure to provide evidence of insurability when applying years earlier even though the company collected premiums from these participants for long periods. SOL negotiated [***a similar settlement***](#) in September 2023 with United of Omaha Life Insurance Co. The Department's multi-pronged strategy of amicus participation and strategic enforcement has helped change a pernicious insurance practice.

The Department has continued to focus on holding all employers accountable and piercing the corporate veil where necessary. In May 2023, SOL obtained [***a favorable decision***](#) from an Administrative Law Judge that pierced the corporate veil in an Occupational Safety and Health Administration (OSHA) case to hold Maine contractor Shawn D. Purvis, doing business as Purvis Home Improvement Co. Inc., personally accountable after he repeatedly failed to ensure the use of required fall protection, leading to the fall and death of his employee on the job. The judge affirmed 14 willful, two repeat, and four serious workplace safety citations issued by OSHA to Mr. Purvis, for repeated failures to ensure required fall protection for workers, and the judge found that piercing the corporate veil to hold him individually liable for more than \$1.5 million in penalties was appropriate. Obtaining decisions like this can help ensure that accountability cannot be evaded through the use of the corporate form.

III. Using All Available Tools, Particularly to Protect the Most Vulnerable

This year, the Solicitor's Office provided critical legal support and advice in thousands of investigations, employing all available legal authorities to effectively protect workers, retirees, and job seekers. From obtaining warrants and enforcing subpoenas to bringing suit to compel access to data, SOL uses the tools needed to make sure investigators can access information critical to their work. SOL has also aided client agencies in using all available authorities to address the scourge of child labor and has helped develop enhanced compliance agreements that maximize the worker protective impact of successful investigations of large corporations.

Ensuring investigators' access to information

We ensured that investigators were able to do their jobs by obtaining 37 warrants and enforcing 48 subpoenas providing access to the worksites and information critical to successful and complete investigations. Similarly, we brought OFCCP access cases to ensure the agency could complete reviews of major federal contractors' compliance with their nondiscrimination and equal opportunity obligations. In September 2023, SOL [filed a lawsuit](#) against DISH Network Corp. seeking to compel the company to provide OFCCP with the documents and information needed to conduct a review of the contractor's practices and seeking an order terminating DISH Network's government contracts if it fails to provide the documents and information needed for the review. In December 2022, SOL successfully [obtained a consent decree](#) requiring defense contractor Rosemount, Inc. to provide documents and information to OFCCP to conduct a compliance review of the company's nondiscrimination and equal employment opportunity practices. SOL filed suit with the Office of Administrative Law Judges to compel Rosemount to provide information after the company failed to provide the required data, including employment data concerning applicants, hires, promotions, and terminations.

In another example of the effective use of our subpoena enforcement authority, SOL filed a petition in May 2023 seeking to [compel Starbucks Corp.'s compliance with an administrative subpoena](#) issued to the company by the Office of Labor-Management Standards (OLMS) as part of its investigation into the company's compliance with the Labor-Management Reporting and Disclosure Act. OLMS sought documents related to an investigation of company expenditures during a worker organizing campaign in Buffalo, New York. The company refused to comply and challenged the Department's subpoena authority. The U.S. District Court for the Western District of Washington subsequently [ordered the company to comply](#) with the subpoena and provide documents responsive to OLMS's subpoena.

Tools and strategies to combat child labor

The resurgence of child labor in our country has necessitated close coordination with the Wage and Hour Division (WHD) involving early intervention in cases, aggressive relief sought, and enhanced compliance agreements. In November 2022, after a WHD investigation uncovered dozens of children working in hazardous occupations cleaning meatpacking equipment overnight in JBS USA and Turkey Valley Farms facilities, SOL successfully filed suit in the U.S. District Court for the District of Nebraska and sought a nationwide TRO and injunction against Packers Sanitation Services Inc. (PSSI) to restrain further child labor violations. The investigation found that children as young as 13 had been employed on overnight shifts and in hazardous occupations. The court issued a TRO and subsequently [a consent judgment](#) enjoining the company from future violations and putting compliance measures in place. The court's order also prohibited retaliation against workers who engaged with the Department and against workers' family members. In February 2023, PSSI [paid a historically large \\$1.5 million in civil money penalties](#) for child labor violations for employing 102 children in hazardous occupations at 13 facilities across 8 states.

Following the PSSI investigation, SOL has continued to utilize all of its tools under the FLSA to combat child labor, including the hot goods provision of the FLSA, which prohibits the shipment of goods made in or around child labor. A WHD investigation found that Monogram Meat Snacks LLC, a subsidiary of a national food manufacturer, was employing children unlawfully to operate meat processing equipment in hazardous roles. In April 2023, SOL assisted WHD in sending an “Objection to Shipment letter” to the company citing the FLSA’s “hot goods” provision to demand that goods produced by unlawful child labor not be shipped. The [company agreed not to ship the goods](#) while it discussed its compliance with the Department. In July 2023, SOL obtained [a consent order and judgment](#) in the U.S. District Court for the District of Minnesota in which the company’s parent, Monogram Food Solutions LLC, agreed to comply with FLSA child labor provisions at its production and warehouse facilities nationwide, to pay more than \$30,000 in civil money penalties, and to take meaningful steps to ensure future compliance.

SOL also litigated [a child labor hot goods case in California](#) after a poultry processor was seen employing children as young as 14 years old to do the hazardous work of deboning poultry using sharp knives and operating power-driven lifts to move pallets. The employer refused to voluntarily agree to stop shipping “hot goods” produced with unlawful child labor. A WHD investigation found that the poultry processing facilities—The Exclusive Poultry Inc., its owner Tony Bran, and associated entities—had unlawfully employed children in dangerous jobs. In September 2023, SOL filed a complaint and motion for a TRO in the U.S. District Court for the Central District of California and, in October 2023, won preliminary relief barring the processors from further using child labor and from shipping “hot goods” produced with unlawful child labor. The court later approved [a consent judgment](#) requiring Mr. Bran and The Exclusive Poultry to pay \$3.5 million in back wages and damages to affected workers and more than \$200,000 in penalties for child labor and other violations. SOL continues to work closely with WHD to develop tools to hold all employers liable for child labor violations and to ensure that those down the supply chain are held accountable even where they are not an employer.

The use of enhanced compliance agreements

SOL has worked with client agencies in expanding the use of enhanced compliance agreements, in many cases to obtain nationwide relief that focuses on changing corporate culture. For instance, following repeated OSHA citations at multiple Dollar Tree and Family Dollar stores around the country, SOL assisted OSHA in developing an innovative legal approach to improve safety for thousands of workers nationwide. In August 2023, the Department reached a [corporate-wide settlement agreement with Dollar Tree](#), which operates 16,000 Dollar Tree and Family Dollar stores across 48 states, to abate workplace safety hazards nationwide. The settlement requires the payment of \$1.35 million in penalties and puts in place measures to ensure prompt abatement of safety hazards that included blocked exits and access to fire safety. Dollar Tree also agreed to institute meaningful measures to improve safety, including by forming safety advisory groups with extensive employee representation, enhancing hazard identification and control programs, developing an audit program, creating a new employee training program, hiring additional safety professionals, maintaining a 24-hour hotline to receive safety complaints, establishing a tracking system to ensure complaints are addressed, and holding quarterly meetings with OSHA.

Enhanced criminal enforcement coordination

While the Solicitor’s Office only litigates civil cases, we recognize that close coordination with criminal law enforcement is often critical. Criminal matters often involve highly resource intensive work by the Solicitor’s Office to aid criminal enforcement, which can often take years. One example of a case that came to fruition in 2023 concerned ALJ Home Improvement, Inc. and its owner Jose Lema. This New York roofing contractor

had a history of worker safety violations, with more than 24 willful OSHA citations between 2019 and 2023, including willful egregious fall protection citations in August 2022 and February 2023. During these years, two workers for Mr. Lema died after falling on the job. In July 2023, the U.S. Attorney for the Southern District of New York [charged Mr. Lema for willfully violating OSHA regulations](#) following a criminal referral from OSHA and SOL. SOL has continued to litigate citations against Mr. Lema and ALJ Home Improvement, obtaining in 2023 an administrative settlement and [a district court consent injunction](#) that require them to comply with a series of enhanced compliance measures to ensure safety. The injunction order also found that the employer's practice of allowing roofing employees to work without fall protection poses an imminent danger of death or serious harm.

In other cases, criminal contempt is a key tool to hold employers accountable for not complying with the laws that DOL enforces. In one such case, Nebraska roofing contractor Francisco Esquivel received multiple OSHA citations for serious safety violations, including for the failure to use fall protection, which can result in serious injury or even death for workers in that industry. After these citations became final orders, SOL filed a petition for the Department in the Eighth Circuit Court of Appeals, pursuant to section 11(b) of the OSH Act, to enforce the orders. This section of the OSH Act allows the Department to seek court orders to enforce abatement of safety violations and can allow for a finding of contempt of court if an employer does not comply. Following Mr. Esquivel's failure to comply with the court's judgment and abate his safety violations, in February 2023, SOL filed [a motion to hold him in contempt](#). The court concluded that Mr. Esquivel was in contempt in March 2023 and, in September 2023, a Special Master appointed by the court ordered him to be brought into custody after he failed to appear at a hearing regarding the appropriate penalties and sanctions to ensure compliance with the final orders. The court released Mr. Esquivel from custody only [after he agreed to an interim plan](#) to cease and desist all business operations until a compliance plan was entered. Ultimately, the parties agreed to a compliance plan that would ensure Mr. Esquivel's compliance with the Eighth Circuit's final orders as well as his future compliance, which the court accepted as resolution of Mr. Esquivel's contempt.

Finally, criminal coordination can be a key tool in MSHA cases where employers submit false samples of dust that can cause debilitating diseases like black lung disease. SOL assisted the U.S. Attorney's Office for the Eastern District of Kentucky in a prosecution that successfully [held a coal company and its dust examiner criminally liable](#) for submitting false samples. On June 8, 2023, the U.S. District Court for the Eastern District of Kentucky sentenced Black Diamond Coal Company, LLC and its certified dust examiner, Walter Perkins, for submitting false coal dust samples to MSHA and for lying to MSHA investigators. The company was sentenced to two years of probation and to pay a \$200,000 fine, and Mr. Perkins was sentenced to six months in prison followed by six months of home detention. The false samples put miners at risk by failing to accurately measure exposure to the dust that causes black lung disease. An SOL attorney served as a Special Assistant U.S. Attorney as a part of the support for this prosecution.

Strategies to protect immigrant and migrant workers

While the Department's retaliation work and its support of [Statements of Interest in support of prosecutorial discretion](#) for workers who are involved in labor disputes are some examples of our work to develop strategies to protect immigrant and migrant workers, SOL has also worked with client agencies to combat exploitative practices through litigation. For example, on March 9, 2023, SOL [obtained a consent judgment](#) in the U.S. District Court for the Southern District of California against Freig Carillo Forwarding, Inc. (Freig), a company that provides customs border broker services for goods being exported to Mexico from California and Arizona, and its owner Javier Martin Freig Carillo. Freig and its owner had unlawfully paid workers well below the FLSA minimum wage, with wages as low as \$3 per hour. Workers recovered nearly \$1 million in minimum

and overtime back wages and liquidated damages, and the Department recovered more than \$26,000 in civil money penalties for egregious violations of the FLSA. Although all the work for the company was performed in the U.S., workers were paid in pesos in Mexico at rates well below the federal minimum wage and were not paid overtime.

The examples highlighted here provide just a glimpse of SOL's critical efforts to protect workers, retirees, and jobseekers. In other important contexts, SOL's enforcement work also continues to have a significant impact. For example, SOL secured [a landmark victory](#) against battery manufacturer East Penn Manufacturing Company, Inc., winning a jury verdict awarding workers \$22 million in back wages for time spent changing in and out of work clothes and showering to avoid the dangers of lead exposure. In another case, SOL settled a suit against a retirement plan's investment advisor and other plan fiduciaries [to recover nearly \\$125 million](#) for more than 9,000 workers after the plan's investment management firm invested nearly half of workers' funds in a single company whose stock fell dramatically.

Likewise, this report covers just a fraction of SOL's work advancing our enforcement priorities to maximize our worker protective impact. In numerous other cases, we have acted to stop retaliation, combat workers' misclassification, advance developments in the law, and ensure the use of all the tools at our disposal to protect the most vulnerable. In the coming year the Solicitor's Office will continue to strengthen these efforts and will further hone the strategies needed to advance our enforcement priorities, using our limited resources to the greatest effect possible.



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