

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**HORNBECK OFFSHORE SERVICES,  
L.L.C.,**

**Plaintiff**

\*      **CIVIL ACTION NO. 10-1663**

\*

**VERSUS**

\*      **SECTION “F”**

\*

**KENNETH LEE “KEN” SALAZAR, IN HIS  
OFFICIAL CAPACITY AS SECRETARY,  
UNITED STATES DEPARTMENT OF  
INTERIOR; UNITED STATES  
DEPARTMENT OF INTERIOR;**

\*      **MAGISTRATE “2”**

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**ROBERT “BOB” ABBEY, IN HIS OFFICIAL  
CAPACITY AS ACTING DIRECTOR,  
MINERALS MANAGEMENT SERVICE;  
AND MINERALS MANAGEMENT SERVICE,**

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**Defendants**

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’ MOTION TO ENFORCE  
PRELIMINARY INJUNCTION ORDER**

NOW INTO COURT, through undersigned counsel, come Plaintiffs Hornbeck Offshore Services, L.L.C., the Bollinger Entities and the Chouest Entities (collectively, “Plaintiffs”), which respectfully submit this memorandum of law in support of their motion to enforce this Court’s June 22, 2010 Order, pursuant to which the Court “immediately prohibited” Defendants “from enforcing the Moratorium, entitled ‘Suspension of Outer Continental Shelf (OCS) Drilling of New Deepwater Wells,’ dated May 28, 2010, and NTL No. 2010-N04 seeking implementation

of the Moratorium, as applied to all drilling on the OCS in water depths greater than 500 feet.” (Rec. Doc. 68) (the “Preliminary Injunction Order”). The basis for Plaintiffs’ motion is that, just hours after the Court issued its Preliminary Injunction Order, Defendant Secretary Salazar announced the de facto continuance of the Moratorium in direct defiance of this Court’s Preliminary Injunction Order.

In a statement issued just hours after the Court entered its Preliminary Injunction Order, Defendant Secretary Salazar said:

The decision to impose a moratorium on deepwater drilling was and is the right decision. The moratorium is needed to protect the communities and the environment of the Gulf Coast, and DOI is therefore appealing today’s ruling.

We see clear evidence every day, as oil spills from BP’s well, of the need for a pause on deepwater drilling. That evidence mounts as BP continues to be unable to stop its blowout, notwithstanding the huge efforts and help from the federal scientific team and most major oil companies operating in the Gulf of Mexico. The evidence also continues to mount that industry needs to raise the bar on blowout prevention, containment, and response planning before deepwater drilling should continue.

Based on this ever-growing evidence, I will issue a new order in the coming days that eliminates any doubt that a moratorium is needed, appropriate, and within our authorities.

(a copy of Secretary Salazar’s Statement Regarding the Moratorium on Deepwater Drilling, dated June 22, 2010, is attached as Exhibit “A”) (emphasis added). In fact, just this morning Secretary Salazar testified in response to questions from Senator Lamar Alexander of Tennessee about the “Moratorium in place” and Senator Lisa Murkowski of Alaska “that this moratorium stays in place.” See unofficial partial transcript of testimony attached hereto as Exhibit “B”.

### **Law and Argument**

While Defendants have the right to challenge this Court’s Preliminary Injunction Order on appeal, *see* 28 U.S.C. § 1292, and further have the right to engage in appropriate fact finding, data analysis and risk assessment followed perhaps by additional agency action, the law

precludes Defendants from continuing today to enforce the Moratorium in defiance of this Court's prohibition against its enforcement. At present, Defendants have not filed a Notice of Appeal to the Fifth Circuit, nor have they filed a motion with this Court seeking a stay of the Preliminary Injunction Order pending appeal. Accordingly, the Preliminary Injunction Order is in full force and effect, and is the law of this case. Nevertheless, Defendants have chosen to ignore and disobey it. Secretary Salazar's comments have the obvious effect of chilling the resumption of OCS activities, which is precisely the wrong this Court sought to redress through its Preliminary Injunction Order. Simply put, Defendants' disregard of this Court's Preliminary Injunction Order effectively negates its purpose by deterring those it protects from engaging in activity that is lawful under it.

Litigants subject to an injunction cannot "by-pass orderly judicial review of the injunction before disobeying it" because, "in the fair administration of justice no man can be judge in his own case, however exalted his station, however righteous his motive . . ." *Walker v. Birmingham*, 388 U.S. 307, 320-321 (1967). Justice Blackmun cogently reiterated the Supreme Court's *Walker* holding in his dissent in *Firefighters Local Union No. 1784 v. Memphis Fire Dep't*, 467 U.S. 561, 601 n.5 (1984), stating: "An enjoined party is required to obey an injunction issued by a federal court within its jurisdiction even if the injunction turns out on review to have been erroneous . . ." (citing *Walker*, at 314) (emphasis added). The Fifth Circuit likewise has recognized that disobedience of a district court's order providing temporary injunctive relief cannot be countenanced. *Norman Bridge Drug Co. v. Banner*, 529 F.2d 822, 829 (5<sup>th</sup> Cir. 1976) (concluding that, appellants, Drug Enforcement Agency agents, "should not have chosen disobedience as the method of testing" the district court's temporary restraining order and observing that the agents' defiance "lacks precedential support for the simple reason

that the great weight of authority holds it to be inappropriate.”) (citations omitted).

The law therefore requires dissatisfied enjoined parties to avail themselves of orderly judicial review to obtain the relief they seek, and, in the interim, they must obey the “injunction issued by” the federal district court “even if the injunction turns out on review to have been erroneous.” *Firefighters Local*, at 601 n. 5. In short, the method that Defendants here chose to test this Court’s Preliminary Injunction Order – defiance of it – is not a method available to them. Accordingly, Plaintiffs respectfully request that this Court enforce its Preliminary Injunction Order by ordering Defendants to refrain and cease and desist from any additional effort to continue their enforcement of the Moratorium.

Respectfully submitted,

*s/Carl Rosenblum*

CARL D. ROSENBLUM, T.A. (2083)  
GRADY S. HURLEY (13913)  
ALIDA C. HAINKEL (24114)  
MARJORIE A. MCKEITHEN (21767)  
JONES, WALKER, WAECHTER, POITEVENT,  
CARRÈRE & DENÈGRE  
201 St. Charles Avenue, 49<sup>th</sup> Floor  
New Orleans, Louisiana 70170  
Telephone: (504) 582-8000  
Fax: (504) 589-8170  
crosenblum@joneswalker.com

And

JOHN F. COONEY  
(admitted Pro Hac Vice)  
Venable LLP  
575 7<sup>th</sup> Street, N.W.  
Washington, D.C. 20004  
Telephone: (202)344-4812

**Attorneys for Hornbeck Offshore Services,  
L.L.C., the Bollinger Entities and the Chouest**

**Entities**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing pleading has been served upon all parties by email or by using the CM/ECF system which will send a Notice of Electronic filing to all counsel of record, this 23rd day of June, 2010.

*s/Carl Rosenblum*