



**U. S. Department of Homeland Security  
Bureau of Immigration and Customs Enforcement**

800 K Street, NW  
Washington, DC 20536

Via Fax and First Class Mail

September 5, 2003

Mr. Sam Vitaro

Re: INS FLSA

Dear Mr. Vitaro:

I am in receipt of your fax dated August 29<sup>th</sup> re Agency's Failure To Respond to your order of August 5<sup>th</sup>. The Agency has not received your order. Upon review of the correspondence, I saw only a letter from Mr. Goldberg to you dated August 6<sup>th</sup> in which he referenced your August 5<sup>th</sup> order.

The August 29<sup>th</sup> correspondence makes reference to the August 5<sup>th</sup> order by which its contents may be surmised. The emphasis on "old claimants," "newly excluded old claimants" and other issues involving "new claimants" is ill advised, and counter productive. The union, perhaps with your encouragement, continues to focus on the steps taken by the Agency to refine its initial searches of the databases to produce an accurate final listing of class members. Emphasis on procedural steps rather than on the final product is similarly counter productive.

On August 1, the Agency provided Mr. Goldberg with the final list of claimants, including eligibility periods. Mr. Goldberg responded to this information by letter dated August 5, 2003. His major issues concerned lack of payroll data, such as 31 Act offset, which would not be included in the information to be sent to the payroll-servicing units, as this information is resident in their databases. The Agency expected Mr. Goldberg to review the listing and perhaps question the inclusion or omission of specific individuals, or to question individual eligibility periods. Instead, the union continues to attempt to misdirect the thrust of the process resulting in the further delay of payments. We intend to forward to Mr. Goldberg a list of rejected suffer and permit claims later this month.

Once again, the Agency acknowledges that certain employees were misclassified with respect to the Fair Labor Standards Act coverage and are entitled to back pay. We have also agreed to liquidated damages. We are not clear what happened in San Francisco outside of the