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My name is Siobhán McGrath. I am a Policy Researcher with the Brennan Center for Justice, a member of the New York Day Labor Coalition. Thank you for the opportunity to provide testimony on the very pressing task of finding solutions to the exploitative working conditions currently faced by day laborers in New York City.

The Brennan Center works to promote the creation of good jobs, and policies to ensure that everyone in our society – especially immigrants and people of color – has access to them. Increasingly, we are focusing on the lack of enforcement of laws that exist to protect workers. To this end, we are conducting a long-term study that is documenting pervasive violations of employment and labor laws in fourteen industries in New York City. We are finding that the problem of workplace violations is much broader than is commonly understood, with growing numbers of workers enduring minimum wage and overtime violations, unsafe working conditions, discrimination, and retaliation for speaking up.

Day laborers stand out as particularly vulnerable to this type of exploitation – facing constant uncertainty about whether they will be paid for their work or whether they’ll be able to escape injury during the course of the workday. There are about five-dozen corners in New York City where day laborers seek work, mostly in the outer boroughs. It is estimated that every day as many as 8,300 workers look for jobs on these corners. The total number who do so over the course of a year is much higher.

The majority of day laborers work in the construction industry, and most are hired by subcontractors who bring them to specific work sites. Because the construction industry is project-based, employment relationships are short-term and there is no such thing as a permanent workplace. This means that contractors have multiple opportunities to break labor laws. One common practice is to misclassify workers as independent contractors, allowing the employer to entirely sidestep responsibility for meeting legally required standards.

In order to fully understand the working conditions experienced by day laborers, I'd like to review some key findings from the New York Day Labor Survey, conducted in 2003 by Abel Valenzuela of UCLA and Edwin Melendez of New School University. Of the 290 day laborers surveyed,

- A full 50% experienced non-payment of wages;
- 60% were paid less than agreed;
- 39% were abandoned at the work site;
- 14% were paid with a bad check;
- 61% had no access to food or water; and
- 53% had no breaks.

Day laborers in construction also face significant health and safety risks on a daily basis. For example, we've heard stories of workers being asked to remove the safety equipment that they brought with them to the jobsite; the worst cases involve fatal injuries. Of the workers surveyed by Valenzuela and Melendez:

- 36% were asked to do hazardous work over the prior 12 months;
- 63% were not provided with any protective clothing or equipment by their contractor;
- 12% were injured on the job at least once in previous year;
- 46% did not seek medical treatment for the most serious injury.
- Of those that did seek treatment, 28% reported that the worker paid for the treatment, 28% that the employer paid, and 44% some other form of payment (Medicaid, emergency, or unpaid).
- 90% of the workers did not make a Workers Comp insurance claim.

Workers' lack of knowledge about their rights may be one of the factors that contribute to the prevalence of workplace violations in this industry. Of the surveyed workers:

- 61% of the workers surveyed said they did not know what rights they had; and
- 80% did not know where or to whom they could report workplace abuses.

Most troubling is the fact that even when day laborers are aware of their legal rights, they are effectively prevented from exercising them. Of the surveyed workers:

- 29% feared retaliation if they reported an abuse.
- Of those who feared retaliation,
 - 47% feared violence;
 - 42% feared being fired;
 - 55% feared non-payment of wages; and
 - 67% feared being reported to the INS.

Clearly, these working conditions are unsustainable and unacceptable. They hurt workers, they hurt families, and in the end, they hurt our communities.

Comparable studies of day laborers have been conducted in Los Angeles, Tucson, Cleveland, Chicago, and nationally. These studies, along with some of the relevant statistics from them, are

listed in the appendix to my testimony. They demonstrate that in many cases, the construction industry in other cities is structured in a similar way to New York's – the same types of contractors hire the same groups of workers, in similar ways. Day labor corners in other cities operate much like they do in New York, and the types of abuses faced by workers are often the same and often occur at similar rates.

Therefore, successful models developed in other cities should be the starting point for creating solutions here in New York City – in particular the types of Day Labor Centers that my colleagues are describing here today. These Centers can be a vehicle for reigning in abusive contractors, setting decent standards for wages and working conditions, facilitating community relations, and potentially fulfilling other needs of day laborers that are currently not being met. A study conducted by Hector Cordero-Guzman, Chair of the Black and Hispanic Studies Department at Baruch College, CUNY, recently documented some of these needs, including affordable housing, childcare, ESL classes, training and education on workers' rights conducted in multiple languages, transportation to job sites, skills development, and occupational training for jobs that are in demand.

I therefore urge you to consider a multi-pronged approach to addressing the problems faced by day laborers. This approach should include substantive support for job centers run by and for day laborers, speaking out in support of day laborers when their rights are abused, and implementing legislation that offers day laborers greater protection.

Thank you again for the opportunity to speak about this most important issue.

Appendix: Day Labor Studies

Cordero-Guzmán, Héctor, Abel Valenzuela, Blanca Lopez and Elizabeth Diaz. Forthcoming. "Day Laborers and Community Based Organizations." New York: New School University.

Day Laborer Coalition. 2005. "Survey of Latino Day Labor Workers." Chicago: Day Laborer Coalition.

- 9.8% of respondents stated that there is preferential treatment based on gender and age in getting placed at a job
- 7.7% reported earning less than minimum wage
- Of those who reported working overtime, 57.9% reported that they did not receive overtime wages.

Kerr, Daniel, and Christopher Dole. 2001. "Challenging Exploitation and Abuse: A Study of the Day Labor Industry in Cleveland; Report Prepared for the Cleveland City Council." Cleveland, OH: Cleveland Homeless Oral History Project, Case Western Reserve University and the Day Laborers' Organizing Committee, Cleveland, Ohio.

- 58.4% paid less than quoted wage.
- 45.5% worked less hours than quoted.
- 55.8% not paid overtime after 40 hours.
- 31.2% of total and 39.6% of African-Americans experienced racial discrimination.
- 20.8% of total and 33.3% of females reported gender discrimination.
- 70.1% reported unsafe worksites
- 48.1% experienced retaliation.

Smith, Kelly Eitzen. 2003. "Conditions and Legal Consciousness of Homeless Day Laborers in Tucson, AZ." Tucson: The University of Arizona Center for Applied Sociology.

- Of 11 workers injured on the job, 10 reported the injury but only 2 received workers' compensation
- 13.5% were not provided with toilets, 35.7% were not provided with soap to wash, 14.3% were not provided with drinking water and 14.3% were not provided with breaks

United States General Accounting Office. (*now Government Accountability Office*) 2002.

"Worker Protection: Labor's Efforts to Enforce Protections for Day Laborers Could Benefit from Better Data and Guidance." Washington, DC: United States General Accounting Office.

- Day laborers are prone to workplace abuses and are probably undercounted.
- Researchers report that over half the day laborers in their studies were not paid the wages due to them, corroborating agency reports that day laborers complain at least once a week about nonpayment of wages.
- Because neither the Wage & Hour Division nor OSHA can get complete information about potential violations involving day laborers, it is hard to focus resources on them.
- Day laborers are generally reluctant or unaware of their right to complain to authorities about not being paid promised wages or working in unsafe conditions.

Valenzuela, Abel Jr. 1999. "Day Laborers in Southern California: Preliminary Findings From the Day Labor Survey." Los Angeles: National Employment Law Project and Farmworker Justice Fund.

- 48% of workers experienced non-payment of wages at least once.
- 52% were paid less than agreed.
- 33% were abandoned at work site.
- 28% were paid with a bad check.
- 59% had no access to food or water.
- 48% had no breaks.

Valenzuela, Abel Jr., and Edwin Melendez. 2003. "Day Labor in New York: Findings from the NYDL Survey." New York City: Community Development Research Center and Center for the Study of Urban Poverty.

———. 2004. "Additional Findings From the NY Day Labor Survey." New York, NY.