

IN THE SUPREME COURT OF MARYLAND

JUAN CARLOS TERRONES ROJAS,*
et al.,

Petitioner,

SCM-PET-0138-2025

v.

F.R. GENERAL CONTRACTORS,
INC., *et al.,*

Respondent.

* * * * *

BRIEF OF AMICI CURIAE IN SUPPORT OF PETITION FOR CERTIORARI

Maryland law requires employers to pay workers for all hours they are required to work, including time spent reporting to designated locations and riding employer-mandated shuttles. Yet the Appellate Court of Maryland held that construction workers could be denied compensation for mandatory time spent waiting for and riding such a shuttle unless they could prove it was the “sole means” of access to the jobsite. The court’s novel evidentiary requirement allowed the employer to avoid liability by suggesting that workers *could have* reached the site by parking illegally, trespassing, or navigating unsafe routes. As employer’s counsel argued to the jury, “legal or not,” there were other ways in. This turns Maryland’s wage protections on their head by conditioning compensation not on the employer’s orders, but on whether the worker can ignore company rules, thereby risking termination, and disprove all hypothetical alternative paths onto the jobsite, no matter how unsafe or unlawful.

This approach directly contradicts *Amaya v. DGS Construction, LLC*, 479 Md. 515 (2022), where this Court clarified that the key question under Maryland’s wage laws is whether the employer requires the employee to report to a designated location. By imposing this new evidentiary burden, the court below undermines the remedial purposes of Maryland’s wage laws.

Wage theft already costs workers billions of dollars each year, particularly in low-wage, labor-intensive industries. See David Cooper & Teresa Kroeger, *Employers Steal Billions from Workers’ Paychecks Each Year*, Econ. Pol’y Inst. 1–4 (May 10, 2017), <https://files.epi.org/pdf/125116.pdf>. In Maryland, hundreds of thousands of low-wage workers—particularly immigrants, women, and people of color—are underpaid each year for the hours they work or denied wages altogether for time their employers require them to spend on the job.

Amici¹, the Public Justice Center and CASA Inc., submit this brief to situate the trial court’s error in the broader context of wage theft and urge the Court to grant certiorari to prevent the erosion of Maryland’s wage protections.

I. Wage Theft Is a Systemic Crisis That Disproportionately Harms Marginalized Workers

Wage theft, the failure to provide employees the wages or benefits to which they are entitled, is widespread and economically devastating. Jennifer J. Lee & Annie Smith,

¹ Amici’s statements of interest are in the Appendix.

Regulating Wage Theft, 94 Wash. L. Rev. 759, 765 (2019). Estimates suggest that wage theft costs workers as much as \$50 billion annually. *See* Cooper & Kroeger, *supra*, at 1–4. Minimum wage violations *alone* account for \$15 billion annually—a number exceeding the value of property crimes committed nationwide each year. *Id.* In Maryland, over 580,000 workers are shorted an estimated \$875 million in wages annually. Rachel Deutsch & Kate Hamaji, *Combatting Wage Theft with the Maryland Paystub Transparency Act of 2016*, Ctr. for Popular Democracy 2 (Feb. 2016).

A. Underreporting and Weak Enforcement Enable Widespread Abuse

Wage theft is grossly underreported. “Employers are unlikely to admit that they are paying workers less than the minimum wage, denying workers meal breaks, or otherwise breaking the law,” Anette Bernhardt et al., *Broken Laws, Unprotected Workers*, Nat’l Emp. L. Project 11 (2009), and employees often do not understand their rights, lack access to time records, or fear retaliation, *see* Matthew Fritz-Mauer, *The Ragged Edge of Rugged Individualism*, 54 Mich. J. L. Reform 735, 769 (2021). Furthermore, a survey of 4,000 workers found that 43% of workers who reported wage theft faced retaliation. Laura Huizar, *Exposing Wage Theft Without Fear*, Nat’l Emp. L. Project 4 (June 2019), <https://s27147.pcdn.co/wp-content/uploads/Retal-Report-6-26-19.pdf>. Retaliation tactics include reduced hours, increased workloads, or termination. Bernhardt, *supra*, at 24–25. Undocumented workers often fear immigration-related retaliation as well. Pat Kinsella, *Wage Theft Hits Immigrants – Hard*, The Ctr. for Pub. Integrity (Oct. 14, 2021), <https://publicintegrity.org/inequality-poverty-opportunity/garment-immigrant-workers-wage-theft/>. These dynamics create a culture of fear and silence.

B. Wage Theft Deepens Poverty and Harms Communities

The costs of wage theft are felt deeply by those who bear them, particularly because these violations are most prevalent in low-wage industries like retail, construction, food services, and health care. U.S. Dep’t of Lab., *2024b Low Wage, High Violation Industries* (2024), <https://www.dol.gov/agencies/whd/data/charts/low-wage-high-violation-industries>.

Wage theft results in increased poverty rates. Seventeen percent of low-wage workers have experienced a minimum wage violation and lost on average 25% of their weekly income. Cooper & Kroeger, *supra*, at 9. Highly relevant to this case, another study found that 70% of workers were not paid for time worked outside their regular shifts. Fritz-Mauer, *supra*, at 748. A U.S. Department of Labor study found that, in New York and California, approximately 67,000 families live below the poverty line *because* of wage theft. U.S. Dep’t of Labor, *The Social and Economic Effects of Wage Violations: Estimates for California and New York* 48 (2014), <https://www.dol.gov/resource-library/social-and-economic-effects-wage-violations-estimates-california-and-new-york>; Cooper & Kroeger, *supra*, at 2.

For individuals and families already struggling to make ends meet, “[b]eing denied payment often cascades into other escalating harms.” Fritz-Mauer, *supra*, at 749. “The essence of poverty lies in how a person’s hardships coalesce, interact, and build upon one another.” *Id.* When wages go unpaid, families are forced to choose between essentials like food, housing, and medicine. *Id.*

These ripple effects impact low-wage workers across all demographics, but they fall hardest on women, Black and Latine people, and immigrants. One survey found that the rate of minimum wage violations for Black workers was three times higher than for white workers. Bernhardt, *supra*, at 48. Additionally, “[w]omen were significantly more likely than men to experience minimum wage violations, and foreign-born workers were nearly twice as likely as their U.S.-born counterparts to have a minimum wage violation.” *Id.* at 5, 43.

Several compounding factors contribute to these disproportionate burdens. Wage theft is most prevalent in the under-regulated low-wage industries that disproportionately employ these populations. See Matt Finkin, *From Weight Checking to Wage Checking*, 90 Ind. L. J. 851, 851–55 (2015). For example, immigrants make up approximately 30% of U.S. construction workers. Nat’l Immigr. F., *Immigrant Workers in the U.S. Construction Industry* (2023), <https://immigrationforum.org/article/immigrant-construction-workers-in-the-united-states/#:~:text=Construction%20Industry%20Demographics%20and%20Employment,of%20the%20industry's%20entire%20workforce>. In Maryland, the proportion is even higher: immigrants make up approximately 36% of the state’s construction labor force. Am. Immigr. Council, *New Americans in Maryland* (2023), <https://map.americanimmigrationcouncil.org/locations/maryland/#>.

Businesses looking to minimize labor costs while avoiding penalties often target these populations, knowing they are the least empowered to complain. “[E]mployers

understand that the odds that one of their employees will file a claim against them is miniscule,” and “they can decrease the likelihood . . . by retaliating against any worker who does complain.” Nicole Hallett, *The Problem of Wage Theft*, 37 Yale L. & Pol’y Rev. 93, 107–08 (2018). Retaliation is illegal, but a worker would have to file a claim and wait for the outcome, and “[i]n the meantime, the worker is out of a job, unable to pay [their] bills (or deported to his or her home country, unable to return).” *Id.* Ultimately, businesses know that women, Black people, Latine people, and immigrants “are less likely to have the luxury of the time it takes” to challenge exploitation and face the consequences. *Id.*

Though the most vulnerable shoulder the greatest burden, the effects of wage theft reach everyone. For the “many people genuinely seek[ing] to run law-abiding businesses,” wage theft “distorts the competitive market.” Fritz-Mauer, *supra*, at 755–57; *see also* Elizabeth J. Kennedy, *Wage Theft as Public Larceny*, 81 Brooklyn L. Rev. 517, 529–32 (2015) (“By engaging in wage theft, employers can illegally—and significantly—reduce their payroll costs and underbid competitors.”). Meanwhile, the local government bears the cost of lost tax revenue. Kennedy, *supra*, at 531. Then, “[i]n a double blow to state and local economies, since low-income workers are likely to circulate their earnings in the local economy by spending on basic necessities like food, clothing, and housing,” wage theft also burdens local businesses where workers would have spent that money. *Id.* at 531–32. Plus, “the workers and their families are often forced to rely on already strained public safety nets, such as food stamps, food banks, . . . subsidized housing, and shelters.” *Id.* at 532; Cooper & Kroeger, *supra*,

at 13–15 (showing, empirically, that wage theft losses increase reliance on public assistance).

II. Employers Use Wage Theft as a Business Model

Wage theft is often a calculated choice, with some employers building their business models around it. For example, misclassification of employees as independent contractors can reduce labor costs by 30%, allowing those businesses to undercut law-abiding competitors. John Schmitt et al., *The Economic Costs of Worker Misclassification*, Econ. Pol’y Inst. (Jan. 25, 2023). This is a typical practice in construction where employers hire workers for relatively long periods without providing benefits or job security; according to a 2021 study, a typical construction worker, as an independent contractor, loses out on as much as \$16,729 per year in income and job benefits. *Id.* Others undercapitalize their businesses to evade wage judgments. David Weil, *Improving Workplace Conditions Through Strategic Enforcement: A Report to the Wage and Hour Division* 9–10 (2010), <https://www.dol.gov/whd/resources/strategicEnforcement.pdf>.

Some companies outsource labor to smaller subcontractors or temporary agencies, insulating themselves from liability. These structures create “fissured workplaces” that make enforcement and recovery exceedingly difficult. They also create a cascading effect of wage theft as larger employers pressure subcontractors to reduce their labor costs. David Weil, *Creating a Strategic Enforcement Approach to Address Wage Theft: One Academic’s Journey in Organizational Change*, J. of Indus. Rels. (2018). That

pressure, combined with the cost-savings, may lead otherwise law-abiding subcontractors to choose wage theft.

When it comes to off-the-clock wage theft, employers want more productivity for lower pay. In cases the PJC has litigated, we have seen how inefficient processes contribute to wage theft. For instance, in *Trotter v. Perdue Farms, Inc.*, No. CIV.A.99-893-MPT, 2002 WL 34226966 (D. Del. Aug. 5, 2002), poultry plant employees spent approximately eight unpaid minutes a day obtaining, donning and doffing personal protective equipment off the clock, which added up to approximately \$500 unpaid per worker per year. Steven Greenhouse, *Poultry Plants to Pay Workers \$10 Million in Compensation*, NY Times, at A-10 (May 10, 2002). This company, one of the largest employers on Maryland's Eastern Shore, tried to save millions of dollars by nickel and diming its workers this way. Once required to pay, the company changed its process to reduce the time involved.

In the case below, F.R. General Contractors required employees to report to a parking site and take a company shuttle to the worksite. They kept no records of the wait and travel time and did not compensate employees for it. That time was nonetheless integral to their employment—and to the company's operations. If employers are allowed to exclude such time from compensable work, they are incentivized to use cheap, inefficient, or exploitative systems that shift business costs onto low-wage workers, such as providing too few shuttles and increasing wait time. The Appellate Court's decision risks legalizing wage theft in other contexts where employers control access to worksites, transportation, or shift logistics.

CONCLUSION

Wage theft is already a crisis. The decision below invites employers to expand unlawful practices, authorizing employers to create systems that require but do not compensate labor.

Amici urge this Court to grant certiorari to correct the misreading of *Amaya* and clarify that Maryland's wage laws prohibit employer-mandated off-the-clock labor.

Respectfully submitted,

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**STATEMENT OF INTENT TO FILE SUPPLEMENTAL BRIEF PURSANT TO
RULE 8-511(E)(2)**

Should this Court grant the petition for a writ of certiorari, the amici intend to seek consent of the parties or move for leave to file an amicus curiae brief on the issues before the Court.

CERTIFICATE OF RULES COMPLIANCE

1. This brief contains 1,882 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Sahar Atassi
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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 20-201(g), on June 16, 2025, the foregoing brief of amici curiae in support of petitioner was served via the MDEC File and Serve Module and that, pursuant to Rule 8-502(c), two copies each were mailed, postage prepaid, first-class, to:

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APPENDIX

STATEMENT OF INTEREST

The **Public Justice Center** (“PJC”) is a non-profit civil rights and anti-poverty legal organization established in 1985. Adopting a race equity lens, PJC uses impact litigation, public education, and legislative advocacy to reform the law for its clients. Its Appellate Advocacy Project expands and improves representation of disadvantaged persons and civil rights issues before the Maryland and federal appellate courts.

PJC has a longstanding commitment to ending wage theft and ensuring that Maryland’s wage laws are liberally interpreted, consistent with the General Assembly’s humanitarian objectives. As part of that commitment, PJC has participated as amicus curie in multiple stages of the *Amaya* and *Rojas* litigations, and in numerous other wage justice cases. *See, e.g., Martinez v. Amazon.com Services, LLC*, SCM-MISC-0017-2024; *Amaya v. DGS Construction, LLC*, 479 Md. 515 (2022) (amicus); *Rojas v. F.R. General Contractors, Inc.*, ACM-1983-2023, 2025 WL 1122085 (Apr. 16, 2025); *Pinnacle Group, LLC v. Kelly*, 235 Md. App. 436 (2018); *Peters v. Early Healthcare Giver, Inc.*, 439 Md. 646 (2014); *Salinas v. Com. Interiors, Inc.*, 848 F.3d 125 (4th Cir. 2017); *Heath v. Perdue Farms*, 87 F. Supp. 2d 452 (D. Md. 2000).

CASA, Inc. (“CASA”) is a national non-profit membership organization with more than 173,000 lifetime members and physical offices in four states including Maryland, Virginia, Pennsylvania, and Georgia. Founded in Maryland in 1985, CASA’s members are predominantly non-citizens in a variety of immigration statuses. CASA’s mission is to create a more just society by building power and improving the quality of

life in working-class Black, Latino/a/e, Afro-descendent, Indigenous, and immigrant communities. From CASA's beginnings in a church basement, we have envisioned a future with diverse and thriving communities living free from discrimination and fear, working together with mutual respect to achieve human rights for all.

CASA operates Worker Centers where day laborers can come to seek employment in a safe environment, ensuring that they have access to fair wages and safe working conditions. CASA's legal team is a leader in fighting wage theft and workplace abuse, recovering hundreds of thousands of dollars for workers who were unjustly denied fair wages.