



New York County District Attorney's Office
Testimony before City Council Committee on the Justice System
April 16, 2018

Good afternoon Chairman Lancman and members of the Committee on the Justice System. We are Executive Assistant District Attorney Michael Sachs, Chief of the Investigation Division, and Assistant District Attorney Diana Florence, Attorney-in-Charge of the Construction Fraud Task Force. We are presenting testimony on behalf of Manhattan District Attorney Cyrus R. Vance, Jr. Thank you for the opportunity to speak about our investigation and prosecution of wage theft.

According to Cornell University's Worker Institute, wage theft in New York accounts for nearly \$1 billion in lost wages each year and affects tens of thousands of workers – that's close to \$20 million per week. Conventional wisdom suggests that wage theft solely affects low income workers who are cheated through subminimum wage or unpaid overtime schemes. However, the reality is that the problem is much larger in scope and much more pervasive, especially within the construction industry in New York. This is because the very same companies who steal from their workers also routinely falsify their records with respect to workers' compensation insurance policies and state tax returns. Furthermore, these unscrupulous companies often subject these same workers to worksites that are rife with safety violations.

By committing wage theft and associated frauds, these companies unfairly lower their costs, making it nearly impossible for law-abiding businesses to compete. And every taxpayer shoulders the effects of wage theft because when the workers are underinsured, it forces government to step in and incur costs that should have been borne by their employer.

Recognizing the vital importance of the role construction plays in our dynamic city, but also knowing that the industry is susceptible to corruption, District Attorney Vance created the [Construction Fraud Task Force](#) in August 2015. Through this Task Force, we collaborate with city, state, and federal agencies, workers' advocacy groups, and academic scholars on a wide range of issues. Following several successful prosecutions related to health and safety in the construction industry, the Task Force organized the [Wage Theft Initiative](#).

As evidenced here today, the Wage Theft Initiative includes collaborations between seven local District Attorney's Offices (which includes all five New York City DA's, plus Westchester and Nassau Counties), the Department of Investigation, the New York City Comptroller's Office, the New York State Department of Labor, and the New York State

Attorney General's Office. Since December 2017, this partnership has resulted in ten criminal cases and accounted for more than \$2.5 million in stolen wages affecting over 400 construction workers. Our collective priority is to target unscrupulous employers who cheat and endanger the hard-working men and women of New York City and State.

Wage theft is a form of worker exploitation, akin to labor trafficking and other violations of employees' rights. Its perpetrators take advantage of some of our communities' most vulnerable populations, including undocumented immigrants and low-income workers. In addition to the Wage Theft Initiative, the Manhattan District Attorney's Office has a robust Human Trafficking Unit whose mission includes prosecuting labor traffickers.

We would like to emphasize a point that is very important to District Attorney Vance and our entire Office. Many of the victims of wage theft and other workplace abuses are undocumented New Yorkers, and are not always empowered to stand up for themselves. So, we want to speak directly to them: We are here to protect your safety and your rights, and we encourage you to work with us to achieve justice without fear of being deported.

To achieve this goal, District Attorney Vance invested \$1.6 million in a new program managed by the New York Committee for Occupational Safety and Health (NYCOSH). The program aims to assist the disproportionate number of immigrant workers who become victims of workplace crimes by making it easier for them to document and report unsafe work conditions, wage theft, discrimination, and exploitation. NYCOSH will provide victims with referrals and access to support services, regardless of immigration status. This program is expected to benefit tens of thousands of workers in the first three years. We hope that the program will be up and running in a few months.

Before we go further into detail about our wage theft cases, we want to first tell you the story of a construction worker named Carlos Moncayo because the investigation surrounding his death is what ultimately led to the creation of the Wage Theft Initiative.

Carlos Moncayo was born in Cuenca, Ecuador and came to New York after high school in 2012. On Monday morning, April 6, 2015, 22-year old Carlos awakened at his sister's house in Queens, grabbed a quick breakfast, kissed his 2-year old nephew goodbye and headed to work as a carpenter at a construction site in the heart of the glittering Meatpacking District. Carlos had much to look forward to that morning. His 23rd birthday was just four days away and his mother was planning a visit soon after. But Carlos never got to celebrate his birthday. Instead, he died before lunch, less than two miles away from this chamber. Carlos died an utterly preventable death when the 14-foot trench he was working in collapsed without warning, raining 3,000 pounds of dirt upon him, and crushing him to death.

Making matters not only criminal but profoundly tragic, the subcontractor Sky Materials and the general contractor Harco Construction had been warned repeatedly that morning by a structural engineer on site about the extremely dangerous conditions at the site, and that no worker should be working in or around them. The engineer repeated his entreaties to stop the work over the course of two hours until the moment of the trench collapse. But the

superintendent and foreman in charge of the project disregarded the engineers' warnings, and Carlos paid with his life. Why? Because the supervisors and the companies they worked for were more interested in completing the project on budget than protecting their workers.

We obtained justice for Carlos's family by convicting the supervisors and companies responsible for his death, but the case did not end there. While examining Sky Materials' documents in the course of the homicide investigation, we found suspicious records revealing that the company was not paying proper overtime wages to its employees, as well as providing false information to its workers' compensation insurance carrier. I am proud to say that we were also able to obtain justice for Carlos' coworkers by obtaining guilty pleas from Sky Materials on wage theft and insurance fraud violations, and perhaps more importantly, full restitution for the workers of a half million dollars.

Sadly, Carlos's case is neither unique nor an isolated incident. As we continue to investigate wage theft, we see time and time again that wage theft and unsafe work conditions go hand in hand. Among an unscrupulous subset of the construction industry, wage theft and unsafe working conditions have become the norm – not just in New York City and but across the country. Another example of this health and safety/wage theft correlation can be found in our case against City Metro Corp. Earlier this month—on the eve of the three-year anniversary of Carlos's death—we secured guilty pleas from City Metro Corp. and its principals for orchestrating a scheme to steal tens of thousands of dollars from workers hired to perform construction work in Manhattan. The defendants pleaded guilty to Scheme to Defraud in the First Degree, and that same day, repaid more than \$95,000 in stolen wages to 20 workers. Like Sky Materials, City Metro had numerous workplace safety violations, including several accidents that were not reported to authorities as required by law.

To be clear, wage theft is not about poor business management or incompetence. We believe that it is a deliberate tactic, integral to the business model of dishonest corporations whereby they defraud workers of their wages and deprive cities and states of millions of dollars in tax revenues.

These businesses exploit the trust that workers have in the system – that if they put in an honest day's work, they will be paid what they were promised. And when they are not paid, they believe their employers who tell them, "Come back at 3 pm or next week, don't you worry, I will pay you." In the meantime, workers continue to work, hoping that their employer will pay them the following week. And the cycle continues until the workers finally get fed up and quit, often leaving behind thousands of dollars in unpaid wages in the pockets of their employers.

Until recently, wage theft as a business model made economic sense because rarely were there consequences for such conduct, and when there was enforcement, it was merely civil. With the Wage Theft Initiative, DA Vance—working alongside prosecutors from around New York State—changed the calculus. Our goal is to make profiting from the unpaid blood, sweat, and tears of one's workforce too costly to bear. We believe that our efforts have begun to achieve that goal.

The cases we have brought underscore DA Vance's commitment to protecting all workers from employers who fail to address the safety and security of their workers. I am here to affirm that the prosecution of wage theft and unsafe conditions will not end with the recent conviction of City Metro. Through the work of the Task Force, we have started developing a trusting relationship between law enforcement and workers, many of whom are undocumented. We have received numerous phone calls from workers complaining of wage theft, and we are following up with each of these complaints, as well as complaints received by the New York State Department of Labor. Our Office maintains a WhatsApp account for the specific purpose of allowing workers to anonymously report wage theft and other construction crimes. That WhatsApp number is 646-712-0298.

In the coming weeks and months, the Manhattan DA's Construction Fraud Task Force will unveil several other investigations against individuals and companies that both steal from their workers and put their physical well-being at risk. And the Task Force has uncovered yet another scheme that unscrupulous companies utilize to steal millions of dollars in wages and orchestrate a large-scale workers' compensation insurance fraud. Based on the discovery of this scheme, the Task Force plans to spearhead a new collaborative initiative to tackle these problems across city and county lines.

In addition to supporting our prosecutions, there are steps that the City Council can take to improve conditions for New York's construction workers. In February 2017, DA Vance sent a letter to the Council with recommendations aimed at strengthening enforcement of existing health and safety rules with respect to OSHA training. The letter included the following recommendations:

1. Creating an OSHA-10 and OSHA-30 card database to help prevent workers from obtaining OSHA safety training cards if they have not actually taken the required safety training course.
2. Barring building permits for a period of five years for a company, its subsidiaries, and its successors (determined by common ownership of the two companies) that have been convicted of a felony related to worker safety.

We believe that implementing these recommendations to not only worker safety convictions, but also to wage theft, would provide a powerful deterrent to companies who victimize their workers, and would go a long way towards destabilizing the wage theft business model currently in place.

Thank you.