



TESTIMONY OF THE LEGAL AID SOCIETY
PRESENTED ON FEBRUARY 28, 2013

TO THE COMMITTEE ON IMMIGRATION AND THE COMMITTEE ON CIVIL SERVICE AND LABOR:

The Legal Aid Society writes in support of the proposed resolution which calls on the United States Congress to pass and the President to sign H.R. 2169/S.1195, also known as the POWER Act. Among other provisions, the Act would allow victims of federal, state, or local labor law violations to apply for immigration status if they have suffered substantial harm as a result of the violation or will suffer extreme hardship if removed from the United States and if they have been helpful or are likely to be helpful in the investigation of the violation.

The Legal Aid Society

The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform.

The Legal Aid Society has performed this role in City, State and Federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of 1,000 of the brightest legal minds. These 1,000 Legal Aid Society lawyers work with nearly 700 social workers, investigators, paralegals and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 25 locations in New York City, the Society provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel. The Society's legal program operates three major practices — Civil, Criminal and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. With its annual caseload of more than 300,000 legal matters, The Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession.

The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits some two million low-income families and individuals in New York City and the landmark rulings in many of these cases have a statewide and national impact.

The Immigration Law Unit

The Legal Aid Society was first established 1876 as a German immigrant-rights organization, and although it has evolved into a comprehensive law firm, it has not wavered in its commitment to immigrants and immigrant communities in New York City. For several decades the Society

has operated a nationally recognized Immigration Law Unit based in the Civil Practice. The Unit provides low-income New Yorkers with comprehensive immigration services ranging from deportation defense to adjustment of status to Legal Permanent Residence and citizenship applications. The Unit specializes in the intersection between immigration and criminal law and works collaboratively with all practice areas to serve the Society's diverse immigrant clients through an integrated service model. Unit staff represents immigrants before U.S. Citizenship and Immigration Services (USCIS), before immigration judges in removal proceedings, the Board of Immigration Appeals and in federal court on habeas corpus petitions and petitions for review, and on administrative and judicial appeals. We also specialize in representing some of the most vulnerable immigrants and provide comprehensive screening for eligibility for special remedies such as Violence Against Women's Act (VAWA); U visas for crime victims, T visas for trafficking victims, and Special Immigrant Juvenile Status (SIJS). The Unit also partners with 10 community-based organizations in New York City to provide application assistance, comprehensive advice and workshops to low-income immigrants, refugees and asylees.

The Society's extensive experience with the 1986 legalization exercise, the World Trade Center Disaster Relief Initiative, the 2001 Special Registration exercise for Arab men (National Security Entry-Exit Registration System), the 2010 registration and 2011 re-registration of Haitian nationals for Temporary Protected Status (TPS) and Deferred Action for Childhood Arrivals (DACA) exercises makes us uniquely qualified to contribute to the consideration of national immigration law reform.

The Employment Law Unit

In 2001, in the wake of September 11th, The Legal Aid Society obtained funding to establish the Employment Law Unit. The Unit is one of the first in the nation to dedicate staff entirely to providing clients with a full range of employment law services and representing clients in administrative and court proceedings. Subsequently, many other programs nationwide have followed in our pioneering footsteps. Today, the Legal Aid Society's Employment Law Unit provides direct legal assistance in employment rights cases annually and remains at the forefront of the field. Of the diverse population that the Employment Law Unit serves, over half of our clients are immigrants.

Many unemployed workers who seek our assistance are those who have been unfairly denied the critical support of unemployment insurance benefits. We provide advice and representation in administrative proceedings and appeals in order to obtain and preserve UI benefits for our clients. In addition, the Unit provides legal assistance to individuals whose employers have violated employment laws. The Unit's staff attorneys are currently providing representation in more than ten major cases in State and Federal court concerning violations of the employment laws.

We Support the POWER Act

While in some instances the Society represents an individual in employment law cases, in many cases we represent groups of low-wage workers and even whole classes of workers in order to leverage resources. Most of the cases involve violations of the wage and hour laws, while some involve discrimination and/or retaliation. In addition, the Society's Employment Law Unit is increasingly representing immigrant victims of labor crimes. We have a growing caseload of

workers who have been subjected to forced labor and trafficking and workers whose employers have coerced them into keeping silent or actually participating in misrepresentations to government officials in the course of wage and hour investigations.

The abusive practices of employers affect not only our clients, but also other members of their communities and industry. High-profile decisions in these cases thus not only benefit our clients but also set a precedent that abusive and illegal practices are unacceptable and provide an example to other low-income workers who may be afraid to come forward or are unaware of their rights. Our ability to enforce workplace protections is often limited by employers' retaliation against employees who assert their rights. For example, employers often immediately terminate employees who report violations, reduce the hours of those workers who cooperate with any ongoing investigations, coerce workers into making misrepresentations to authorities, and otherwise intimidate workers from taking steps to enforce the law.

Immigrant workers without lawful status are particularly vulnerable to becoming victims of these crimes and other forms of retaliation by employers. Employers who are breaking the law and facing potential investigation regularly threaten to report undocumented workers to immigration authorities. Sometimes they actually take steps to have whistleblowers removed from the country – and sometimes they succeed. In a report released just this week, the National Employment Law Project highlights twenty-two such cases in which immigration law enforcement was leveraged against employees seeking to enforce basic rights, including a case of ours, and discusses the resulting damage to our collective ability to ensure basic workers' rights protections.¹

Existing law provides immigration relief for crime victims, however, the current protections are far too narrow. We routinely have clients who are victims of very serious civil and criminal violations in the workplace but who fear confronting their employers. Many ultimately refuse to come forward because they are at risk of deportation if the employer takes action against them. The POWER Act would remove immigration law from its role as a potential tool for lawbreaking employers to continue exploitative schemes. The Act would provide immigration relief to workers who are victims of criminal activity in the workplace, have suffered harm or would suffer hardship upon removal from the country, and are involved in reporting the crime to government authorities. Other workers making a claim of a labor or civil rights violations would qualify for temporary status while their claim is pending.

These provisions will help ensure that workers who make claims are protected and will also encourage other workers to come forward – making it possible to enforce our labor and employment laws in the most exploitative workplaces.

Conclusion

The Legal Aid Society asks for the Council's support for the resolution calling on Congress to pass the POWER Act. We thank the New York City Council Committee on Immigration and the Committee on Civil Service and Labor for the opportunity to testify about this important matter.

¹ See "Workers' Rights on ICE: How Immigration Reform Can Stop Retaliation and Advance Labor Rights," by Rebecca Smith and Eunice Hyunhye Cho, National Employment Law Project, February 2013, available at <http://www.nelp.org/page/-/Justice/2013/Workers-Rights-on-ICE-Retaliation-Report.pdf?nocdn=1>.

Respectfully submitted,

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NEW IMMIGRANT COMMUNITY EMPOWERMENT

New Immigrant Community Empowerment (NICE) is a community based organization in Jackson Heights, Queens dedicated to immigrant worker's rights.

We work with, organize, and advocate for day laborer construction workers, domestic workers and other informal sector workers who are newly-arrived, undocumented immigrants who live predominantly in Western Queens. NICE conducts regular weekly outreach at two large day laborer *paradas* or "street corners." One of them is the *parada* that spans several blocks on 69th St. in Jackson Heights (it goes all the way from Roosevelt Avenue and 37th Avenue to Queens Boulevard) and it hosts more than 300 men every morning. The other *parada* is located at Northern Boulevard and Parsons Boulevard in Flushing, Queens and is another major hub for day laborers in the New York City area. In addition, NICE conducts network outreach to women involved in domestic work and other low wage work.

Through our outreach, NICE discusses workplace problems with workers, informs them of their rights and learns about what is happening in their sector and in their particular workplaces. NICE currently runs two worker committees, the *Comite de Trabajadores* composed primarily of construction day laborers and the *Comite de Mujeres* composed primarily of domestic workers. Through committee meetings, workers get plugged into and develop campaigns, learn about their rights and build community and solidarity with one another. In addition, because wage theft is such a common problem for our members, NICE has a monthly wage theft clinic in collaboration with legal partners at the Urban Justice Center. We currently see about 10 wage theft cases every month. To respond to the high number of workplace accidents that affect our members, we are also now developing a worker's compensation clinic.

Our organizing work (including outreach and base building) has given us access to some of the most exploited and vulnerable of immigrant workers in our community and we find that our undocumented immigrants regularly face abusive, exploitative and unsafe working conditions. Almost all the day laborers in our membership and those at the *paradas* have experienced wage theft at least once and generally several times.

In some cases, workers are abandoned by bosses at the end of the day or at the end of the week when payment is due. In other cases, they have gone on working for days or weeks receiving only a fraction of the promised rate, fed by promises from bosses that the agreed upon payment will come soon. When it becomes painfully clear that payment is not coming, workers quit, often having wasted days to weeks of indispensable time and labor for no payment at all. Workers in other industries, such as domestic workers, also face wage theft, generally as violations of minimum wage and overtime laws and in some cases non-payment.

In addition to unpaid wages, our members face other workplace problems including verbal and physical abuse, unsafe and dangerous conditions, stress, exhaustion, and isolation. Women working as domestic workers tend to be especially vulnerable to verbal and physical abuse as well as isolation.



Despite the horrific abuses and violations of rights that many undocumented immigrant workers experience, many are hesitant to make demands and report workplace abuses. Most fear retaliation or losing their jobs if they speak up, many fear immigration consequences such as detention and deportation.

For instance, NICE has been organizing a group of eight workers who are owed close to \$90,000 including damages and stolen wages from the work they performed at a site in Manhattan. One of these eight workers was actually fired when he continued to ask for his wages. The stress of his situation caused him to suffer from insomnia and depression for months, which were later exacerbated by his desperation in finding new work.

Undocumented workers face a great deal of discrimination in their daily lives, which can manifest into cruel treatment in the workplace. For example, one of our members was often confronted at work because of his nationality. He worked for 10 years at this job doing floor installation. His days would be filled with discriminatory comments from bosses at the site. His direct boss would yell at him remarks such as “get out of my sight or go back to your country of origin!” A close collaborator of the boss would often disparagingly point out to him that he didn’t know English because he was Hispanic. His boss would mention his country of origin and insult him, especially after this worker would point out that he was the only one being given the hardest work at the site. The consequences of speaking up for this worker were being fired. When he came to NICE, we discovered that he not only suffered this verbal abuse and discrimination, but he was also paid significantly below minimum wage and no overtime.

NICE believes that the POWER Act will empower immigrant workers to speak up against these abusive employers by giving them the protection they need to report and have a day in court to bring them to justice. NICE strongly supports the POWER Act and commends the City Council of the City of New York for introducing this resolution calling on the U.S. Congress and the President to pass this federal act. In addition, we ask that city, state and federal agencies enforce existing labor laws to the full extent of the law and that there should be appropriate funding to support these enforcement efforts.

Thank you for your time.



L E G A L

S E R V I C E S

INCORPORATED

TESTIMONY

ON

**THE PROPOSED RESOLUTION CALLING FOR THE
PASSAGE OF THE POWER ACT**

PRESENTED BEFORE:

**THE NEW YORK CITY COUNCIL
COMMITTEE ON IMMIGRATION AND
COMMITTEE ON CIVIL SERVICE AND LABOR**

PRESENTED BY:

**ANAMARIA SEGURA
SENIOR STAFF ATTORNEY
MFY LEGAL SERVICES, INC.**

FEBRUARY 28, 2013

MFY Legal Services, Inc. (MFY) submits this testimony to New York City Council Committees on Immigration and Civil Service and Labor to express our support for the passage of a City Council Resolution in favor of the Protect Our Workers from Exploitation and Retaliation Act (POWER Act).

MFY envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We provide advice and representation to more than 8,000 New Yorkers each year. MFY's Workplace Justice Project (WJP) advocates on behalf of low-income workers most vulnerable to exploitation. On their behalf, we regularly litigate claims for unlawful failure to pay wages and unlawful discrimination. We also provide advice, counsel, and representation clients on a range of other employment problems. Because MFY does not receive federal Legal Services Corporation funding, it is one of the few resources for New York City's low-wage undocumented immigrants who need legal representation.

The POWER Act Will Mitigate the Effective Incentive to Violate the Employment Rights of Immigrants of the *Hoffman Plastic* Case by Providing Workers Whose Rights are Violated with Documented Status

MFY supports the passage of the POWER Act because it could make a huge difference to our clients, who often have been the victim of wage theft and discrimination, but have few protections against employers' retaliation.

Even though undocumented workers are protected by most labor and employment laws, including minimum wage, overtime, discrimination, and health and safety laws, these workers face significantly greater challenges than documented workers in enforcing their rights under the law. This disparity is due in part to the U.S. Supreme Court's 2002 decision in *Hoffman Plastic Compounds Inc. v. NLRB*, which held that the National Labor Relations Board could not award undocumented workers back pay as a remedy when an employer illegally fired the workers in retaliation for exercising their labor rights under the National Labor Relations Act.¹ The decision left undocumented workers without the ability to pursue the legal remedies normally available to workers whose rights had been violated, and effectively undercut the law's protection of all workers.

After *Hoffman*, employers urged courts to extend the decision's reasoning to limit undocumented workers' rights and remedies under other employment laws, and were successful in doing so in some cases. For example, the holding in *Hoffman* has been extended to limit undocumented workers' remedies in other contexts where the remedy could be classified as pay

¹ 535 U.S. 137 (2002).

for “work not performed,” such as in denying back pay to victims of workplace discrimination.² Indeed, in our experience, it is common for employers to threaten workers with reports to the immigration authorities in response to justified complaints about unlawful conditions.

Ultimately, *Hoffman* provides an incentive to employers to hire undocumented workers in order to break the law with no consequences. The lack of effective protection against retaliation means that undocumented immigrant workers are justifiably afraid to come forward, since they are barred from being awarded back pay or being reinstated to their job if they are fired for asserting their rights. Seeing coworkers fired and not reinstated creates a chilling effect that impacts all workers. Undocumented Workers Are Subjected to a Host of Abuses for Which They Have No Recourse

MFY has seen first-hand the way abusive employers take advantage of our undocumented clients, by blatantly violating minimum wage and overtime laws and illegally discriminating against them, emboldened by the knowledge that many in our clients’ positions won’t assert their rights. Below are a few examples.

Ms. L, an undocumented client from Mexico, worked in a takeout and catering business on the Upper East Side for years, for an abusive boss who constantly made derogatory comments about her race and national origin. For example, her boss told her that she was a “dirty Mexican” and that Mexicans “only came to the United States to steal.” She was also sexually harassed by a kitchen supervisor in the same workplace, for example, when he exposed himself to her, and also made sexually explicit jokes and gestures. Even though she complained, the boss did nothing to stop the behavior. Ms. L and other workers were not paid minimum wage or overtime. The boss would keep Ms. L and other workers in line by threatening to call immigration if they complained about the bad treatment. When Ms. L once got sick and said she could not come into work for a couple of days, the boss fired her. Even if she were to prove to a court that she was discriminated against, Ms. L would not have the right to receive back pay.

Ms. M, an undocumented client from Honduras, has worked as a home attendant for several home health agencies in New York City. Although she regularly worked as a sleep-in home attendant for one of her former employers, providing 24-hour care to her elderly and disabled patients, she has never been paid overtime as required by law. After Ms. M became ill on the job and was hospitalized, her employer fired her. Even if she were to be able to prove to a court that she was fired in violation of disability discrimination laws, Ms. M would not have the right to receive back pay or to be reinstated to her job, leaving her with little remedy other than to seek repayment for the unpaid wages for her work.

² See Ruben J. Garcia, *Ten Years After Hoffman Plastic Compounds v. NLRB: The Power of a Labor Law Symbol*, 21 Cornell J.L. & Pub. Pol’y 599, 661 (2012) (listing cases).

Ms. D, an undocumented client from Mexico who has a young daughter, was the victim of rape, sexual assault, and constant sexual harassment by her employer, the owner of a number of laundromats in the Bronx. Ms. D stayed at the job for years, in part because of her employer's threats that he would report her to immigration authorities if she were to leave and go to the police. At first Ms. D felt that she had no choice and that she would do anything to support and protect her young daughter, including staying at the job. Eventually, however, Ms. D left the job and filed a police report; however, justice has moved slowly, and Ms. D still lives in fear that her former employer will take retribution against her. Unsurprisingly, that employer is also guilty of egregious wage theft, failing to pay her minimum wage or overtime.

As these clients' stories show, immigrant workers who, in theory, should be protected by the law in fact have fewer remedies available to them, and all too often are left with little recourse when their rights are violated. Out of the three examples, because of the severity of the crime and the fact that she reported it to the police, only Ms. D has a solid chance of obtaining a U-visa, which is a type of visa available to victims of certain "qualifying criminal activity" who cooperate with law enforcement, and which provides temporary legal status and legal work eligibility in the United States.³

Although Ms. L and Ms. M have also been victims of illegal wage theft and discrimination, under the current statutory regime they have fewer remedies available to them, and their choice to file a lawsuit against their former employers could result in retaliation against which they are insufficiently protected.

The POWER Act could make a huge difference to clients like Ms. L and Ms. M. It would provide temporary protection for immigrant victims of crime and employment retaliation, and it would expand protections more broadly than what is available now under a U-visa, because it would apply to civil workplace claims. Among other things, it would apply to a worker who filed or is likely to be helpful in the investigation of a "bona fide workplace claim" and "reasonably fears, has been threatened with, or has been the victim of . . . abuse of the immigration or other legal process by the employer in relation to acts underlying or related to the filing of the claim."⁴ Under this framework, workers who have been the victims of wage theft but whose employers' abuse fall short of "qualifying criminal activity" have less to fear even if they believe their employers will threaten them with reporting them to immigration authorities if they complain.

MFY applauds the City Council for its proposed resolution in support of the POWER Act, and joins the City Council in calling on Congress to pass it without further delay. Thank you for the opportunity to submit testimony on this pressing issue.

³ See generally, Department of Homeland Security, U Visa Law Enforcement Certification Resource Guide at 1-3, available at http://www.dhs.gov/xlibrary/assets/dhs_u_visas_certification_guide.pdf (last visited Feb. 26, 2013).

⁴ Protect Our Workers from Exploitation and Retaliation Act, H.R. 2169, 112th Cong. (1st Sess. 2011), text available at <http://www.govtrack.us/congress/bills/112/hr2169/text> (last visited Feb. 26, 2013).

For any questions about this testimony, please feel free to contact Anamaria Segura at (212) 417-3707 or asegura@mfy.org, or Maia Goodell, at (212) 417-3749 or mgoodell@mfy.org.



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Testimony on Resolution No. 1598

Presented on February 28, 2013

Thank you for the opportunity to provide testimony today. My name is Melanie Willingham-Jaggers and I am an organizer at ALIGN: The Alliance for a Greater New York, a community-labor coalition dedicated to creating good jobs, vibrant communities and an accountable democracy for all New Yorkers.

I am here to express ALIGN's strong support for New York City Council Resolution No. 1598, calling on Congress and President Obama to pass and sign into law the Protect Our Workers from Exploitation and Retaliation (POWER) Act.

The POWER Act gives workers, regardless of their immigration status, the ability to stand up to abusive employers. It prevents employers from violating the rights of immigrant workers with impunity, and from using immigration law enforcement to skirt labor law. Under the POWER Act, immigrant workers are covered by the protections they need to pursue workplace claims, and whistleblowers who are victims of employer retaliation can apply for legal status.

There are too many stories of immigrant workers facing retaliation and deportation for standing up to unscrupulous employers. Just months ago, guest workers at a Louisiana plant of Walmart-supplier C.J.'s Seafood were threatened with physical violence and deportation when they raised objections to deplorable working conditions—extremely low wages and no overtime pay, 24-hour shifts, and locked worksites. Under the POWER Act, immigrant workers can report forced labor situations without fear of employer retaliation, and the kinds of labor violations suffered by the C.J.'s workers can finally be rooted out.

It is critical that the New York City Council take action in support of immigrant workers. New York City is home to approximately 2 million immigrant workers, who comprise an enormous share—over 40 percent¹—of the City's workforce. Immigrants are just 15% of the workforce, nationally.² We have seen damage done to our communities because of a broken immigration system. Immigrant workers, especially those who are undocumented, face some of the most exploitative and dangerous working conditions in the city. Industries employing mostly immigrants, such as food manufacturing and home and domestic care, have among the highest rates of wage theft and health and safety violations. Some health and safety violations have even proven fatal: there was recently a candlelight vigil held for Juan Baten, a 22-year-old worker from Guatemala, who lost his life when he was pulled into a dough-mixing machine at Tortilleria Chinantla, a Brooklyn tortilla factory. Under the POWER Act, immigrant workers can report dangerous working conditions without fear of employer retaliation, and tragedies like the one that claimed Juan Baten's life can be prevented.

In the coming years, New York will rely on immigrant workers more than ever before: Our city's senior population is projected to grow rapidly in the coming decades as Baby Boomers reach their golden years. An aging population demands the labor of hundreds of thousands of home care workers, over 70 percent of whom are immigrant women. In fact, home care is the fastest-growing occupation in New York City. Unfortunately, wage theft and occupational health hazards are rife in the care industry. NYC's more than 60,000 undocumented care workers face the worst kinds of exploitation due to their vulnerable immigration status.³

Fixing the broken immigration system will have a positive impact on all New Yorkers. In the care

¹ <http://www.nationaljournal.com/thenextamerica/workforce/immigrants-keep-big-apple-humming-post-sandy-20121030>

² <http://www.cepr.net/documents/publications/unions-immigrants-2010-03.pdf>

³ <http://archive.truthout.org/article/unprotected-laws-domestic-workers-face-exploitation>

industry, bringing workers out of the shadows will reduce high turnover and improve the quality of home care for our loved ones. Our communities grow stronger when families are not torn apart by deportation, when workers earn a family-sustaining wage, and when workers are not subjected to occupational health hazards.

New York City, given its immense immigrant workforce, should be a leader in protecting the rights of immigrant workers and advancing policy that brings workers out of the shadows—policy like the POWER Act.

Thank you.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1598

in favor in opposition

Date: 2/28/13

(PLEASE PRINT)

Name: Karen Carace

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Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/28/13

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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in favor in opposition

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