



February 10, 2014

Honorable Chairs of the New York State Senate Finance Committee
and the New York State Assembly Ways and Means Committee:

Make the Road New York (MRNY) is a multi-service organization that builds the power of Latino and working class communities to achieve dignity and justice through litigation, legal and survival services, coupled with policy innovation, transformative education, and community organizing. MRNY has over 14,000 members and operates storefront community centers in the high density immigrant neighborhoods of Bushwick, Brooklyn; Jackson Heights, Queens; Port Richmond, Staten Island; and Brentwood, Long Island. For over fifteen years, MRNY has counseled low wage immigrant workers on issues surrounding wage theft, representing workers in federal and state court and before the New York State Department of Labor (NYDOL) and other enforcement agencies. Many of the individuals MRNY serves are commonly paid below the minimum wage, work long hours without being paid time and a half or, worse yet, they are simply not paid for the work they perform. In fact, the inspiration for many of the core provisions of the landmark Wage Theft Prevention Act (WTPA) came from MRNY's membership, who several years ago led a strong coalition of unions, workers centers and legal services organizations to pass this law.

The last available data from the U.S. Department of Labor calculated that the amount of stolen wages recovered throughout the country topped \$185 million in 2008.¹ According to a study published last fall by the Economic Policy Institute, that amount is *three times more* than all the money lost in bank, gas-station and convenience-store robberies that same year, according to numbers provided by the Justice Department.² The campaign to pass the Wage Theft Prevention Act sought to attack this very problem in New York State. With the passage of the WTPA, New York became the state with the strongest anti-wage theft protections in the country. Unfortunately, the passage of this legislation on its own has not been enough to stem wage theft. Failure to comply with the most basic provisions of the labor law remains rampant throughout New York State and particularly in the communities that MRNY serves. Albany can help by dedicating the resources necessary to ensure effective, efficient, strategic enforcement of the State's workplace protection laws.

¹ U.S. Department of Labor, *Wage and Hour Division: 2008 Statistics Fact Sheet*, December 2008.

² The Legislative Attack on American Wages and Labor Standards, Gordon Lafer, The Economic and Policy Institute, October 31, 2013, <http://www.epi.org/publication/attack-on-american-labor-standards/>

BROOKLYN
301 GROVE STREET
BROOKLYN, NY 11237
TEL 718 418 7690
FAX 718 418 9635

QUEENS
92-10 ROOSEVELT AVENUE
JACKSON HEIGHTS, NY 11372
TEL 718 565 8500
FAX 718 565 0646

STATEN ISLAND
161 PORT RICHMOND AVENUE
STATEN ISLAND, NY 10302
TEL 718 727 1222
FAX 718 981 8077

LONG ISLAND
1090 SUFFOLK AVENUE
BRENTWOOD, NY 11717
TEL 631 231 2220
FAX 631 231 2229

The New York State Department of Labor is the one agency with broad enforcement jurisdiction and authority to enforce minimum wage, overtime, prevailing wage, and other basic labor protections – and is the agency that most low wage workers must turn to for enforcement of minimum wage and overtime laws. The vast majority of low wage workers lack the resources and connections to hire private attorneys. The NYDOL is the most visible and accessible resource for workers whose rights have been violated. But for decades, as the workforce has been growing, the NYDOL has been bleeding resources, losing the investigators and judges necessary to stop wage theft, which has resulted in long delays in the investigation and processing of claims for unpaid wages.³ These delays provide ample time for crucial evidence to be lost, witnesses to move away, and the most unscrupulous employers to falsify employment records and even close their business and reopen under a new name – all of which jeopardize workers’ chances of ever collecting their stolen wages. For these reasons, MRNY is deeply concerned with Governor Cuomo’s proposed budget cuts to the NYDOL. Our testimony today will focus on the critical need for additional resources to this under-funded agency.

A recent FOIL of the NYDOL reveals that there is a growing backlog of complaints for investigation. These documents have confirmed what workers and advocates already know: that many investigations do not begin promptly, and workers often wait many years to receive money the DOL determines is due, if such money is ever recovered at all. The agency backlog causes delays for nearly every aggrieved worker seeking help from the NYDOL. The most recent records tracking the length of investigations provided by NYDOL were from May 2012, and show that there were more than 2,300 investigations that had been open for one to two years.⁴ These numbers do not include the more than 7,000 cases designated as “pending payment”, more than 3,500 of which had been open for more than two years.⁵ According to a study of nearly 200 MRNY referred cases handled by NYDOL over the last three years, investigations do not begin for a majority of cases until well after a year of a worker filing a complaint with the agency.⁶ Many investigations can last several years. After workers receive a NYDOL decision in their favor, they might wait another year before a hearing of any appeal at the Industrial Board of Appeals (“IBA”) because there are too few administrative law judges to hear cases.⁷

Just as we prioritize the funding of our police departments, our district attorneys and our attorney general’s office, we need to prioritize the enforcement of laws that protect working class New Yorkers from theft. Enforcement of wage and hour laws is a wise investment in our economy. When workers are treated fairly and prosperity is more broadly shared, our economy grows faster and becomes more resilient. Proper enforcement of the law will deter violations, it will empower workers on the job, and it will

³ *Strengthening Labor Standards Enforcement Through Partnership with Workers’ Organizations*, Janice Fine & Jennifer Gordon, *Politics and Society* 552, 557 (2010).

⁴ Pico Ben-Amotz, comp. FOIL Request Documents, p. 289. October 7, 2013. Documents released by the NYDOL pursuant to a Freedom of Information Law request made on May 16, 2013 by the Urban Justice Center, on File with MRNY, Queens, NY, p. 112-127.

⁵ *Id.*

⁶ MRNY NYDOL Complaint Tracker, Magdalena Barbosa (2013). On file with MRNY.

⁷ *Id.*

protect honest businesses from illegal conduct of competitors. Funding enforcement of this law is a crucial step towards strengthening the rule of law, building a culture of mutual respect, and creating a prosperous and equitable economy that creates genuine opportunity for all.

We join together with other members of the New York Coalition to End Wage Theft to call for increased resources for the NYDOL in order to effectively address the rampant problem of wage theft in New York. The addition of 200 investigators would return staffing to the levels held by the NYDOL over three decades ago and would help to significantly reduce the backlog. The annual price tag on 200 new investigators, five additional hearing officers for the IBA and five additional IBA staff is an estimated \$14 million. This estimate is based on average salaries of \$44k for an investigator, \$100k for a hearing officer, \$44k for IBA staff, and 40% in fringe benefits and overhead costs. This investment would be a return in the taxpayers' favor since new investigators will be able to handle more cases resulting in an increase in fines and penalties – for wage theft as well as workers compensation and unemployment insurance fraud – that will help the state to fund continued enforcement. Investing a mere \$14 million in leveling the playing field for law-abiding employers is a common sense solution.

Sincerely,

Magdalena Barbosa
Supervising Employment Attorney
Make the Road New York
magdalena.barbosa@maketheroadny.org

