

**Testimony of Commissioner Lorelei Salas
New York City Department of Consumer and Worker Protection**

**Before the Committee on
Consumer Affairs & Business Licensing**

**Oversight Hearing on
Employment Agencies and other Labor Placement Agencies**

April 19, 2021

Introduction

Good afternoon Chair Ayala and members of the Committee. I am Lorelei Salas, Commissioner of the Department of Consumer and Worker Protection, or DCWP. I am joined by Tamala Boyd, our General Counsel, Adam Blumenkrantz, our Associate General Counsel, Steven Ettannani, our Executive Director of External Affairs, and Carlos Ortiz, our Director of Legislative Affairs. Thank you for the opportunity to testify today before the Committee.

Presently, DCWP licenses more than 59,000 businesses and individuals in more than 50 industries. We enforce essential consumer protection, licensing, and workplace laws that serve countless New Yorkers, and offer programming that increases access in our city to high-quality financial services for New Yorkers.

DCWP's Authority under NYS General Business Law

DCWP is designated, under Article 11 of the New York State General Business Law (GBL) as the licensing and enforcement agency for employment agencies in New York City. Employment agency laws and rules apply to businesses that, for a fee, help individuals find work, or assist businesses in finding individuals to hire. There are approximately 240 licensed employment agencies in the city. Regulations governing employment agencies include requirements to post certain consumer disclosures, obligations to provide clients with contracts and receipts, and prohibitions from guaranteeing clients jobs, discriminating against a client on the basis of their age, race, or creed, or from charging illegal fees, such as for deposits or in advance of job placement.

Promoting a Culture of Compliance among Licensees

DCWP takes its obligation under the GBL seriously; and the work begins with fostering a culture of compliance among licensees. DCWP voluntarily provides employment agencies, just as we would licensees governed by local law, a 'plain language inspection checklist.' This checklist outlines legal requirements and is a tool to help businesses or consumers identify, and avoid, violations before an inspection. The checklist is available on our website and is distributed by staff on educational business corridor walks. Under DCWP's Visiting Inspector Program, new brick and mortar employment agencies that open in the city also receive a scheduled, personal

educational visit from a seasoned inspector to go over any questions ownership and their staff may have about their obligations.

New York State employment agency law is nuanced with, for example, differing licensee obligations to clients depending on employment class and even a unique regulatory framework for theatrical employment agencies. DCWP voluntarily designs and makes available on its website templates for contracts, receipts, registers, and terms of conditions that licensees can use and feel confident in being compliant with the law. These templates are user-friendly, downloadable, and, in some cases, offered in multiple languages.

Partnerships with stakeholders inform our compliance and education efforts. Most recently, DCWP partnered with the Association for Talent Agents (ATA), to create a unique ‘plain language checklist’ for their industry. This document is a product of a longstanding dialogue with the ATA to ensure that their membership is informed about their obligations and recent amendments to the GBL that impacted their constituency.

Advocacy and Community Outreach

DCWP has actively lobbied the state legislature to modernize employment agency protections for consumers. In 2015, DCWP provided complaint data to New York State Senators and Assembly Members involved in the ‘Justice for Job Seekers’ campaign. That data informed investigative reporting and eventually manifested into reforms adopted by Governor Cuomo. DCWP commended the state legislature for prohibiting advance fees and instituting stricter terms and conditions disclosures for consumers. Mayor de Blasio wrote the Governor in October 2016 urging him to sign the measure into law, which the Governor did.

The 2016 reforms also allowed DCWP to require employment agencies to post the ‘Job Hunter’s Bill of Rights,’ which DCWP developed with New Immigrant Community Empowerment, or NICE, as a useful resource for consumers. Prior to this 2016 reform, DCWP could mandate this important document be posted at an employment agency only *after* it was found to be in violation of the law, and even then, only pursuant to a consent order with the employment agency.

Concurrently, with these recent amendments, DCWP engaged in continued outreach to communities on consumer protections for job seekers. This included developing consumer protection tips in over 10 languages. Since 2018, DCWP has conducted nearly 400 events educating New Yorkers on this topic. Understanding the outsized impact of this fraud on immigrant New Yorkers, DCWP also partnered with stakeholders that work with immigrant communities like Adhikaar, Chhaya CDC, and the Arab American Association of New York to host a series of events discussing issues of fraud and job seeker protections.

Enforcement

DCWP enforces employment agency laws and rules through mediation, field inspections, on patrol or in response to complaints, and actions brought by the agency before the Office of Administrative Trials and Hearings (OATH). In the past 3 years, we have received nearly 675

complaints, conducted 256 inspections, and issued 299 charges for violations of the employment agency laws and regulations.

However, despite our enforcement efforts, we continue to face uphill challenges with so-called ‘fly-by-night’ employment agencies. These agencies lure consumers in, rip them off, and disappear shortly thereafter. Typically, these unlicensed individuals or businesses sign short-term leases, use fake corporate names, or conduct outreach through informal networks that make locating them after a complaint extremely difficult. In ideal circumstances, a criminal enforcement entity, with tools at its disposal, such as search warrants and wiretaps, would be better suited to capture the needed information to apprehend these unlawful individuals.

Generally though, DCWP may collaborate with appropriate enforcement agencies at the city, state, and federal level in a number of ways including direct communications or through broader coalitions such as the Protecting Immigrant New Yorkers Task Force or the Queens Borough President’s Immigration Task Force. As an example of this work, we have aided active investigations from the New York State Attorney General’s Office by supplying additional complaints, affidavits, and even testimony from consumers that were harmed by deceptive practices.

Regarding our own active cases, we expect to soon receive a decision from OATH on a theatrical employment agency that has been operating without a license. The initial complaints were brought to us by several musical artists, and we are seeking civil penalties for the business’ unlicensed conduct. We hope that a successful outcome will help deter future violations by other businesses of their responsibilities and protect consumer rights in our city.

Conclusion

Especially in times of crisis, such as we find ourselves today, it is imperative that our businesses, our consumers, and our communities, in general, understand that we must support each other. We cannot accept, as a matter of course, harm to our most vulnerable fellow New Yorkers. At DCWP, we continue to work on ensuring that our consumers and workers have a voice within city government, a resource for education, and a shield from harmful business practices. In that work, we have always counted on and greatly appreciated the support of advocates and the City Council.

Thank you again for the opportunity to testify today, and I look forward to any questions you may have.



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April 19, 2021

The New York City Council
Committee on Consumer Affairs and Business Licensing
New York City Hall, Remote Hearing – Virtual Room 2
City Hall Park
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RE: Hearing Testimony – “Body Shops” Criminalize Workers, Deepen Structural Racism of the Criminal Legal System, and Degrade Workers’ Wages, Safety, and Voice

Dear New York City Council Committee on Consumer Affairs and Business Licensing Members:

On behalf of the National Employment Law Project (NELP), we write in strong support of greater regulation, reporting, and transparency of so-called “body shops,” unregulated labor brokers that target New Yorkers who are under parole supervision and other forms of court-related surveillance for underpaid and hazardous work.

NELP is a national, non-profit law and policy organization headquartered in New York City. For more than 50 years, NELP has fought for the employment rights of working people across the country. We advocate at the federal, state, and local levels for policies to create good jobs, expand access to work to those who want it, and strengthen protections and support for workers in low-wage industries and individuals who are unemployed. One of NELP’s areas of expertise is expanding fair access to employment for workers targeted by criminalization and the criminal legal system, disproportionately Black and Latinx. NELP is one of the nation’s leading authorities on “fair chance” employment policies (also known as “ban the box”) and fair chance occupational licensing reforms. In recent years, NELP has worked closely with advocates and policymakers both within New York and throughout the country to craft policies and law that reduce barriers to employment and expand the job prospects of people with records.

NELP’s concern with “body shops” and other similarly unregulated labor brokers is that they overemphasize the anti-recidivist or rehabilitative quality of *any* work, while underemphasizing risks endured by court-surveilled New Yorkers both to (1) unfair discrimination and lost earnings, and (2) working under the threat of jail. By targeting workers made desperate for work by court-surveillance and the threat of re-incarceration, unregulated labor brokers combine and exacerbate racialized inequalities for workers in criminal punishment, workplace safety, and wages. As social movements challenging mass incarceration and criminalization continue to grow, we are especially concerned that court-surveilled work under the threat of jail will be championed by some as meaningful reform

and not seen for what it is: expanding a vulnerable workforce by locking workers of color into long cycles of low wages and jail.

Two trends, traditionally viewed as separate domains, appear increasingly bound together. The first is that over the last 40 years, the US labor market has gradually shifted from long-term, direct-hire jobs with employer-sponsored benefits and high unionization rates to shorter-term, increasingly precarious contract jobs with lower wages, fewer benefits, and more obstacles to collective worker action.¹ The second is that over the same four decades, the US has increased its incarcerated population by 500% to 2.2 million people — crowning itself the world’s incarceration leader — under a sprawling system of punishment and surveillance that targets Black and Latinx people. This unprecedented expansion of incarceration has been combined with a radical defunding and deterioration of social service, public health, and welfare functions of government at all levels.² The rise of unregulated labor brokers is central to this recent history of workplace degradation and destabilization. So too is the rise of contemporary social movements that in the past decade-plus have repeatedly challenged inflated and overfunded municipal, state, and federal budgets that expand punishment and surveillance and deepen radical, racialized economic inequality.³

Body shops in New York City are at the center of this history today. Labor brokers, in this case body shops, hire and pay workers who perform work for third party companies, known as “host employers.” Brokers profit by charging the host employer a markup on the hourly workers’ wages. Brokers compete with one another by driving down the cost of labor, the only cost they control, which incentivizes paying poverty wages and cutting corners on meaningful training and workplace safety and health standards.⁴ These workers often work alongside the host employer’s permanent workforce resulting in a second-tier workforce who do the same or similar work as workers hired directly by the host employer, but for less pay, nearly non-existent benefits, and no job security. The labor broker system drives down wages and “insulates the host companies from workers’ compensation, unemployment taxes, union drives, and the duty to ensure that their workers are citizens or legal immigrants,”

¹ National Employment Law Project, *Eliminating Structural Drivers of Temping Out: Reforming Laws and Programs to Cultivate Stable and Secure Jobs*, March 2020, <https://www.nelp.org/publication/eliminating-structural-drivers-temping-reforming-laws-programs-cultivate-stable-secure-jobs/>

² See e.g., The Sentencing Project, *Trends in US Corrections*, August 2020, <https://www.sentencingproject.org/wp-content/uploads/2020/08/Trends-in-US-Corrections.pdf>; For history of transformation of governance from welfare to racialized punishment over past forty years, see e.g. Joe Soss, Richard Fording, and Sanford Schram, *Disciplining the Poor: Neoliberal Paternalism and the Persistent Power of Race*, University of Chicago Press, 2011

³ See e.g., Chicago Community Bond Fund, *Money for Communities, Not Cages: The Case for Reducing the Cook County Sheriff’s Jail Budget*, October 2018, <https://chicagobond.org/wp-content/uploads/2018/10/money-for-communities-not-cages-why-cook-county-should-reduce-the-sheriffs-bloated-jail-budget.pdf>; Mobilization for Black Lives, *The Breathe Act Proposal, Section 1: Divesting Federal Resources from Incarceration and Policing and Ending Criminal Legal System Harms*, <https://breatheact.org/wp-content/uploads/2020/09/The-BREATHE-Act-V.16.pdf>

⁴ NELP, *supra*, <https://www.nelp.org/publication/eliminating-structural-drivers-temping-reforming-laws-programs-cultivate-stable-secure-jobs/>.

allowing host employers to control working conditions without being responsible for them.⁵ Labor brokers are an engine of occupational segregation, sorting Black and Brown workers into this second-tier status and other forms of bad work.⁶ Unemployment insurance structures that exclude incarcerated or brokered workers or tax programs like the Work Opportunity Tax Credit can subsidize the labor broker industry, and therefore subsidize low wage, unstable work. Labor brokers, in this case New York City body shops, that target court-surveilled workers for low wage work ensure the silencing of working New Yorkers' voices in some of the most dangerous professions⁷ and depress wage and safety standards in the City.⁸

The threat of poverty faced by court-surveilled workers is real, and it is racist. NELP estimates that 60 percent of those who have been incarcerated remain unemployed a year after release.⁹ People with incarceration histories are four to six times more likely to be unemployed than similarly situated peers without a record.¹⁰ Only 55 percent of formerly incarcerated people report any earnings whatsoever one year after release, with the median earnings barely exceeding \$10,000 annually.¹¹ The Brennan Center for Justice recently concluded that formerly imprisoned people can expect to earn approximately 52 percent less in annual income than similarly situated peers who were never incarcerated.¹² The financial impact of an arrest or conviction record is radically anti-Black: Black people

⁵ Id.

⁶ Black workers comprise 25.9 percent of workers employed by labor brokers while they comprise 12.1 percent of the overall workforce. Latinx workers comprise 25.4 percent of workers employed by labor brokers while they comprise 16.6 percent of all workers. Id.

⁷ The "Laborers and Freight, Stock, and Material Movers" occupation, as categorized by the Bureau of Labor Statistics, has an injury rate is 3.4 times the average rate and saw an increase of more than 61,000 temporary workers nationally between 2014 and 2017. *Lasting Solutions for America's Temporary Workers*, National Employment Law Project, August 2019, <https://www.nelp.org/publication/lasting-solutions-americas-temporary-workers/>; Construction death rates remain five times as high as all industry deaths and contractors' reliance on inexperienced and untrained laborers are a source of fatal injuries. *Fatal Injuries among New York City Construction Workers*, New York City Department of Health, July 2017

<https://www1.nyc.gov/assets/doh/downloads/pdf/survey/construction-fatalities.pdf>

⁸ See e.g., Noah Zatz, "Get to Work or Go to Jail: State Violence and the Racialized Production of Precarious Work," *Law and Social Inquiry*, December 2019, <https://www.cambridge.org/core/journals/law-and-social-inquiry/article/get-to-work-or-go-to-jail-state-violence-and-the-racialized-production-of-precarious-work/75240FEFBE2355E8CD24595F84633CDF>

⁹ NELP, *Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions*, December 2019, <https://www.nelp.org/publication/fair-chance-licensing-reform-opening-pathways-for-people-with-records-to-join-licensed-professions/>

¹⁰ UCLA Institute for Research on Labor and Employment, Dallas Augustine, Noah Zatz, and Naomi Sugie, *Why Do Employers Discriminate Against People with Records? Stigma and the Case for Ban the Box*, July 2020, <https://irle.ucla.edu/publication/why-do-employers-discriminate-against-people-with-records-stigma-and-the-case-for-ban-the-box/>

¹¹ The Brookings Institution used IRS data to track labor market outcomes and economic characteristics of incarcerated people. Brookings Institution, *Work and Opportunity Before and After Incarceration*, March 2018, <https://www.brookings.edu/research/work-and-opportunity-before-and-after-incarceration/>

¹² Brennan Center for Justice, *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, September 2020, <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>

without a court record earn less annually and receive fewer call backs from prospective employers than white people with a record.¹³ These studies strongly suggest that anti-Black racism both in the criminal legal system and within the broader labor market compound one another, shaping work opportunities more than — and in addition to — the presence of an arrest or conviction record.

Similarly, the threat of re-incarceration for New Yorkers on parole is real, and it is racist. There are approximately 35,000 New Yorkers under parole supervision on any given day. A recent study published by Columbia University Justice Lab found that New York State reincarcerates more people on parole for technical rule violations than any other state in the US.¹⁴ Technical rule violations are not allegations of a new criminal offense but are violations of parole rules that regularly include passing alcohol or drug tests, satisfactory payment of criminal justice debt, completing court-mandated classes, maintaining curfew, and seeking and maintaining employment. Those accused of violating parole rules in New York can be held in jail for several months as allegations are resolved with no right to a bail setting.¹⁵ The threat of re-incarceration for technical parole rule violations is dramatically anti-Black and anti-Latinx. In New York City, Black and Latinx people on parole are 12 and four times more likely to be reincarcerated for technical violations than white people on parole.¹⁶

Body shops and similar labor brokers exacerbate the well-documented and staggering structural racism found in the criminal legal system.¹⁷ The UCLA Institute for Research on

¹³ Over the course of an entire career, the Brennan Center estimates that Black workers with an arrest or conviction record earn \$37,000 on average annually, while similarly situated white workers with an arrest or conviction record earn \$49,000. Black workers without an arrest or conviction record earn \$39,000 on average annually, while similarly situated white workers without an arrest or conviction record earn \$52,000. Id.; see also, Devah Pager, “The Mark of a Criminal Record,” *American Journal of Sociology*, March 2003, <https://doi.org/10.1086/374403>

¹⁴ Columbia University’s recent report found that in 2019, 40% of people sent to New York prisons were incarcerated for technical rule violations, nearly three times the national average. Columbia University Justice Lab, *The Enormous Cost of Parole Violations in New York*, March 2021, <https://justicelab.columbia.edu/cost-of-ny-parole-violations>

¹⁵ New York State Department of Corrections and Community Supervision, *Community Supervision Handbook: Revocation*, <https://doccs.ny.gov/community-supervision-handbook/revocation>

¹⁶ Columbia University Justice Lab, *supra*, <https://justicelab.columbia.edu/cost-of-ny-parole-violations>

¹⁷ Being a court-surveilled worker means initial contact with the criminal legal system that led to arrest and/or prosecution. The criminal justice system targets Black, Latinx, immigrant communities, and the poor through a variety of policing and prosecutorial strategies such as geographically concentrated racial profiling, prosecutorial bias, and sentencing discrimination. These targeting strategies have resulted in radical disparities: Black people comprise 15% of the population in New York State and 43% of the jail population and 45% of the prison population. See e.g. Vera Institute of Justice, *Incarceration Trends in New York*, December 2019, <https://www.vera.org/downloads/pdffdownloads/state-incarceration-trends-new-york.pdf>; Race disparities in incarceration rates cannot be explained by greater offense rates. Instead, these disparities are the result of multiple points in which systems actors can choose to release someone and do not. For instance, there is anti-Black racism in the discretion of officers to arrest someone, the decision by judges to set bail, how high that bail is, whether a person or their family can afford it, in what pleas may be offered by a prosecuting attorney, in conviction, in sentencing lengths, in parole, and in capital punishment. Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, July 2016, <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>; The criminal legal system touches all our lives: in New York State,

Labor and Employment estimates that on any given day in the US, approximately 9,000 people are incarcerated for violating a probation or parole requirement to maintain employment, and an additional 32,000 are incarcerated for violating a requirement to pay a court-related debt.¹⁸ Court-surveilled workers face pressure from the parole system or other “community supervision” programs to accept lower work standards. The reality, for instance, that someone can only find jobs that pay illegally low wages in New York is all-too-frequent, where one in 20 workers makes less than minimum wage.¹⁹ Whether a court-surveilled worker can reject or refuse an unfair or unsafe job is dramatically undercut by the threat of jail, causing such workers to enter and remain in jobs with depressed labor standards. These effects are wide ranging in New York City. A recent study estimated that in 2020, 9,173 court-surveilled workers worked in the New York City construction industry through body shops and calculated deep losses in consumption spending and economic activity across neighborhoods for each of the City’s five boroughs resulting from the use of body shops.²⁰

We believe New York City is positioned to lead in challenging racialized vulnerabilities court-surveilled workers face in the workplace. Requiring transparency and greater reporting from opaque and unregulated labor brokers will be the first step. Ultimately, court-surveilled New Yorkers are our family members, co-workers, and neighbors who are also experiencing our unprecedented public health and unemployment crises. Body shop practices expand the criminalization of New York’s workers, whereby court-involvement is understood by employers to indicate deserving-less-at-work, and unemployment is understood by the criminal legal system as criminality. These practices increase the risks of silencing workers’ voices, degrading work safety standards, and exacerbating racialized economic inequality to court-surveilled New Yorkers, which in turn increase these risks to the whole of us.

For these reasons, the National Employment Law Project supports the Council in establishing greater regulation, reporting, and transparency in labor brokers that target court-surveilled New Yorkers.

Recommendations:

- Require all labor brokers in New York City to register with the Department of Consumer Affairs and Business Licensing;

6,958,700 adults have an arrest or conviction record, approximately 45% of all adults in the state. NELP, *supra*, <https://www.nelp.org/publication/fair-chance-licensing-reform-opening-pathways-for-people-with-records-to-join-licensed-professions/>; see also, The National Judicial College, *Most Judges Believe the Criminal Justice System Suffers from Racism*, July 14, 2020, <https://www.judges.org/news-and-info/most-judges-believe-the-criminal-justice-system-suffers-from-racism/>

¹⁸ UCLA Institute for Research on Labor and Employment, *Get to Work or Go to Jail*, March 2016, <https://www.labor.ucla.edu/publication/get-to-work-or-go-to-jail/>

¹⁹ Economic Policy Institute, *Employers Steal Billions from Workers’ Paychecks Each Year*, May 10, 2017, <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>

²⁰ Pinnacle Economics and the Mason Tenders District Council, *The Impacts of Suppressed Wages and Benefits for Re-entry Construction Workers in New York City*, PDF available upon request.

- Require all registered labor brokers to provide annual reporting on their business and labor practices, including (1) the number and percentage of workers they employ as employees and as independent contractors; (2) detailed recordkeeping for each worker and assignment, including worksite and type of work performed; (3) the demographics of their workforce, including race, gender, and ethnicity of workers by occupation; (4) median wages and benefits provided; (5) median length of employment; (6) number and percentage of workers who are under court-surveillance; and (7) whether and how labor brokers are in communication with probation or parole officers or other criminal legal system representatives, including third-party reentry organizations;
- Require that brokered workers receive wages and benefits equal to permanent or direct-hire workers;
- Require all registered labor brokers to provide adequate notice to each worker in writing in the worker's primary language regarding each new assignment, including the name and contact information for the company where the worker will be working, a description of the job the worker will be performing, employer obligations under relevant law, including work hours, benefits, and pay;
- Require all registered labor brokers to post wage bonds that will cover their workers' claims for unpaid wages; and
- Ban labor brokers in hazardous or risky industries, such as construction, where extensive training and experience is critical to enforcing health and safety standards.

Respectfully submitted,



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Testimony Northwest Bronx Community & Clergy Coalition, Inc.
Sandra Lobo, Executive Director

Topic Committee on Consumer Affairs and Business Licensing Oversight Hearing -
Employment Agencies and other Labor Placement Businesses

Date Monday, April 19, 2021

Good morning. My name is Sandra Lobo and I am testifying today on behalf of the Northwest Bronx Community and Clergy Coalition (NWBCCC). First, I want to thank the Committee on Consumer Affairs and Business Licensing for the opportunity to testify today.

As a 47 year old organization committed to addressing the root causes of inequality and poverty within our community and borough, we at NWBCCC firmly believe that we must work alongside organized labor to bring more union jobs to the Bronx.

Systems of mass incarceration act in direct opposition to our goals of uplifting our community, because these systems have created a racial caste that inhibits formerly incarcerated Bronx workers from fully reentering society post release. As we move forward in the fight to undo racist drug laws and other racial disparities in the criminal justice system, we must also ensure those workers with a criminal record have a real chance to enter back into our communities, with good, safe jobs.

Non-union construction labor brokers, known as body shops, offer workers the opposite of a quality career. They prey off of an easily exploitable workforce, and treat these workers as if they were disposable. These companies are dangerous for the health and growth of our Northwest Bronx community -- a community that has been one of the most affected by mass incarceration, and countless other racist policies. Body shops take those who need financial help, support with employment, kindness, and empathy, and give them nothing. They offer these workers a fake second chance, one that treats them as if they were in an extension of prison.

Body shops, with their poverty wages and egregious treatment of workers, don't create the kinds of jobs we need. This community has time and time again been over policed and offered too few

resources. Body shops are just one more form of policing, one more form of trying to control a low income, justice-affected community. Body shops act in direct opposition to real re-entry careers for workers. Our community needs careers, with access to healthcare and retirement security, not another means for black and brown bodies to be taken advantage of.

New York City must not allow employers to exploit workers simply because they have criminal records. The City Council must act to regulate body shops now.

Thank you.

Testimony New York Communities for Change

Topic Committee on Consumer Affairs and Business Licensing Oversight Hearing -
Employment agencies and other labor placement businesses.

Date Monday, April 19, 2021

Good morning. My name is Jonathan Westin and I am testifying today on behalf of New York Communities for Change. First, I want to thank the Committee on Consumer Affairs and Business Licensing for the opportunity to testify today.

New York Communities for Change (NYCC) is one of the largest grassroots, membership-driven, community-based organizations in New York. As a coalition of working families in low and moderate-income communities, NYCC uses community organizing, direct action and legislative advocacy to advance the cause of social and economic justice.

NYCC has been on the frontline of efforts to reform the criminal justice system in New York City. We are committed to the fight for fair housing for people on probation and parole and to the demand for both job opportunities and jobs with dignity for workers returning from incarceration. We have long partnered with Laborer's Local 79 in demanding that New York City enact policies that ensure real affordability, real local hire and real livable wages.

We have been hearing from our partners and from members about a new exploitative employment model called Body Shops. Body Shops take the labor of justice affected workers and broker it at an astronomical markup to the City's richest developers. Body shops take advantage of the scarcity of job opportunities available to formerly incarcerated New Yorkers. Barriers in housing, education, employment and disenfranchisement in the political process creates desperate workers willing to do anything to avoid returning to prison.

As a City, we must step up and protect these workers.

We have to act now to protect justice-affected New Yorkers reentering our communities. The New York City Council has the responsibility to protect its most vulnerable citizens against exploitative employers and dangerous working conditions. No contractor or developer should be allowed to condemn black and brown construction workers to economic imprisonment and bodily harm. That's re-sentencing, not real re-entry.

The Real Estate Board of New York to The Committee on Consumer Affairs of the New York City Council on Employment Agencies and Other Labor Placement Businesses

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association. Founded in 1896, REBNY represents commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople and other organizations and individuals active in New York City real estate. REBNY strongly supports policies that expand the local economy, grow, and improve the City's housing stock and create greater opportunities for all New Yorkers. Thank you to the City Council for the opportunity to testify today.

Despite the global pandemic, New York's construction industry remains one of the most robust in the world. With construction jobs anticipated to grow by the tens of thousands over the next few years, the construction industry provides an opportunity for thousands of New Yorkers to obtain good jobs and reach the middle class.¹ With this in mind, REBNY continues to work collaboratively with the Building and Construction Trades Council (BCTC), Building Trades Employers Association (BTEA), New York Building Congress, and others to highlight the importance of the construction and development industries for the future of New York City's economy. Last year, REBNY, BCTC and BTEA advanced a [critical agreement](#) that provided the framework needed to remobilize construction and create good jobs for all workers in this industry.

All workers are entitled to the protections of the law. REBNY also believes strongly in ensuring that all opportunities in construction are safe and fair - basic principles particularly important to uphold for vulnerable workers who have been formerly incarcerated or otherwise have been historically disenfranchised. While the New York construction industry can provide high-quality careers for thousands of New Yorkers, it is critical that effective protections against issues such as wage theft and unsafe working conditions are in place.

As with many industries, wage theft, unsafe conditions, and other issues have been documented in the construction industry. Among other instances of these practices, this includes allegations that so-called 'body shops' prey on socioeconomically vulnerable workers including people of color and particularly

¹ <https://www.buildingcongress.com/news/building-congress-in-the-news/NYC-Construction-Forecast-Remains-Strong>

formerly incarcerated individuals who are required to maintain employment as a requirement of their parole and therefore may be less able to come forward with allegations of labor abuses.

Addressing these issues certainly merits the attention and action of policymakers. To that end, REBNY recommends that the Council consider the following proposals:

First, as the Council deliberates the FY2022 budget, it should consider increasing funding to support the Department of Consumer Affairs and Worker Protection and other agencies to better protect justice-involved and other vulnerable workers from wage theft and other unsafe or illegal practices. If allegations of companies working as 'body shops' are found to be true, the strongest steps should be taken to ensure that those workers are afforded the full protections of the law.

Furthermore, it would behoove the Council to consider proactive opportunities to grow the construction industry as an avenue for a more just and equitable workforce. REBNY recognizes that private-sector union construction is essential to the development of New York City, and our members account for most of union construction contracts. However, it is not practicable to contract union work for the entirety of all jobs. Moreover, because of practical constraints to union membership, there is a sizable pool of workers looking for jobs in construction that need to find alternative paths to employment, some of which could provide the experience needed to ultimately join labor unions.

The Council should consider legislation that would create an elevated minimum wage with benefits for construction projects that receive government assistance. Under this model, if a site receives government assistance, workers on the site would be guaranteed to be paid a wage and benefit that exceeds the minimum wage. Such a policy should also include local hiring requirements as well as reporting and disclosure requirements to provide transparency into who is working on the job site.

Finally, the Council should also consider partnering with non-for-profit organizations who are effectively bringing more individuals into the construction workforce, both union and non-union. REBNY is proud to partner with our sister organization, Building Skills New York, to do just that. Building Skills' mission is to provide an efficient and convenient process for finding a construction job for New Yorkers, particularly those who are formerly incarcerated or from communities of color, who historically have been unable to gain access to careers in the construction industry. Building Skills then focuses on job retention and job continuity for the workers it serves. Through this model, workers can also acquire advanced construction skills which can lead to broader career pathways and expanded opportunities with higher compensation levels, both through union and non-union trajectories. With the adverse effects of the pandemic still lingering, partnering with organizations like Building Skills could provide opportunities for thousands of New Yorkers.

To conclude, REBNY stands ready to work with the Council to help create good jobs for all workers. Thank you for the opportunity to testify today on these points.

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Testimony: Urban Upbound

Committee: Committee on Consumer Affairs and Business Licensing

Topic: Oversight Hearing - Employment Agencies and other Labor Placement Businesses

Date: Monday, April 19, 2021

Good Morning. My name is **Mitchell Gordon Taylor** and I am here representing Urban Upbound, an advocacy organization dedicated to breaking the cycle of poverty and eliminating the barriers to economic mobility. Thank you Chair Diana Ayala and all Council Members present for holding this hearing on such an important topic. Urban Upound supports the regulation of firms exploiting vulnerable reentry workers, as the practices of these agencies are damaging to our community and individual workers.

As our City and state move toward implementing criminal justice reforms, it is imperative legislators assist reentry workers in breaking down barriers to successfully reentering their communities. One of those barriers is the scarcity of work open to those following their incarceration, and the entities that use this to exploit the vulnerability of their position. Construction is one of the few industries welcoming formerly incarcerated individuals, prompting unscrupulous firms and employers to prey on them. Body shops have emerged, firms and agencies that are funneling reentry workers to nonunion firms, offering low wages, little to no benefits and oftentimes, poor safety conditions. These firms damage the financial health of communities and keep those reentering society in an impoverished state. Body shops are non-union construction labor brokers that engage in exploitative practices, preying on reentry workers and offering poverty-level wages. These firms are largely unlicensed and profit from using mass incarceration as a feeder system, supplying the city's richest developers with a cheap and vulnerable workforce. Body shop contractors exploit reentry workers by taking advantage of their restricted rights following incarceration, affording them little to no protections and low wages. Body shops foster cyclical poverty and must be regulated to end their abusive practices. Those reentering society cannot thrive while these labor brokers operate with little to no oversight. Regulating these shops will be instrumental in protecting reentry workers.

Urban Upbound is in staunch support of regulating body shops to protect our formerly incarcerated community members. The City Council has the responsibility to act to end their abuses practices and uplift those reentering society. Thank you.

Testimony Danny Coley

Topic Committee on Consumer Affairs and Business Licensing
Oversight Hearing - Employment agencies and other labor placement businesses.

Date Monday, April 19, 2021

My name is Danny Coley and I am a former Body Shop worker. Today I have a successful career as a member of Laborers' Local 79. For the first time in my life, I earn a decent salary with benefits. But my road here was not easy. Part of what made my transition back into the workforce difficult was a Body Shop called Marin Laborers. Body Shops like Marin prey on the vulnerabilities of justice-affected New Yorkers. They know how to recruit us, they know how to keep us compliant, and how to profit off the racism of mass incarceration.

Before I even left prison, I was conditioned to work for nothing or be punished. Mass incarceration disproportionately impacts the Black community and primes us for exploitation. While I was away, like everyone in prison, I had no choice but to work. Refusing to work could result in solitary confinement. Having experienced that torture for 180 days, I knew work, however menial, was preferable. We had no say in our wages, which were only cents on the dollar.

When you are released, you are not free. You become a prisoner of institutions meant to help you. Throughout my life I have felt trapped in several programs designed to help me re-enter the workforce because they only ever forced me into degrading, low pay work with the constant threat of a parole violation if I refused. The last time I left prison I went through a program called CEO. After months of working directly for CEO for about \$50 a day, Marin Laborers asked CEO for workers and I was sent to the job.

When I took the job at Marin, \$13 an hour to work construction seemed like a good deal compared to what I had been making. Finding work with a criminal record is hard, I thought this was the best I could get. In reality, I was working in one of the City's most dangerous jobs for minimum wage. Even after I was promoted to foreman and eventually earned a pay increase, I never received benefits.

Marin got workers from CEO, but they also used us to recruit more re-entry workers. Like me, most of my coworkers were on parole. Marin knew we were all on parole, their hiring process and business model relied on it. Few employers will hire justice-affected workers, and we need to work to meet our parole requirements. Marin takes advantage of this by underpaying us,

knowing it will be hard for us to advocate for better wages because the threat of termination from them is a threat of re-imprisonment.

Incarceration and re-entry conditioned me to work for slave wages or go back to jail. I was conditioned to view Marin's job offer as an opportunity and not the exploitation it truly was. My parole status and incarceration history were turned into weapons against me. It is the same for every worker still trapped in Body Shops.

I would ask the City Council to regulate body shops and protect re-entry workers. My success should not be an exception for Body Shop workers. We all deserve the chance to break free from the cycle of mass incarceration and exploitation.

Testimony John Simmons

Topic Committee on Consumer Affairs and Business Licensing
Oversight Hearing - Employment agencies and other labor placement businesses.

Date Monday, April 19, 2021

Good morning, my name is John Simmons and I am a proud construction worker. I want to thank Committee Chair Diana Ayala and the entire City Council for giving me a space today to shine light on body shops in the construction industry. My story is not unique. Unfortunately, many justice-affected workers like myself share many similarities post release. We all look forward to finally being free, only to be welcomed by predatory employers who use our criminal backgrounds to disadvantage us.

The day I was released from prison, I promised myself I would never go back. I had determination and was hungry for success. It didn't take long to realize the system had something else planned for me. I was unemployable in the eyes of the world. There weren't many opportunities for me other than low-wage jobs that didn't help cover my basic needs. I ended up at the Center for Employment Opportunities (CEO), where they knew it didn't make a difference what kind of a job we got as long as it would keep our freedom. It was through CEO that I ended up working for a body shop.

What is extremely dangerous is that these body shops know we have to keep employment in order to maintain our freedom. They are aware they have the power to send us back to jail so they use this to force us into working under unsafe, unhealthy and unsanitary conditions. They know we are blocked from working in many industries, so they drive our wages down and deny us of needed benefits like healthcare. Many of us knew the way we were treated was not right, but we also knew that complaints would lead to retaliation so we kept quiet. Per NYS law, we can't even participate in labor protests. There is no real freedom for us and these body shops know it.

It wasn't until I was introduced to the unionized trades that I finally gained my freedom. Local 79 changed my life because I was able to achieve real financial independence. Body shops are a real threat to people like me. I urge this Council to regulate them and protect the men and women who only want a second shot at life with dignity and respect.

Thank you.

Testimony Kareem Marcus
Topic Committee on Consumer Affairs and Business Licensing
Oversight Hearing - Employment agencies and other labor placement businesses.
Date Monday, April 19, 2021

Good morning,

My name is Kareem Marcus I am a member of the Laborers' Local 79 and I live in the Bronx. Thank you to the city council and chair Ayala for the opportunity to testify about the issues I have experienced due to lack of oversight in Body Shops in the construction industry.

My first construction job, I was brokered by a no-name Body Shop that supplied general labor to construction sites and paid cash off the books. The guy who ran the crew targeted recently released workers who were desperate for a job. We were paid cash \$100 a day and did not receive the proper overtime rate.

I then got a job with a Body Shop contractor called CSS, Construction Staffing Solutions. Most CSS employees were also recently released from prison, and the company used the current workers as an informal network to recruit others with a criminal history. I asked for \$18 an hour, but was offered \$15, which I accepted. We understood that CSS was charging much more than that for every hour we worked. During the interview, CSS told me that if I got hurt I should call them instead of an ambulance. That raised my eyebrows, it seemed like they wanted to save their behinds and send you to their doctor. I had no training on safety or how to use tools. While I was on coffee break, another CSS worker fell eight feet down a manhole and was seriously injured.

Body Shop construction also took a toll on my personal life. I wasn't making ends meet off of 40 hours, so we had to come in Saturday and Sunday and stay late Monday through Friday. I was banging up my body working 7 days a week, 10 hour shifts, just to make a living. I couldn't even take my kids to the park in the summertime.

Through the pre-apprenticeship program Pathways to Apprenticeship (P2A), I was finally able to leave Body Shop construction and get into Local 79's apprenticeship program. I'm finally able to spend time with my family and provide them with benefits and security. Union construction is a blessing to reentry workers; we should no longer allow Body Shops to segregate Black and Brown bodies into these shady firms not subject to any regulation or oversight.

Thank you.

Testimony Michael Negron
Topic Committee on Consumer Affairs and Business Licensing
Oversight Hearing - Employment agencies and other labor placement businesses.
Date Monday, April 19, 2021

Thank you for the opportunity to speak today. My name is Michael Negron and I used to work for a Body Shop called SLG Construction. Body Shops in New York City are targeting black workers with histories of incarceration, people like me. These Body Shops offer us empty promises of gainful employment and chances for advancement. They are profiting off our labor and paying us less than the value of our work.

Working for a Body Shop is like being held hostage to the pay and work conditions dictated to us. For many of Body Shop workers, failing to be employed is a parole violation that could get you sent back to prison. That work requirement makes us especially vulnerable to exploitation by Body Shops. We are paid low wages, while Body Shops get rich. SLG worked for some of the largest nonunion general contractors including Gilbane, Triton and TG Nickle. SLG charged nearly twice my pay rate for every hour I worked.

My boss at SLG acted like he was doing me a favor by allowing me to work on dangerous construction sites, breaking my back at low pay for their profit. SLG's management constantly diminished us—even once trying to stop me from using a public bathroom. While SLG's management was leaving the clean restroom, they directed me to use a dirty temporary facility. It felt like being told I was separate and not equal.

SLG knew how to hold my criminal justice history over my head. But my coworkers and I started to speak up for ourselves. I knew there was a risk to me being fired, but I took a stand and tried to organize. I reached out to coworkers, attended worker organizing meetings and helped run a petition drive to advocate for better wages for all SLG employees.

SLG illegally demanded me to stop organizing. When I refused, I was fired. Eventually, with the help of Local 79, I filed charges with the National Labor Relations Board, which resulted in SLG paying my lost wages.

My story is just one example, but it shows how willing Body Shops are to dehumanize and degrade black re-entry workers. They do not care about our livelihoods, wellbeing or rights. Relegating re-entry workers to exploitative, dead-end jobs at Body Shops is no different than hiding us away in prison. Our problems do not disappear when we are forced into the shadows.

Many thousands of Black New Yorkers who served time in prison are trying to re-enter the economy and make a positive contribution to the neighborhoods where we live and build.

Nonunion construction is one of the few industries where we can find jobs after incarceration. I would ask the City Council to bring accountability to Body Shops. People leaving prison face many obstacles, but you could take action to eliminate the exploitation of Body Shops as one of them.

Testimony Tierra Williams
Topic Committee on Consumer Affairs and Business Licensing
 Oversight Hearing - Employment agencies and other labor placement businesses.
Date Monday, April 19, 2021

Good morning,

My name is Tierra Williams, I am a member of the Laborers' Local 79 and an intern with the organizing department. Thank you to the city council and chair Ayala for the opportunity to testify about the lack of oversight I have experienced while working at Body Shops in the construction industry.

I was one of the 18 primarily Black women survivors of sexual abuse or assault who were involved in the Attorney General's landmark \$1.5 million sexual harassment settlement against Body Shop contractor Tradeoff. While employed by Tradeoff, I was subjected to constant harassment. Tradeoff failed to address complaints, and instead protected sexual abusers.

I know many Black women and formerly incarcerated New Yorkers who also work for non-union labor brokers or Body Shop contractors. These dangerous jobs barely provide enough money for survival. Body shop workers are often in desperate need of work after getting released from prison. They must maintain employment as a condition of their parole. They face the real threat of re-imprisonment if parole officers discover they are out of work. Complaining about job conditions, sexual harassment, and other mistreatment can cost these workers their freedom. Firms like Tradeoff make big money sending Black and Brown construction laborers to work on development projects for poverty wages, with little training, and no benefits. Even those offering slightly over minimum are not doing us any favors. When I was making minimum wage, I relied on public assistance benefits, so tax dollars were basically subsidizing the Body Shop. When I got a small raise, I was kicked off those benefits, so any money I earned went towards paying for healthcare for my family at the end of the month.

We deserve to be treated as human beings, not as bodies to be abused and exploited on construction sites. For Black women construction workers like me, unionization and collective bargaining are essential for creating workplaces where contractors and developers treat us with dignity and respect, and providing real family-sustaining benefits.

Thank you.