FILED, Clerk of the Supreme Court, 27 Jun 2025, **089632**, **AMENDED**

SUPREME COURT OF NEW JERSEY

SERGIO LOPEZ, *Plaintiff-Petitioner,* v. MARMIC L.L.C, and MIKE RUANE, individually, *Defendants-Respondents.*	SUPREME COURT OF NEW JERSEY Docket No. 089632 APPELLATE DIVISION DOCKET No.: A-2391-22

BRIEF OF AMICI CURIAE LAW AND LABOR PROFESSORS IN SUPPORT OF PLAINTIFF-PETITIONER SERGIO LOPEZ

Joanne Gottesman, No. 001142004
RUTGERS LAW SCHOOL
217 N 5th St
E223
Camden, NJ 08102
Telephone: (856) 225-6448
jgottesm@camlaw.rutgers.edu

Alia Al-Khatib
UNIVERSITY OF PENNSYLVANIA
CAREY LAW SCHOOL
3501 Sansom Street
Philadelphia, PA 19104
Telephone: (215) 573-6783
aliaalkh@law.upenn.edu
Pro Hac Vice Admission Pending

Dated: April 21, 2025

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutory Provisions

Other Authorities

INTRODUCTION AND PRELIMINARY STATEMENT

Amici curiae are clinical law and labor professors in New Jersey, Pennsylvania, and New York whose work and scholarship are dedicated to immigrant and/or worker justice. Immigrant workers across the country, including in New Jersey and surrounding states, are vulnerable to workplace exploitation, such as wage theft, health and safety violations, and labor trafficking. Wage theft is pervasive in industries that rely heavily on immigrant labor, including construction, farming, food service, and home health care, among others. Strong workplace protections for all workers serve to protect those who are most vulnerable and to ensure that employers who violate laws do not dilute workplace standards for all workers. The New Jersey Legislature has enacted strong workplace protections that benefit the State's workers, businesses, and communities. Ensuring that employees, regardless of immigrant status, are protected by New Jersey wage and hour laws is not only consistent with the relevant New Jersey statutory scheme and federal law, but also the State's policy.

For the reasons set forth below, amici curiae respectfully request that this Court conclude that immigration status is not relevant to whether an employer owes wages under the New Jersey Wage and Hour Law (WHL) and the New Jersey Wage Payment Law (WPL).

STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY

Amici curiae submit this brief as it relates to the first question certified by this Court: Is an individual's immigration status relevant to whether an employer owes wages under the WHL and the WPL?

Amici curiae incorporate by reference Plaintiff-Petitioner Sergio Lopez's statement of facts and offer a concise recitation of the facts directly relevant to the specific issue this brief addresses. In his complaint, Mr. Lopez alleged that his former employer, Defendants-Respondents Marmic, LLC and Mike Ruane, violated the minimum wage and overtime provisions under the WHL and failed to pay his wages in a timely manner in violation of the WPL.[1] After learning that Mr. Lopez did not have a valid Social Security number, Defendants-Respondents provided Mr. Lopez with an apartment, in lieu of wages, without requiring him to pay rent.[2] He did not receive any other compensation for the work that he performed.

The Appellate Division determined that Mr. Lopez's immigration status and invalid Social Security number meant he was "barred from relief and was precluded from recovering damages."[3] It erred in considering Mr. Lopez's

---

[1] Lopez v. Marmic LLC, No. A-2391-22, 2024 WL 3060524, at *1 (N.J. Super. Ct. App. Div. June 20, 2024).

[2] Id. 7-11–T7-25 (Trial Ct. Dec. Mar. 3, 2023).

[3] Lopez, 2024 WL 3060524, at *7.

immigration status, which is inextricably connected to whether he had a valid Social Security number. The WHL and WPL provide protections to employees broadly, including to undocumented workers, and allow all employees covered under the WHL and WPL, regardless of immigration status, to recover unpaid wages for work performed.[4]

ARGUMENT

I. NEW JERSEY'S WAGE LAWS PROVIDE BROAD PROTECTIONS FOR EMPLOYEES WHO EXPERIENCE WAGE THEFT.

New Jersey enacted the WPL and WHL in 1965 and 1966, respectively, and in large part mirrored the protections under the Fair Labor Standards Act (FLSA), which established standards for a forty-hour workweek and minimum wage under federal law.[5] The plain language and objectives of the WHL and WPL protect employees broadly. The WHL established a minimum wage and an

[4] We refer to undocumented workers as those who do not have a current lawful immigration status and therefore lack a valid Employment Authorization Document, also referred to as a work permit. Without a work permit, and assuming the worker never had an approved work permit, that worker cannot obtain a Social Security number. Having a valid Social Security number therefore is inextricably tied to one's immigration status. The trial court's decision to allow testimony on Mr. Lopez's Social Security number therefore revealed his immigration status, even though the court did not allow questioning directly on that topic. See T45-8–T45-12; T48-2–T48-13 (Trial Tr. Aug. 18, 2022).

[5] N.J.S.A. 34:11-56a et seq.; N.J.S.A. 34:11-4.1 et seq.; 29 U.S.C. § 201 et seq.

overtime rate for all hours worked over forty hours per week for certain employees.[6] The stated objectives of the statute were twofold: (1) "to safeguard [workers'] health, efficiency, and general well-being" and (2) "to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to their health, efficiency and well-being."[7] The WHL includes a provision making it "contrary to public policy" to compensate employees with "an oppressive and unreasonable wage."[8] The WPL advances similar goals by ensuring the time, mode, and manner of payment of wages to employees.[9] The WHL and the WPL are "remedial statute[s]" and should therefore be "liberally construed."[10]

To determine whether immigration status is relevant to New Jersey wage claims, the rules of statutory interpretation require courts to first examine "the plain language of each provision and accord to it the ordinary meaning of the words selected by the Legislature."[11] Courts are "also guided by the legislative objectives sought to be achieved by the statute."[12] Where "the plain language

---

[6] N.J.S.A. 34:11-56a4.
[7] N.J.S.A. 34:11-56a.
[8] N.J.S.A. 34:11-56a3.
[9] N.J.S.A. 34:11-4.1-4.14.
[10] Hargrove v. Sleepy's, LLC, 220 N.J. 289, 301-03 (2015).
[11] Id. at 301.
[12] Shelton v. Restaurant.com, Inc., 214 N.J. 419, 429 (2013); Musker v. Suuchi, Inc., No. 089665, 2025 WL 825883, at *4 (N.J. Mar. 17, 2025)

leads to a result inconsistent with any legitimate public policy objective, or it is at odds with a general statutory scheme," then courts "turn to extrinsic tools to discern legislative intent."[13] Courts also afford deference to the agency charged with enforcing the statutes.[14]

The definitions of "employee" under the WPL and WHL are broad.[15] Like the FLSA, the WHL provides for express exemptions from minimum wage and overtime requirements.[16] These explicit exemptions exclude certain categories of employees, such as those determined to be bona fide executive, administrative, or professional employees, as well as workers in specific industries.[17] These exemptions are narrowly construed.[18] None of the express

---

(explaining that statutory provisions are read in context to "give sense to the legislation as a whole") (citation omitted).

[13] Shelton, 214 N.J. at 429.

[14] Hargrove, 220 N.J. at 301-02.

[15] See N.J.S.A. 34:11-4.1(b) ("any person suffered or permitted to work by an employer, except that independent contractors and subcontractors shall not be considered employees"); N.J.S.A. 34:11-56a1(h) ("any individual employed by an employer").

[16] See N.J.S.A. 34:11-56a4(b)-(i); 29 U.S.C. § 213.

[17] N.J.S.A. 34:11-56a4(b)(1).

[18] See State v. Comfort Cab, Inc., 118 N.J. Super. 162, 176 (Law Div. 1972) (narrowly construing the statutory exemption for a motor bus to determine that its ordinary and plain meaning did not include taxicabs); see also Patel v. Quality Inn S., 846 F.2d 700, 702 (11th Cir. 1988) (stating in the FLSA context that "[t]his definitional framework—a broad general definition followed by several specific exceptions—strongly suggests that Congress intended an all-encompassing definition of the term 'employee' that would include all workers not specifically excepted").

exemptions exclude employees on the basis of their immigration status. The WHL and WPL do not consider a valid work permit a prerequisite for remedial benefits. Therefore, imposing such an exemption conflicts with the plain and ordinary language of the statutes.

Excluding employees otherwise protected solely based on immigration status would also significantly undermine the stated objectives of the statute—to protect workers' health, efficiency, and general well-being and ensure fair competition among employers. Failing to protect employees who experience wage theft from employers who violate the laws, solely because of the employee's immigration status, would only further embolden employers who violate the laws. Wage theft impacts all workers in the workplace and drives down hourly wages across the industry, making it difficult for honest, law-abiding employers to compete.[19] A broad interpretation of protections under the WPL and WHL is clear and unambiguous from the plain language of the statutes

[19] Matthew Fritz-Mauer, The Ragged Edge of Rugged Individualism: Wage Theft and the Personalization of Social Harm, 54 U. Mich. J.L. Reform 735, 755-57 (2021) ("[W]hen [law-abiding businesses] are forced to compete in industries where wage theft is rampant, the struggle of starting and managing a business becomes that much more difficult as they find themselves undercut by their unscrupulous competitors."); Annette Bernhardt et al., An Introduction to the "Gloves-off" Economy, THE GLOVES-OFF ECONOMY: WORKPLACE STANDARDS AT THE BOTTOM OF AMERICA'S LABOR MARKET 1, 6-7 (Annette Berhardt et al. eds., 2008) (explaining how pervasive wage theft dilutes workplace norms and standards).

and is consistent with the Legislature's intent: to promote worker well-being and fair competition among businesses.

If this Court were to determine that it should consider extrinsic tools to interpret the statutory text of the WHL and WPL, those tools similarly support broad protections that include undocumented employees. The legislative histories for the WPL and WHL contain no reference to immigration status. A broad interpretation of the term "employee," subject only to the specific exemptions identified under the WHL, is further supported by subsequent amendments to the WHL. The WHL was amended in 1967 when the New Jersey Legislature created a new exemption for summer camp counselors.[20] In 1968, the Legislature passed another amendment to exempt "salesmen of motor vehicles" from minimum wage protections under the WHL.[21] In both instances, the Legislature recognized that certain types of employees not specifically exempted were otherwise protected by the WHL, so to exempt those employees, it had to do so explicitly. These amendments further reveal what the plain language supports—all other employees, except those specifically exempted and therefore including undocumented employees, are protected.

---

[20] L.1967, c. 89, § 1; A. 718 (approved June 2, 1967) (codified as N.J.S.A. 34:11-56a4.1).

[21] L.1968, c. 19, § 1; S. 318 (approved Apr. 22, 1968) (codified as N.J.S.A. 34:11-56a4(a)).

Furthermore, guidance from the New Jersey Department of Labor and Workforce Development (DOL) is consistent with this interpretation of the statute. That interpretation, while not controlling on this Court, should be given significant weight.[22] According to publicly available materials through the DOL, the agency applies New Jersey's labor laws to all employees protected by the applicable laws, regardless of immigration status.[23]

II. EMPLOYEES, REGARDLESS OF IMMIGRATION STATUS, ARE ENTITLED TO UNPAID WAGES FOR WORK PERFORMED.

The U.S. Supreme Court's decision in Hoffman Plastic Compounds, Inc. v. NLRB[24] does not conflict with a broad interpretation of the WHL and WPL. In that case, the Supreme Court considered remedies to which an undocumented worker was entitled under the National Labor Relations Act (NLRA). The Supreme Court reversed the National Labor Relations Board's award of back pay for an undocumented worker, which was calculated from the date of the

---

[22] See Hargrove, 220 N.J. at 316 (holding that whether a worker is an employee or independent contractor under the WPL and WHL should be governed by the same test, the ABC test, and reasoning that the DOL applied this test for both statutes consistently).

[23] See Employer Poster, Payment of Wages, https://www.nj.gov/labor/wageandhour/assets/PDFs/Employer%20Poster%20Packet/MW-17_17S%20(4-22).pdf (last accessed Apr. 9, 2025) (noting that the office does not inquire about workers' immigration status).

[24] 535 U.S. 137 (2002).

worker's termination to the date that the employer first learned of the worker's undocumented status.[25] Reasoning that awarding back pay for work not performed conflicted with another federal law, the Immigration Reform and Control Act of 1986 (IRCA), the Court determined that he should not be entitled to compensation "for years of work not performed, for wages that could not lawfully have been earned."[26]

Significantly, Hoffman held that undocumented workers were considered employees under the NLRA and were therefore protected by the statute. This holding was consistent with prior precedent. In Sure-Tan, Inc. v. NLRB, the U.S. Supreme Court determined that Congress made express exemptions to the statutory definition of "employee," but it did not provide for an exemption based on immigration status.[27] The Appellate Division's conclusion—that Mr. Lopez could not form an employee-employer relationship because he lacked a valid Social Security number as a result of his immigration status—is entirely inconsistent with the U.S. Supreme Court's statutory interpretation of "employee" under the NLRA and the interpretation of "employee" under the WPL and WHL, as discussed above.[28]

---

[25] Id. at 142.
[26] Id. at 149.
[27] 467 U.S. 883, 892 (1984).
[28] Lopez, 2024 WL 3060524, at *6.

Following the Supreme Court's decision in Hoffman, federal and state courts across the country have held that workers, regardless of immigration status, who bring claims under federal and state wage and hour laws are entitled to recover wages for work already performed.[29] The New Jersey Appellate Division similarly noted that recovery for unpaid wages for work performed was available to undocumented workers in New Jersey.[30] As amici curiae Make the Road New Jersey et al. argued, IRCA does not preempt a determination that the WPL and WHL protect undocumented workers.[31]

Furthermore, the Supreme Court's concern in Hoffman was awarding compensation for work not performed.[32] The statutory language of the WPL and

---

[29] See, e.g., Lucas v. Jerusalem Cafe, LLC, 721 F.3d 927, 937 (8th Cir. 2013) ("[U]nauthorized aliens may sue under the FLSA, . . . to recover statutory damages for work actually performed."); Zavala v. Wal-Mart Stores, Inc., 393 F. Supp. 2d 295, 322 (D.N.J. 2005), aff'd, 691 F.3d 527 (3d Cir. 2012) ("[T]he definition of 'employee' under the FLSA is extremely broad, i.e., does not limit relief to citizens."); Zepeda v. Rivera Maint. Landscaping, LLC, No. 24-CV-1952-ABA, 2025 WL 401941, at *3 (D. Md. Feb. 5, 2025) (determining that immigrant status was "irrelevant" to whether an employer violated the FLSA or Maryland wage and hour laws); Coma Corp. v. Kansas Dep't of Labor, 154 P.3d 1080 (Kan. 2007) (holding that a worker with work authorization was entitled to seek earned, but unpaid wages, under the Kansas Wage Payment Act).

[30] See Serrano v. Underground Utilities Corp., 407 N.J. Super. 253, 269-70 (App. Div. 2009) ("[U]ndocumented workers can recover damages arising out of statutory violations for 'work already performed,' such as wage claims under the FLSA.").

[31] Make the Road New Jersey, et al. Amicus Curiae Br. (Sept. 3, 2024).

[32] 535 U.S. at 149. In Defendants-Respondents' response to amici curiae Make the Road New Jersey et al.'s brief, they conflate the definition of back pay

WHL provides remedies to all eligible employees for unpaid wages for work performed.[33] Under the WHL, "[w]ages" includes "any moneys due an employee from an employer for services rendered or made available by the employee to the employer as a result of their employment relationship."[34] Under the WPL, "'[w]ages' means the direct monetary compensation for labor or services rendered by an employee."[35] Consistent with the statutory language, the New Jersey DOL explains on its website that "wages may represent unpaid hours of work, unpaid overtime hours, or payment of less than prevailing wage."[36]

---

as used in Hoffman and in wage and hour violations. Defendants-Respondents' Response to Amicus Curiae Br. (Mar. 31, 2025). The brief notes a definition of "back pay" from the U.S. Department of Labor; however, it ignores that "back pay" used in that context is for work performed, specifically as compensation for unpaid minimum wage or overtime pay. See U.S. Dep't of Labor, Back Pay, https://www.dol.gov/general/topic/wages/backpay (last visited Apr. 9, 2025); 29 U.S.C. § 216(b) (defining damages under the FLSA as "unpaid minimum wages" or "unpaid overtime compensation," both categories that clearly refer to wages for work performed).

[33] The question before the Court is whether immigration status is relevant to wages owed to an employee for work performed, and the Court is not presented with the question of whether an undocumented employee would be entitled to compensation in the form of lost wages for work not performed as a remedy, for example, for a retaliation claim. Arguably, the New Jersey legislature, in protecting all employees without regards to immigration status, intended for such remedies to include undocumented employees.

[34] N.J.S.A. 34:11-56a1(d) (emphasis added).

[35] N.J.S.A. 34:11-4.1(c) (emphasis added).

[36] New Jersey Dep't of Labor & Workforce Dev., Wage & Hour Compliance, Investigation Process, https://www.nj.gov/labor/wageandhour/claims-appeals-investigations/investigation/ (under "Assessment Letter" tab) (last visited Apr. 9, 2025).

Further, New Jersey courts have allowed employees to recover workers' compensation benefits, regardless of immigration status, because "the right to workers' compensation is as much an incident of the employment as the right to receive salary, and has been earned once the labor has been performed."[37]

III. BROAD PROTECTIONS UNDER NEW JERSEY WAGE LAWS BENEFIT WORKERS, EMPLOYERS, AND THE COMMUNITY AT LARGE IN NEW JERSEY.

Wage theft plagues industries across the country, including in New Jersey, to the detriment of impacted workers, businesses, and communities. A 2017 study found that, in the ten most populous states, 2.4 million workers lost $8 billion annually from wage theft, with the average underpaid worker losing nearly $3,300 per year.[38] A 2020 New Jersey study on minimum wage violations found that employers stole on average 20% of the legal minimum wage to which workers were entitled.[39] While perhaps a small difference for some, for low-

---

[37] Mendoza v. Monmouth Recycling Corp., 288 N.J. Super. 240, 248 (App. Div. 1996) (reasoning that it would "be illogical" and serve "no discernible public purpose" to exclude undocumented workers from workers' compensation benefits).

[38] David Cooper & Teresa Kroeger, Employers Steal Billions from Workers' Paychecks Each Year (EPI, May 10, 2017), https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/.

[39] Daniel J. Galvin, Janice Fine & Jenn Round, Minimum Wage Violations in New Jersey: Strategic Enforcement (June 2022 update), https://smlr.rutgers.edu/sites/default/files/Documents/Centers/WJL/wjlMWstudy_rev06-22.pdf.

wage workers, these instances of wage theft likely mean missing a month's rent or being unable to afford groceries.

A. Narrowing protections based on immigration status harms all workers and discourages immigrant workers from reporting violations.

Immigrant workers are especially vulnerable to wage theft.[40] They also form a large percentage of the low-wage workforce in certain industries.[41] With a foreign-born population of nearly 25%, New Jersey is home to a large immigrant community.[42] Among that community, approximately 475,000 are undocumented immigrants.[43] Nearly 70% of the households within which undocumented immigrants live are considered "mixed status," meaning that other members of the household have lawful residence or U.S. citizenship.[44]

---

[40] Cooper & Kroeger, supra note 41, at 20 (finding higher rates of minimum wage violations among noncitizen workers); Galvin, Fine & Round, supra note 42, at 12 (noting that noncitizens in New Jersey were twice as likely to experience minimum wage violations as U.S. citizens).

[41] Janice Fine & Jennifer Gordon, Strengthening Labor Standards Enforcement through Partnerships with Workers' Organizations, 38 Pol. & Soc'y 552, 554-55 (2010) (explaining that as of 2009, immigrant workers made up 20 percent of the low-wage workforce and two of every five low-wage immigrant workers were undocumented).

[42] American Immigration Council, Immigrants in New Jersey (2020), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_new_jersey.pdf.

[43] Pew Research Center, What We Know about Unauthorized Immigrants Living in the U.S. (July 22, 2024), https://www.pewresearch.org/short-reads/2024/07/22/what-we-know-about-unauthorized-immigrants-living-in-the-us/.

[44] Id.

Undocumented workers are deeply integrated into the workforce in New Jersey and contribute significantly to the State. In 2017, undocumented immigrants in New Jersey paid over $587 million in state and local taxes.[45] By 2022, undocumented immigrants paid over $1.3 billion in tax revenue in New Jersey.[46]

Since the enactment of wage and hour laws decades ago, New Jersey has expanded protections for workers. In 2019, New Jersey enacted legislation to increase progressively the state minimum wage.[47] In 2019, New Jersey enacted the New Jersey Wage Theft Act (WTA), which expanded employer liability under the WPL and WHL and enhanced legal remedies for employees.[48] The passage of the WTA was a response in the State to the growing problem of wage theft, one that states and localities across the country have sought to address through enhanced worker protections and enforcement mechanisms.[49] In order to enforce laws combatting wage theft, however, workers must report the

---

[45] Institute on Taxation and Economic Policy, State and Local Contributions of Undocumented Immigrants in New Jersey (June 2017), https://www.njpp.org/wp-content/uploads/2018/04/NJ-Undoc-Immigrant-by-County-1.pdf.

[46] Institute on Taxation and Economic Policy, Tax Payments by Undocumented Immigrants (July 30, 2024), https://itep.org/undocumented-immigrants-taxes-2024/.

[47] A. 15 (approved Feb. 4, 2019) (codified as N.J.S.A. 34:11-56a4(a)).

[48] See Maia v. IEW Construction Grp., 257 N.J. 330, 344-47 (2024) (summarizing the changes to the WPL and WHL made by the WTA).

[49] See Jennifer J. Lee & Annie Smith, Regulating Wage Theft, 94 Wash. L. Rev. 759, 762 (2019) (examining anti-wage theft strategies enacted in twenty-four states and fifty-seven localities from 2005 to 2018).

violations. Enforcement of these laws, through private actions and government agencies, is driven primarily by workers' complaints.[50]

If this Court allows consideration of immigration status for wage claims, workers would fear coming forward about workplace violations. This chilling effect would impact all immigrant workers and workers from certain ethnic groups, regardless of whether they have a work permit, for fear that raising a wage claim would lead to the probing of their immigration status and possibly the status of others in their workplace, family, or community.[51] Even workers with work permits resulting from a temporary form of lawful immigration status, such as Temporary Protected Status (TPS),[52] face extreme uncertainty and

---

[50] David Weil & Amanda Pyles, Why Complain? Complaints, Compliance, and the Problem of Enforcement in the U.S. Workplace, 27 Comp. Lab. L. & Pol'y J. 59, 59 (2005) (explaining that complaints related to workplace violations primarily drive enforcement activity); Galvin, Fine & Round, supra note 42, at 8-9 (finding that workers in certain New Jersey industries, such as housekeeping and restaurant workers, made relatively few complaints to New Jersey DOL yet were found to have relatively high estimated rates of minimum wage violations).

[51] See Amanda M. Grittner & Matthew S. Johnson, When Labor Enforcement and Immigration Enforcement Collide: Deterring Worker Complaints Worsens Workplace Safety (Upjohn Inst., Oct. 2021), https://research.upjohn.org/up_workingpapers/353/ (summarizing studies that found that Latino workers were less likely to complain about workplace conditions due to fear of immigration enforcement).

[52] U.S. Citizenship & Immigration Services, Temporary Protected Status, https://www.uscis.gov/humanitarian/temporary-protected-status (last visited Apr. 9, 2025) (temporarily protects noncitizens from certain countries from deportation).

experience fear in reporting workplace violations.[53] If courts allow immigration status to be considered in wage claims, exploitative employers may be further emboldened to exploit workers, knowing that immigrant workers—documented and undocumented—would be discouraged from reporting violations. Such patterns create a shadow labor market within which workers in more precarious positions face eroded labor standards and unsafe workplaces. The New Jersey Legislature never contemplated a two-tiered system of protections for employees, and this Court should not allow it.

Indeed, the New Jersey Legislature has engaged in bipartisan efforts to further protect the immigrant workforce. In 2024, it strengthened protections for immigrant workers from threats made by employers who try to silence them from complaining about violations of the State's labor and employment laws.[54] In the committee reports, the Legislature recognized that New Jersey's laws broadly protect employees, regardless of immigration status; yet, because immigrant workers may be reluctant to report violations, additional legal protections were necessary.[55] The law's purpose—to protect immigrant workers

---

[53] See generally Kati L. Griffith & Shannon Gleeson, The Precarity of Temporality: How Law Inhibits Immigrant Worker Claims, 39 Comp. Lab. L. & Pol'y J. 111 (2017).

[54] S. 2869 (approved Aug. 8, 2024) (codified as N.J.S.A. 34:1A-1.20a).

[55] Senate Labor Committee Statement to S. 2869 (May 6, 2024).

who report workplace violations—would make little sense if undocumented workers, those most vulnerable to immigration-related threats, were excluded from protections under labor and employment law. Barring consideration of immigration status in claims asserted under the WPL and WHL would therefore further support the Legislature's objectives in statewide policies—to protect immigrant workers from exploitative and retaliatory employers.

B. Businesses and communities are harmed by narrowing protections under the WPL and WHL.

Beyond the direct harm to individual workers, allowing immigration status to be considered in wage claims negatively impacts employers and communities more broadly. When employers underpay undocumented workers, it not only depresses wages for every worker, but it also creates an unfair competitive advantage for businesses that violate wage laws.[56] Honest, law-abiding employers are unable to compete with employers who have no qualms paying undocumented workers below minimum wage. Allowing employers to get away with such violations only encourages this conduct. Over time, this

[56] Eamon Coburn, Note, Supply-Chain Wage Theft as Unfair Method of Competition, 134 Yale L.J. 615, 625-30 (2024) (highlighting that inconsistent enforcement of wage theft creates unfair competitive advantages and undermines lawful business operations).

leads to a broader decline in industry-wide labor standards, harming businesses that seek to operate in compliance with wage and immigration laws.[57]

Furthermore, revealing the immigration status of workers in public filings exposes workers, as well as employers, to potential immigration enforcement action. New Jersey businesses that employed immigrant workers faced immigration enforcement actions earlier this year, which created a sense of alarm among the broader immigrant community.[58] The current immigration landscape is one of extreme uncertainty and confusion, even for workers with work permits. Small business owners in particular face difficulty in trying to keep up with the constantly shifting orders pertaining to certain immigrant communities[59] and are therefore vulnerable to enforcement actions merely for

---

[57] See Fritz-Mauer, supra note 22.

[58] See Pat Battle, Sarah Wallace & Julio "Gaby" Acevedo, Newark ICE operation sparks concerns and anxiety, day after detainments at fish market, NBC New York (Jan. 24, 2025), https://www.nbcnewyork.com/new-jersey/newark-ice-operation-concern-anxiety-detainments-fish-market/6121137/ (reporting on the detention of several workers at a seafood depot in Newark, including the detention of a U.S. military veteran); Arian Campo-Flores & Chao Deng, ICE Raids Send Chill Through Migrant Workforces, The Wall Street Journal (Feb. 14, 2025), https://www.wsj.com/economy/ice-raids-send-chill-through-migrant-workforces-cddf7537 (stating that immigrant workers skipped their shifts in restaurants nearby to the seafood depot in Newark following the enforcement action because of fear).

[59] For workers with TPS who have work permits, employers face uncertainty as to the validity of these work permits due to the sudden, potentially unlawful, revocation of such protections for noncitizens from certain countries. See U.S.

employing immigrant workers. Workplace immigration raids have detrimental impacts on workers, employers, and the community at large.[60] Even employers who make good-faith efforts to comply with immigration laws may be unfairly targeted for immigration enforcement simply because a worker's immigration status becomes public through a wage claim.

Finally, a ruling excluding undocumented workers from protection under New Jersey's wage laws would have reverberating impacts in surrounding states. Businesses with high rates of immigrant labor, such as construction, landscaping, and home health care, regularly have workers laboring in states surrounding New Jersey, including Pennsylvania and New York. The interconnected nature of regional labor markets means that exploitative wage practices in one state can spill over into neighboring states, undermining the effectiveness of wage enforcement across jurisdictions. Broad workplace

---

Dep't of Homeland Security, Press Release, Secretary Noem Rescinds Previous Administration's Extension of Haiti's Temporary Protected Status (Feb. 20, 2025), https://www.dhs.gov/news/2025/02/20/secretary-noem-rescinds-extension-haitis-temporary-protected-status (announcing the end of TPS for noncitizens from Haiti and referencing the termination of TPS for noncitizens from Venezuela the prior month).

[60] See William Daniel Lopez et al., Large-Scale Immigration Worksite Raids: Community Disaster, Community Response, 32 J. Cmty. Prac. 86 (2024) (exploring the impact of workplace raids on communities).

protections benefit workers, employers, and communities in New Jersey, as well as states in the surrounding region.

CONCLUSION

Amici curiae respectfully request that the Court conclude that immigration status is not relevant to claims under the New Jersey Wage and Hour Law and the New Jersey Wage Payment Law and that all individuals determined to be employees, regardless of work authorization, are entitled to protections and remedies under these New Jersey statutes.

Dated: April 21, 2025

Respectfully submitted,

/s/ Joanne Gottesman
Joanne Gottesman, Esq.
No. 001142004
RUTGERS LAW SCHOOL
217 N 5th St
E223
Camden, NJ 08102
Telephone: (856) 225-6448
jgottesm@camlaw.rutgers.edu

/s/ Alia Al-Khatib
Alia Al-Khatib, Esq.
UNIVERSITY OF PENNSYLVANIA
CAREY LAW SCHOOL
3501 Sansom Street
Philadelphia, PA 19104
Telephone: (215) 573-6783
aliaalkh@law.upenn.edu
Pro Hac Vice Admission Pending

LIST OF AMICI CURIAE

Amici curiae are the professors and scholars listed below. Affiliation is provided for identification purposes only; all signatories are participating in their individual capacity and not on behalf of their institutions.

Caitlin Barry
Villanova Law School

Daniel Cortes
Villanova Law School

Janice Fine
Rutgers School of Management and Labor Relations

Alan Hyde
Rutgers Law School

Jennifer J. Lee
Temple University Beasley School of Law

Mary E. Levy
Temple University Beasley School of Law

Beth Lyon
Cornell Law School

Lori A. Nessel
Seton Hall Law School

Sarah Paoletti
University of Pennsylvania Carey Law School