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September 15, 2021

The New York City Council
Committee on Consumer Affairs and Licensing
City Hall Park
New York, NY 10007

RE: Support for Bill 2318-2021, Licensing of Labor brokers

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

On behalf of the National Employment Law Project (NELP), we write in strong support of Bill 2318-2021 sponsored by Council Member Diana Ayala providing for the licensing of labor brokers. The bill is a critical and commonsense first step in demanding transparency and accountability from labor brokers, like so-called “body shops” and temporary staffing agencies, that drive occupational segregation and degrade working conditions for New Yorkers.

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.

Labor Brokers, “Body Shops,” Drive Occupational Segregation and Drive Down Wages and Safety

Labor brokers¹ — entities that hire and pay workers to perform work for third party companies — make money by charging the companies a markup

¹ Bill 2318-2021 refers to labor brokers as labor service providers. In New York City labor brokers that are organized to target workers on parole for construction laboring are referred to as “body shops.”



on the workers' hourly wage. Labor brokers compete with one another on the major cost they can control, labor costs. This competition drives down workers' wages, degrades working conditions, and incentivizes cutting corners on training and workplace safety and health standards.²

Labor brokers are an engine of occupational segregation, sorting Black, Latinx, and other people of color into a second-tier racialized employment status where they do the same or similar work as workers hired directly by the third-party companies, but for less pay, nearly non-existent benefits, more hazardous conditions, and no job security.³

Labor Brokers, “Body Shops,” Exploit the Vulnerability of Workers on Parole

The labor broker system can work in tandem with criminal legal systems – systems that are widely-recognized by both systems-actors and advocates to target people of color⁴ – to lock court-surveilled workers⁵ into underpaid,

² See Laura Padin & Maya Pinto, *Lasting Solutions for America's Temporary Workers*, National Employment Law Project, Aug. 26, 2019, <https://www.nelp.org/publication/lasting-solutions-americas-temporary-workers/>.

³ For example, Black and Latinx workers are overrepresented in temporary staffing work. Black workers comprise 12.1 percent of the overall workforce, but 25.9 percent of workers employed by temporary staffing agencies. Latinx workers comprise 16.6 percent of all workers but 25.4 percent of workers employed by temporary staffing agencies. National Employment Law Project, *America's Nonstandard Workforce Faces Wage, Benefit Penalties, According to U.S. Data*, June 7, 2018, available at <https://www.nelp.org/news-releases/americas-nonstandard-workforce-faces-wage-benefit-penalties-according-us-data/>.

⁴ 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/pdfdownloads/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/>; 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/>;

⁵ “Court-surveillance” here refers to the myriad of supervision and surveillance programs directly or indirectly operated by criminal courts and prosecutorial offices, including parole, probation, non-detained pre-trial supervision, and diversion. These programs are varied, but such programs generally begin with a period of incarceration, enforce compliance through the threat of re-incarceration, and regularly include requirements to seek and maintain employment and to pay court-related financial debts. Criminal courts outsource the enforcement of sentences to other state or county offices (such as New York's Department of Corrections and Community Supervision which enforces both prison sentences and parole) or non-governmental contractors such as private “work-rehab” facilities like the

insecure, and dangerous work. In New York, so-called “body shops” target workers on parole for temporary construction jobs. Workers on parole are made desperate for work by court-surveillance and the threat of re-incarceration. These temporary jobs pay poverty wages, provide little to no health and safety training, and offer no viable pathway to better-paid, unionized work in the construction industry.

The threat of re-incarceration for New Yorkers on parole is real, and it is racist. New York State reincarcerates more people on parole for technical rule violations than any other state.⁶ Technical rule violations are violations of parole rules, not allegations of a new criminal offense. These rules regularly include passing and paying for alcohol and drug tests, paying criminal justice debt, completing and paying for court-mandated classes, abiding by curfew rules, 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.⁷ 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.⁸

Court-surveilled workers face pressure from the parole system to accept any job, no matter how predacious it may be, or risk technical rule violations that lead to re-incarceration. Labor brokers recognize these workers’ vulnerability, and they exploit it. 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 and work quality.

Current Models Demonstrate New York’s Neighborhoods and Communities of Color Carry the Economic Burden of Labor Broker Practices

Salvation Army. See e.g., Reveal News from the Center for Investigative Reporting, “Rehab Work Camps Appear to Violate Federal Law, Senators Say,” November 24, 2020,

<https://revealnews.org/article/rehab-work-camps-appear-to-violate-federal-law-senators-say/>

⁶ A recent report by Columbia University found that in 2019, 40 percent of people sent to New York prisons were incarcerated for technical rule violations. Columbia University Justice Lab, *The Enormous Cost of Parole Violations in New York*, March 2021, <https://justicelab.columbia.edu/cost-of-ny-parole-violations>.

⁷ New York State Department of Corrections and Community Supervision, *Community Supervision Handbook: Revocation*, <https://doccs.ny.gov/community-supervision-handbook/revocation>.

⁸ Columbia University Justice Lab, *supra*, note 3.

Labor brokers hide their role in depressing wages and entrenching occupational segregation behind a lack of transparency and oversight. Bill 2318-2021 would provide the necessary primary source data and transparency to confirm and refine what current economic modelling already demonstrates.

Current economic impact models show that labor brokers not only harm the individual workers who are locked into this substandard employment system but have ripple effects across the neighborhoods these workers live in. The authors of a recent IMPLAN⁹ economic impact study on New York City's body shops demonstrated that the City's neighborhoods of color carry a disproportionate share of the neighborhood-wide impacts in lost consumption activity, lost neighborhood job opportunities, and lost neighborhood income.¹⁰

An estimated 9,173 formerly incarcerated construction workers provided 13.8 million hours of work in 2020 in New York City.¹¹ In modelled scenarios where workers earn \$17 per hour with no benefits — a typical wage for “body shops” — these workers lose \$301.1 million dollars in wages (and \$153.6 million in benefits) in comparison to Laborers' Local 79 construction workers.¹² This dramatic loss of income leads to significant reductions in household spending which, in turn, lead to \$291 million less in sales, \$98.9 million less in income, and 1,732 fewer jobs in New York City.¹³

Neighborhoods and communities of color in New York City shoulder a disproportionate share of this loss in income and investment. In the IMPLAN study's models, approximately 69.7 percent of the lost jobs and 65.3 percent of lost income affect people of color in the City.¹⁴ The incidence of negative impact for people of the color is the greatest in the Bronx (79.1 percent of total income losses), the borough with the highest percentage of people of

⁹ Impact Analysis for Planning (IMPLAN) refers to modeling techniques to conduct regional economic impact analysis originally developed by the US Department of Agriculture to assist federal agencies in land and resource management planning. Like any economic modelling, IMPLAN creates an abstraction of the real world which relies on assumptions that may be imperfect. Bill 2318-2021 would provide the necessary primary source data to confirm and refine what current economic impact modelling already demonstrates.

¹⁰ This study was commissioned to model and measure the impact of body shops on lost job opportunities and lost income in New York City's neighborhoods across its five boroughs. Impacts of Suppressed Wage and Benefits for Re-entry Construction Workers in New York City, at 2.

¹¹ *Id.*

¹² *Id.*

¹³ In scenarios where these workers earn \$25 per hour with no benefits, they and their communities still suffer a significant loss in income and investment. The workers lose \$43.5 million dollars in wages and \$147.5 million in benefits in comparison to Laborers' Local 79 construction workers. This loss in income leads to \$184.6 million less in sales, \$62.7 million less in income, and 1,099 fewer jobs in New York City. *Id.* at 2.

¹⁴ *Id.* at 2.

color, followed by Queens and Brooklyn, the boroughs with the second and third largest percentages of residents of color. These current models suggest that the loss in income and investment is compounded by the financial and real estate industries' long-term policies of neighborhood redlining, housing discrimination, and segregation.

Bill 2318-2021 is a Critical, Commonsense First Step in Demanding Transparency and Accountability from Labor Brokers

Bill 2318-2021 is a critical, commonsense first step in demanding transparency and accountability from labor brokers. The bill, which would require labor brokers to obtain licenses from and submit twice-yearly reporting to the Department of Consumer and Worker Protection, would provide much-needed information about how these entities operate, who they employ, and how they treat their workers.¹⁵ And it would provide the Department with the ability to suspend, revoke, or deny the licenses of labor brokers with poor track records on employment law compliance or other evidence of misconduct.

The bill would also require labor brokers to provide written notice to each worker at the beginning of their employment about their rights, and another written notice at the beginning of each new assignment about the terms of the work, including the name and address of the worksite, the type of work to be performed and safety and training required, hours, wages and benefits, duration of assignment, and workers' compensation coverage. Although these "right to know" provisions appear basic, they represent a seminal change for many employees of labor brokers, who often have no notice of the fundamental terms and conditions of their employment.¹⁶

The bill would also prohibit retaliation against workers who try to enforce the bill's provisions and would provide a private right of action for any violations of the law.

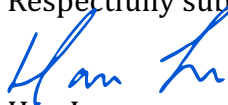
If passed, this bill would establish New York City as a leader in bringing transparency to opaque and unregulated labor brokers and in challenging employer practices that funnel people of color and court-surveilled workers into underpaid and insecure work that exacerbates racialized economic

¹⁵ The information labor brokers would need to disclose in twice-yearly reporting includes the following: the number of workers they employ and, for each worker, demographic information, length of employment, hourly wage and benefits, worker classification reported to workers' compensation carrier, and name and information for third party client where each worker works. The labor broker would also need to disclose any pending civil or criminal investigations and litigation alleging violations of labor and employment law.

¹⁶ Lasting Solutions for America's Temporary Workers, *supra* note 1, at 10.

inequality. For these reasons, we support bill 2318-2021 and ask that you vote for its passage.

Respectfully submitted,



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