

The Epidemic of Wage Theft in Residential Construction in Massachusetts¹

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Executive Summary

Our research documents how the illegal theft of workers' wages has reached epidemic levels in residential construction in Massachusetts. We conducted three case studies examining: the subcontractors for Pulte homes; the drywall industry and specifically New Haven Drywall; and affordable housing construction by a community development corporation (CDC) based on 27 in-depth interviews with construction workers, contractors, homeowners, union staff, and community-based organizers. We detail how contractors in residential construction responded to their financial losses in the Great Recession by the wholesale and illegal misclassification of their workers as independent contractors. By not paying taxes on workers' wages and by not contributing to worker compensation funds, contractors reduced their building costs by 30 percent. In addition, we document how these contingent workers—the majority of who are undocumented immigrants—are routinely cheated out of their wages by contractors who pay late, do not compensate for overtime, and sometimes do not pay for work at all. Firms generate profits by victimizing some of the most vulnerable workers in Massachusetts, delivering poor quality homes to consumers, and leaving citizens of the commonwealth on the hook to make up for hundreds of millions in lost tax revenue. We also show that despite solid statutory language, enforcement mechanisms designed for regularized employers are woefully inadequate to protect workers from the illegal practices by the marginal firms that now dominate residential construction.

Highlights of the research include:

- Five subcontractors for the national homebuilder Pulte were assessed \$490,000 in back wages and penalties by the Commonwealth of Massachusetts for wage theft violations in the state.
- Pulte denied any knowledge about the practice, despite numerous accusations against the company for similar practices in a number of states and by the federal government.
- Although we demonstrate how Pulte financially benefited from this wage theft, the company was legally insulated from being charged with any wrongdoing.

- Few of these wages and fines were ever collected, as many of these marginal subcontractors closed their doors or reopened under new names.
- New Haven Drywall and other drywall firms, such as Jose Gutierrez and Tri State drywall, have a long history of illegal misclassification and wage theft. They have demonstrated how easy it is to reorganize and start new firms to avoid prosecution and to continue illegal misclassification and wage theft.
- Because no existing mechanism prevents such firms from avoiding prosecution, we have seen an explosion of firms that employ illegal misclassification and wage theft in the drywall industry. This phenomenon deeply threatens the economic viability of legitimate contractors who play by the rules.
- The growth of these firms who make their profits from illegal employment practices, supported by major firms such as Pulte, has begun to move beyond residential construction into more commercial and public types of construction.
- We make a number of policy recommendations for Massachusetts to combat illegal misclassification and wage theft. Our research shows that the commonwealth would be well served to follow the example of wage theft eradication programs in Connecticut.

Policy recommendations include:

- Real National Immigration Reform
- Public Identification of Misclassification and Wage Theft Violators
- Create Barriers for Law-Breaking Firms and Individuals to Reenter the Market
- Impose Real Penalties and Fines
- Better Permanent Interagency Coordination
- Dramatic Increase in Workplace Raids
- New Funding Mechanism to Combat Wage Theft
- Firms at the Top of the Supply Chain Must Be Held Responsible
- Formalize Relationship with Worker Centers and Unions Already in the Fight Against Wage Theft

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There's a lot of dishonesty out there. There are a lot of people that take a whole crew of Brazilians and pocket the money and don't pay up. We do a whole house and nothing gets paid out.

—Andres, worker for Jose Cordeiro Nunes, subcontractor for Pulte Homes

They paid the first week then the next week he told us to wait for him and we decided to wait because we needed the work. We waited for the third week...this was on a Friday...and he told us that on Monday he would pay us. But we had to go [back] because we worked even on Saturdays. So we went to work that Saturday—we didn't get overtime though. Then the month passed and he only paid us for one week over the month.

—Jose, worker for New Haven Drywall

I spoke to the guy and when we were talking, he offered me a contract to side the house. But I said, "I'm not a contractor, I don't got no license to do a contract." He told me, "Don't worry about it. We can work it out, you know?" But I also know that...to be a contractor you have to have the insurance policy if anything happens at the job site, you have to be covered. He told me, "No don't worry about it," so I said OK. I took the job.

—Eduardo, worker at Yanez Framing, subcontractor for Stutman Constuction

All three of these workers in the residential construction industry in Massachusetts are victims of wage theft. Andres was simply not paid for his work, and Jose kept getting shorted on his pay and paid late. Eduardo was told by the company that if he wanted to work for them he had to be paid as an independent subcontractor. He had no written agreement and after he complained to his employer about adding additional tasks they refused to pay him for work already done. All three of the above employer practices are without question illegal, but they have become routine in home building across Massachusetts. Four factors have come together to spark an epidemic of wage theft in residential construction in the commonwealth.

First is the increasing practice of employers illegally classifying workers as "independent contractors." Independent contractors such as electricians and plumbers have long existed in the building and construction trades. But as outlined by the Massachusetts Attorney General a legitimate subcontractor "...must be free for an employer's direction and control," perform a service "outside the usual course of business of the employer" and "customarily engaged in an independently established trade."³ Contractors are increasingly ignoring these legal requirements and recklessly misclassifying a wide swath of workers as independent contractors. By doing so they avoid having to pay workers' compensation, unemployment compensation, and taxes—all of which saves approximately 30 percent of their labor costs. So while the concept of misclassification may sound like some simple bureau-

cratic detail, this illegal practices yields massive economic rewards for unscrupulous employers and is becoming accepted practice in the industry

Second, the growth of illegal misclassification has led to the proliferation of small, marginal subcontractors who drive down wages and working conditions in the industry. The emergence of this new production regime has re-informalized the employment relationship wherein most workers in residential construction take on a job without a contract, for cash, for an employer they often cannot name, and without any benefits or the basic protections provided by law. This very much parallels what we have seen in the garment industry worldwide: by moving risk and these kinds of abhorrent working conditions further out on the supply chain, this new production regime insulates major employers from responsibility while at the same time makes it virtually impossible for workers to get justice. We know that wage theft has been growing in a wide variety of industries and workplaces. However, this new production regime being pioneered in residential construction but also making its way into more commercial construction—where virtually everyone is, or works for, a very small independent contractor—creates an ideal environment for the theft of workers' wages. Workers do not show up on regular payrolls, they are not eligible for unemployment, and the small firms that predominate will almost always fold up rather than pay fines or back wages—all of which create little accountability for stealing workers' wages.

Third, in residential construction this devolution of the employment relationship through misclassification and wage theft is further exacerbated given that a substantial majority of these workers are immigrants—many of them undocumented. Undocumented workers are already marginalized in the economy, forced largely to work in the shadows. By denying them access to regularized employment, they are neither citizens nor workers. Although U.S. law protects their rights in the workplace no differently than those of citizens, unscrupulous employers victimize undocumented workers by stealing their wages under the shadow of the workers' undocumented status.

Finally, we have witnessed an epidemic of wage theft in the commonwealth because the regulatory mechanisms in place to control these illegal practices have proven woefully inadequate, and in their failure have provided little deterrent. Both at the federal and the state level these regulatory frameworks were developed in the post-World War II era, and they were largely designed to monitor large regularized employers. As we will see, despite solid statutory language in Massachusetts, enforcement mechanisms were not designed to regulate the kind of firms and informal employment relationships that now dominate residential construction in the commonwealth. They have largely been ineffective in controlling wage theft and by letting it flourish it provides the foundation for a new business model in the industry.

The Wage Theft Explosion

The Fair Labor Standards Act⁴ (FLSA) established the minimum wage, the right to overtime pay, regulations about hours worked, prohibitions against certain forms of child labor, and required certain kind of employer record keeping. States may have higher minimum wages and typically require employers to post a “wage and hour” poster in each and every workplace. Like most states’ posters, the Massachusetts version has very clear language that says workers employed for five or six days during the calendar week, for instance, must be paid “within six days of the end of the pay period during which the wages were earned.”⁵ It also stipulates, “Employers must give each employee a pay statement setting forth the name of employer, name of employee, date of check (including the day, month, and year), number of hours worked during the pay period, hourly rate, and all deductions or increases made during the pay period.”⁶

Yet, despite these only bare-bones protections,⁷ they are routinely violated under the general concept of “wage theft.” Kim Bobo in her *Wage Theft in America: Why Millions of Americans Are Not Getting Paid—And What We Can Do About It*, describes the ways in which wage theft can happen: giving workers checks that bounce; not paying overtime; misclassifying workers as independent contractors; paying by the day or job; making workers’ pay for a job; not paying the prevailing wage; automatically deducting for breaks that workers don’t get; stealing workers’ tips; supervisor kickbacks; not paying people at all; not paying a last paycheck; failing to give layoff notices; and denying workers’ compensation.⁸

The most extensive documentations of wage theft appear in a 2009 study by Bernhardt and colleagues titled *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in American Cities*, which surveyed 4,387 low-wage workers in three U.S. cities: Chicago, Los Angeles, and New York.⁹ Of those surveyed, they found that more than two-thirds had experienced a pay-related violation in the previous week. Additionally, 26 percent were paid less than the minimum wage, and of those workers, 60 percent were paid more than a dollar less than the minimum wage. Seventy six percent of those working overtime had not been paid the legally required overtime rate. “Foreign-born Latino workers had the highest minimum wage violations of any ethnic-group.”¹⁰ Overall, they calculate that for the two-thirds of people they sampled who were not paid correctly, they lost approximately 15 percent of their annual income due to some form of wage theft. The U.S. Department of Labor in a 2014 study of California and New York reports that “minimum-wage violations in those two states translate into \$20 million to \$29 million in lost income per week...Those amounts represent 38 percent of the income of the victimized workers in New York and 49 percent of the income of victimized workers in California.”¹¹

There is growing recognition as well—although it is not highlighted in either the Bobo or the Bernhardt studies—that a great deal of wage theft occurs because of the illegal misclassification of workers as independent contractors. As Deputy Secretary of Labor Seth Harris told a U.S. Senate committee:

*The Labor Department's experience has shown that misclassification can be a tool for employers to evade their legal obligations to workers and thereby gain a competitive advantage over employers that obey the law....Companies that misclassify their workers expect to reduce labor costs by as much as 30 percent, in part by not paying workers' compensation premiums. Law-abiding business owners who play by the rules are being forced out of competition by companies that skirt the law and play games with the definition of "employee."*¹²

In his testimony Harris outlined the financial cost of misclassification and its prevalence: "A 1994 Coopers & Lybrand study estimated that misclassification would cost the federal government \$34.7 billion between 1996 and 2004. The Planmatics 2000 study concluded that between 10% and 30% of the employers audited had misclassified some employees as independent contractors."¹³

In their examination of the costs of misclassification in Massachusetts during the years from 2001 to 2004, Carre and Wilson report that up to 248,206 workers were misclassified in Massachusetts, costing the commonwealth \$152 million in lost income tax and \$35.1 million in unemployment insurance taxes. Up to 24 percent of construction employees were misclassified, accounting for up to \$6.9 million in lost income tax and \$3.9 million lost in unemployment taxes.¹⁴

Despite this documented rise in both misclassification and wage theft, the regulatory framework to both prevent violations and punish violators of the FLSA has not kept up. A 2009 major study by the Government Accountability Office (GAO), *Employee Misclassification: Improved Coordination, Outreach, and Targeting Could Better Ensure Detection and Prevention*,¹⁵ found that many Wage and Hour Division (WHD) offices were extremely unresponsive to attempts to report wage and hour complaints. The GAO filed 10 fictitious complaints with WHD district offices. Of these complaints, five were not recorded in WHD's database, and two were recorded as successfully paid even though the fictitious complainants reported that they had not been paid. Only one of the 10 complaints was appropriately investigated and entered into the database.¹⁶

In *Wage Theft in America*, Bobo argues that much of the regulatory failure results from the lack of a real enforcement mandate. In 2011, the federal budget of the Department of Labor was \$14 billion, of which only \$1.5 billion was devoted to enforcement.¹⁷ Although more workers and businesses are now covered under the FLSA, the number of workplace inspectors has shrunk since the early 1980s. While in 1947 the WHD was able to inspect 9 percent of firms, by the late 1970s it was able to inspect only 2 percent, and that rate has continued to decline. When wage thieves are caught, they are often forced to pay little more than the wages they

should have paid in the first place. Between 2002 and 2006, of the 206 federal court cases brought by the secretary of labor and which would result in FLSA back wages, only 9.5 percent were awarded civil money penalties and only 22.4 percent of workers actually received liquidated damages.

To better coordinate Massachusetts's response to wage theft and misclassification, in March 2008, Governor Deval Patrick (through Executive Order #499) established a Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (JTF) "to coordinate multiple state agencies' efforts to stamp out fraudulent employment activities by enforcing the state's labor, licensing, and tax laws."¹⁸ During 2013, "as a result of referrals and cooperative oversight, partner agencies recovered \$15,658,226 in wage restitution, state taxes, unemployment taxes, fines, and penalties."¹⁹ The Massachusetts Task Force has commissioned a study to update the numbers on the prevalence of misclassification in the commonwealth and its impact on the economy.²⁰ In July, 2104 Gov. Deval Patrick formalized the Task Force, creating a permanent Council on the Underground Economy.

Research Design and Methods

Previous research has demonstrated that the illegal misclassification of workers and wage theft are significant issues for low-wage workers in Massachusetts and around the country. Given this solid documentation of the problem, our research for this paper was not designed as a census of wage theft, but rather as an in-depth examination of how these processes operate in a particular industry within a specific geography. For it is not enough to simply know that wage theft is taking place: we need to understand how it actually plays out on the ground if we are truly going to develop ways to combat this illegal practice.

With that in mind we chose to look at the residential construction industry. Overall, the construction industry has been very much underrepresented in the study of work and labor.²¹ By definition, construction work is temporary and for the most part is not based on long-term employment relationships with employers. This lack of regularized workplace parameters creates the potential for the misclassification of workers and wage theft. We chose specifically to focus largely on residential construction—the largest sector of the construction industry, and one that is mostly nonunionized—because it remains one of the most informal and decentralized portion of the construction industry. Commercial construction, on the other hand, is both highly unionized and often subject to prevailing wage and other regulatory processes. This is not to suggest that illegal misclassification and wage theft do not occur in commercial construction, but that institutional relationships act to constrain these practices.

Residential construction occurs in a variety of settings, in major urban areas and their suburbs, in smaller cities and towns, and in rural locations. Yet much of the research on wage theft has focused on low-wage earners living and working in major metropolitan areas. For this project we focused on residential construction in and around Worcester and Framingham, two modest-sized cities of 182,000 and 68,100, respectively, in the central part of Massachusetts. We chose this location, in part, because of the belief that innovation (and the violations that prompted them) often begin in smaller markets like this one before entering larger urban markets. In the case of construction, practices emerge in these regional markets in residential construction, far away from the watchful eye of labor organizations and other regulatory bodies. We also chose to focus on residential construction in central Massachusetts because, based on press reports and actions by the Massachusetts Attorney General's office, we already knew of the prevalence of wage theft and the illegal misclassification of workers as independent contractors. Additionally, two organizations in the area, the MetroWest Workers Center and Carpenters Union Local 107 part of the New England Regional Council of Carpenters, had already done extensive research and advocacy for residential construction workers who were the victims of wage theft and illegal misclassification, from which we could learn.

We conducted research at three specific research sites to explore the dynamics of wage theft in different sectors of residential construction. We began by looking at workers employed by a variety of subcontractors working for Pulte Homes, the second-largest homebuilder in the United States. This research allowed us to examine how wage theft is not just happening at small marginal firms but how it also plays out within the subcontracting practices of a major firm. Second we looked at one of the major subcontracted trades in residential construction, the drywall industry, looking specifically at New Haven Drywall. From our focus on one specific trade, we sought to explore how wage theft and misclassification alter work practices and working conditions. Finally we looked at the residential construction supervised by a community development corporation (CDC). Although CDC construction is not officially considered “public,” it does allow us to understand how misclassification and wage theft are making their way to more formalized construction.

For this research we conducted 27 interviews with a wide range of individuals involved with residential construction who were all in some way victims of wage theft. First and foremost we interviewed 12 workers directly involved in residential construction. Their names have been changed for their protection.²² We also interviewed the director of MetroWest Worker Center and four representatives of the New England Regional Council of Carpenters (NERCC) working out of Central MA at Carpenters Local 107 who have been researching and advocating for wage theft victims as well the NERCC Executive Secretary. We spoke to two Pulte homeowners, whose identities we have kept confidential; the two owners of Red Line Wall Systems, a drywall firm; the head of a CDC in Worcester; as well as a Worcester city councilor. Finally, we spoke with several high-level officials of the Massachusetts Department of Labor and Workforce Development who wished to have their comments remain off the record, a representative of a contracting watchdog group, and a senior official in the Connecticut Department of Labor. In addition to interviews, we consulted a wide variety of public documents related to wage theft and materials specially related to central Massachusetts.

Pulte Homes: Built on a Foundation of Wage Theft

PulteGroup Inc. is the second-largest residential homebuilder in the country with \$5.6 billion in revenue in 2013. They sell houses under the Centex, Pulte, and Del Webb brands.²³ Since it was founded in 1950, Pulte has delivered over 600,000 homes in 28 states. The company has traditionally been strongest in the Southwest, Texas, and Florida but more recently has focused on the Northeast, which is becoming one of their market segments.

Andres, originally from Brazil, has been doing framing carpentry in central Massachusetts for the past nine years. Introduced to the trade through other Brazilian immigrants after coming to the United States, he has a family in Brazil and sends money back regularly to his mother and his son. He does a wide variety of work under the general category of wood framing in residential construction. He reports that he has faced wage theft, including late and incomplete payment for his work, many times since being in the United States. "There's a lot of dishonesty out there. There are a lot of people that take a whole crew of Brazilians and pocket the money and don't pay up. We do a whole house and nothing gets paid out."²⁴ Like most workers in residential construction Andres was working for a subcontractor as an independent contractor.

In 2010 he faced a serious problem when he was working for Jose Cordeiro Nunes, a subcontractor for Pulte Homes. Two months into the job the pay started to be sporadic. "They paid two times then they said they would pay, but they never paid us again."²⁵ The contractor told Andres that they had not received payment from Pulte, which is why they couldn't pay. After repeated inquiries the response was always the same: "He said he was going to pay and that we should go back to work."²⁶ This is the paradox for workers who haven't received their last check or two in residential construction. If they quit, then they have severed ties with the contractors and will likely never see the money they have earned. However, if they stay hoping to recover some of that money, they know from experience that if they continue to work in the coming weeks they risk working for no pay at all. The possibility of back pay, however, keeps them on the job often past the time it makes sense to stay.

Through a fellow Brazilian carpenter, Andres reached out to Diego Low at the MetroWest Workers Center, a 501(3)c nonprofit community-based organization founded in 2010 in Framingham, Massachusetts. It primarily serves workers in the Milford, Marlboro, and Framingham areas. However, given that construction crews circulate regularly in the New England area, MetroWest often assists workers in adjacent states. As Low, the founder and longtime director of the center, reports, "I'd say 80 to 85 percent [of the workers] are coming to us because of wages, be it, 'I worked for five weeks and I was only paid for three,' or 'five days and paid for three', or 'I worked ten years for the company and never got overtime.'"²⁷ Low interviewed Andres to gather detailed information on his work and wages with an eye toward

filing charges with the Massachusetts Attorney General's office. Workers on Pulte jobs kept coming forward to Low, reporting the late and nonpayment of wages among subcontractors.

Pedro, another of our interviewees, arrived in Massachusetts in 2004 on a Saturday. "On Sunday I bought the work clothes and the tool belt and on Monday I started work. My brother had come here and after five years he brought me here."²⁸ Pedro went right to work for Five Stars Construction, one of Pulte's major subcontractors in central Massachusetts. There were a number of crews on the job with 100 or more mostly Brazilians on the job, all working as crews of independent subcontractors. But several months into the job, Five Stars stopped paying some of its crews. "They were late on payment a month or 45 days," Pedro tells us²⁹ "There were about six of us...they promised they would pay us I think it might have been Monday. They were to have paid us that day, but when they got there they said they didn't have the payment." Pedro and his crew stopped working and confronted the employer. "The guy underneath the employer came and talked to us. At lunchtime he called everybody together and told us what was happening—that Pulte hadn't sent all the money for the work already performed. They said, 'You guys all have to decide—those of you who want to continue—and we'll try to pay you. Those who want to leave can leave.'"³⁰

Pedro and his crew decided to leave, having worked for 45 days without being paid. When we ask him how he lived he shrugs as if it was nothing out of the ordinary for a Brazilian immigrant worker. "We went as long as two months with the company without a cent" on many occasions, he tells us. One time, he recalls, "They had gone to the bank itself and had been told there were insufficient funds [for the personal checks they had received for payment of wages]. They're constantly going back with the check unstamped. Somebody who's still working at Five Stars, calls him one day and says, 'There's money in the account.' So, since we were working near the bank, we ran over to the bank and were able to cash our checks!"³¹ This kind of frenzy surrounding efforts to get paid had become ordinary for Pedro and for so many of the workers we interviewed in residential construction. He told us that during these times when he was unpaid he and his brother were unable to send any money home, but they cobbled enough together from friends and other family members to live. Pedro was out of work another month before he found work again.

Ironically, the company he found work with was Nunes Brothers Construction, another subcontractor with Pulte. Our interviewee Andres had worked for one of the brothers, Jose Cordeiro Nunes, who had since been cited for employment fraud by the Massachusetts Attorney General "as owner of JC Drywall & Plastering...and ordered to pay a combined \$72,751 in fines and restitution."³² So Nunes formed this new company with his brother.³³ But what Pedro and his fellow workers faced there was no different than the theft of their wages, which had become ordinary at Five Stars, or what Andres faced working for Nunes's earlier company. In October

2010 they were three weeks behind in their pay. “We stayed out of work a week, and went and were told then that some money had come in. So we went and got the balance we were owed,” Pedro tells us. “As the partner leaves, another guy comes in....He was going to change the company, we were going to be paid every week, and everything was going to be straightened out!”³⁴ Pedro wasn’t exactly sure who the guy speaking to them was, but he thought it was someone from Pulte.

With more stories like this coming into the MetroWest Workers Center, Diego Low made the decision to undertake a detailed investigation about what Brazilians were experiencing when they were employed by Pulte subcontractors. From his previous work, he knew that to make charges stick with the attorney general, he would need detailed information on the hours and wages of each of the workers who had come forward. It was a huge undertaking for a community-based nonprofit organization with no staff. “You’d go and spend six hours in somebody’s living room in New Bedford, documenting the hours of six or seven people, and you’d have to sit down a couple of times at least to do it all. We didn’t have the infrastructure to do it” says Low.³⁵ They went ahead anyway and documented a pattern of nonpayment of wages for hours worked, and the consistent nonpayment of overtime. After six months of painstaking work, they “filed 36 of the 41 claims against Pulte [with the Massachusetts Attorney General]. The Carpenters Union filed five out of Fall River. We filed for people living in Worcester, Framingham, Marlborough, [and] places in between, New Bedford and Boston, for work done in Northbridge, Braintree, Plymouth, Natick, and Warwick, Rhode Island.”³⁶

In addition to the consistent wage theft by Pulte subcontractors, Low discovered through meticulous investigative work something else equally troubling. “If you stand back and look at the patterns here, some of these people had worked essentially nonstop for Pulte for more than five years,” Low reports. He goes on to suggest that although “a series of employers issued them checks...all of the coordination of the underpaid workers’ work was directly with Pulte.”

As discussed earlier, the Massachusetts Attorney General requires that a legitimate subcontractor must be “free from control and direction” of the general contractor. From his extensive research with Pulte workers, Low found that Pulte was playing much more than just the role of the general contractor. He reported what happened to a Pulte worker who participated in one of their jobs actions after workers had not been paid. “The Pulte supervisor saw him on the site and demanded that they [the subcontractor] kick him off, and they did. That was the end of his work. They [Pulte] had the effective power to fire and they effectively supervised a bunch of these guys. The pattern again was crystal clear and they knew the pattern.” The pattern also involved a series of subcontractors operating in a similar fashion. Low explains that:

These were five subs more or less employed sequentially....All of them passed bad checks. Many of them [the workers] were doing work stoppages because they weren’t

getting paid and Pulte [reps] would speak directly to the workers asking them to finish the job, asking them to have faith that they would get paid at the end of the job. Then [the Pulte reps would] turn around and quietly hand a check, presumably, to the sub, then just wash their hands of any responsibility for the fact that folks didn't get their back wages.³⁷

As one of the workers Low interviewed tells it, “For many years, the people who worked there were the same. The crew stayed more or less the same, but the guy who paid you changed. The work remained the same. The only thing that changed was the name of the company.”³⁸

Based on the detailed research that Low had conducted and the charges he had filed, the state got involved in the case, which culminated with the Massachusetts Attorney General ordering the five Pulte subcontractors Low had identified to pay back wages totaling over \$190,000 and penalties totaling \$409,775.³⁹ As the press release indicates, “The enforcement action is the result of investigations by Attorney General Martha Coakley’s Office, the Executive Office of Labor and Workforce Development, and the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification.” No mention was made of the investigative work or the charges filed by the MetroWest Worker Center. The contractors fined included:

- AM Construction Services and its President, Adimar Demoura, age 32 of Framingham, allegedly failed to pay four workers a total of \$15,331.50 for framing work done on private residential projects in Braintree and Plymouth. They were also fined \$22,500 in penalties.
- Five Stars Construction and its President, Alexandre Miranda, age 40 of Trumbull, Connecticut, allegedly failed to pay two workers a total of \$30,700 for framing work done on a private condominium project in Natick. They were also fined \$30,000 in penalties.
- Nunes Brothers Construction and its President, Tiago Aguiar M. Nunes, age 28 of Brooklyn, New York, allegedly failed to pay 23 workers a total of \$99,086.75 for framing work done on private condominium and single-family homes projects in Braintree, Plymouth, Natick, and Northbridge. They were also fined \$112,500 in penalties.
- Seven Seas Group and its President, Jackson Croscup, age 55 of Fall River, allegedly failed to pay five workers a total of \$10,333 for framing work done on a private condominium project in Natick. They were also fined \$20,075 in penalties.
- Two Brothers Construction and its President, Wellington DeLima Borges, age 41 of East Natick, allegedly failed to pay six workers a total of \$34,751.50 for framing work done on a private home development project in Plymouth. They were also fined \$34,500 in penalties.⁴⁰

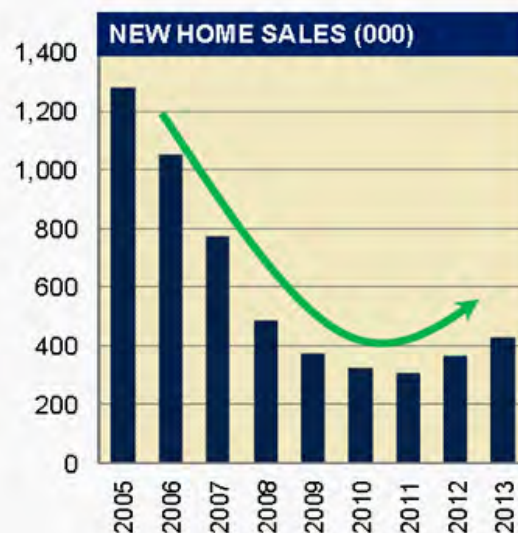
It is important to note here that Pulte itself was not charged with any wrongdoing. In a statement to the press Pulte tried to insulate itself from accusations of complicity. “We fully expect that our contractors will pay their employees according to all state and local guidelines, and have such requirements within our vendor agreements.”⁴¹ On their Form 10-K (Annual Report) submitted to the Securities and Exchange Commission (SEC) they state, “Using a selective process, we have teamed up with what we believe are premier subcontractors and suppliers to improve all aspects of the house construction process.”⁴² According to a reporter, “PulteGroup has previously told the *Daily News* and other publications that it has received no complaints from official channels, and has never had problems like this before.”⁴³

These statements might have seemed more genuine if there had been only one subcontractor guilty of wage theft—a bad apple in the bunch. That the Massachusetts Attorney General filed charges and fined five of their subcontractors—indeed their major subcontractors in central and eastern Massachusetts—is no coincidence. Coupled with Low’s discovery of Pulte actually directing work on the jobsite, the persistent subcontractor pattern indicates their complicity. “The investigation fined five separate subcontractors, but the real culprit is Pulte Homes, a multi-billion dollar national homebuilder,” argues Mark Erlich, Executive Secretary-Treasurer of the New England Regional Council of Carpenters. “Those subs are interchangeable and were just doing Pulte’s bidding. Cheating is Pulte’s business model and, unfortunately, that approach is far too common in the residential construction indus-

CHART 1

Ongoing Rebound in Housing Demand

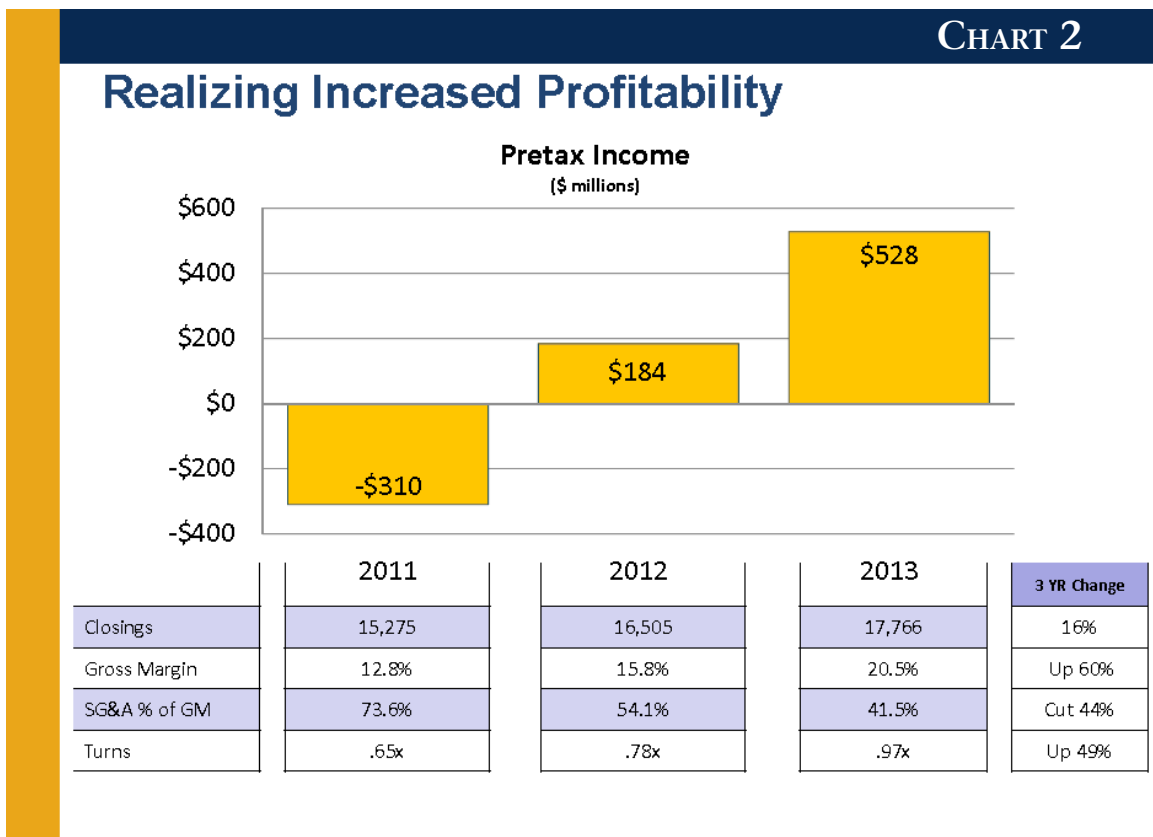
- Industry experts expect period of sustained growth in housing demand
 - Favorable demographics and pent-up demand
 - Low inventory of new and existing homes
 - Historically low interest rates
 - Relative value in owning vs. renting



try.”⁴⁴ Even Joanne Goldstein, the Massachusetts Secretary of Labor and Workforce Development, in her comments on the case pointed the finger at Pulte, expressing frustration that they could not be charged. “In this case, we charged all the companies we could reach,” she says. “It is frustrating that companies are insulated from liability but get the benefit of the misclassification or wage and hour violations.”⁴⁵ A closer look at Pulte and its finances suggests that this model of construction has proved to be very profitable for Pulte.

Like many homebuilders, both local and national, Pulte witnessed the collapse of new-house construction that occurred after the housing bubble burst and the overall impact of the Great Recession. Chart 1 above, drawn from the May 2014 *Pulte-Group Investor Presentation*,⁴⁶ illustrates just how far the market fell—from almost 1.3 million units in 2005 to just over 300,000 units in 2010. Yet the main purpose of this chart aims to show investors that, contrary to slide in new homes sales, demand for housing is on the rebound.

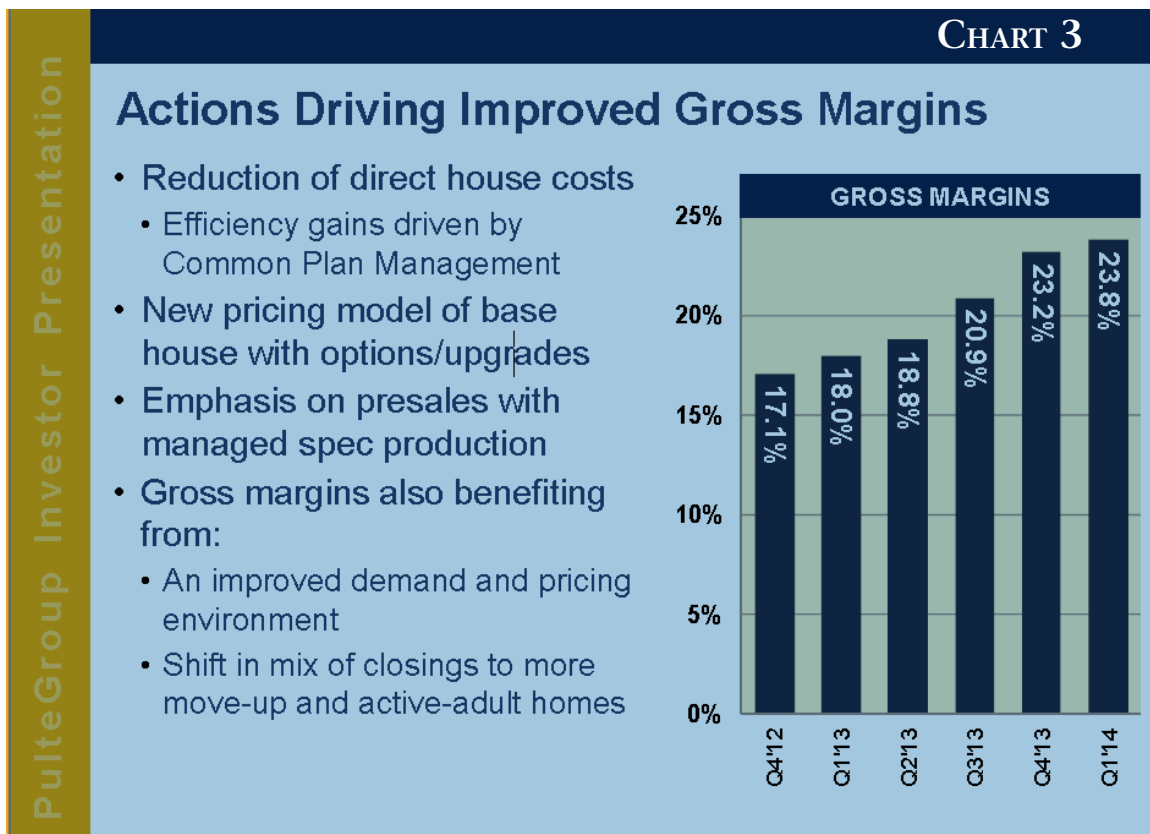
Chart 2 illustrates just how quickly Pulte has translated this increased demand into profit. In 2011 they lost \$310 million in earnings before taxes. However, by 2012 they had turned this around to a profit of \$184 million, which they more than doubled in 2013 to \$528 million. This is a spectacular rebound, given that the number of housing units, as we can see from Chart 1, has inched up ever so slowly and is still only a fraction of what housing starts were in 2002. The stock market responded with Pulte stock adding \$11.29 per share in 2012, up 178 percent on the



year. The question then remains: How did Pulte accomplish this huge increase in profit while still building a relatively small number of homes?

The answer lies in a closer examination of their finances. As we can see in Chart 2, their three-year change in the gross margin increased 60 percent. The gross margin, or what is sometimes referred to as the gross profit, is what remains after the direct costs involved in production, or what accountants refer to as the Cost of Goods Sold (COGS), which is then deducted from the overall revenue. Accountants use the COGS to assess the efficiency of production. The gross margin does not include any sales or general administrative costs (SG&A). In the homebuilding industry, the costs of goods sold are the costs of materials and labor involved in construction. This dramatic increase in the gross margin indicates that Pulte was able to significantly reduce the cost of building houses. Chart 3, also drawn from their *Investor Presentation 2014*, looks more in detail at their gross margin figures.

Chart 3 shows a steady increase in their gross margin over the past six quarters. In the bulleted list Pulte endeavors to account for this improvement in their margins by various activities of the firm. At the top of the list is “reduction of direct house costs.” One way to significantly reduce their “direct house costs” is to use the production model they used in central and eastern Massachusetts. By hiring a series of subcontractors who would certainly engage in a variety of wage theft, they would significantly reduce construction costs and improve their gross profit margin.



From our limited case study in central Massachusetts we cannot suggest that all of the increase in Pulte gross profit is a consequence only of wage theft. However, Massachusetts is not the only case where Pulte has worked with subcontractors who have been involved in significant amounts of wage theft. Worker advocates have been representing Pulte workers who have been victims of wage theft in Michigan,⁴⁷ Austin, Texas,⁴⁸ as well as in Arizona, Nevada, and California.⁴⁹ Beyond these claims by worker advocates, in 2011 the U.S. Department of Labor launched an investigation of Pulte, along with a number of other homebuilding companies. Looking for instances of wage theft and worker misclassification, “the firms were sent letters instructing them to turn over names, addresses, social security numbers, pay rates and hours worked for all employees over the past two years.”⁵⁰ Pulte balked at the request, forcing the Labor Department to file a petition in federal district court on February 28, 2012.⁵¹ The question is, what do they have to hide?

Despite major press coverage and the fanfare of the Massachusetts Attorney General (AG) going up against Pulte contractors, the actual payment of wages was disappointing at best. “Two years after those complaints were filed, \$190,000 in restitution assessed by the AG, they collected less than 10% of it. Forget the fines, which was another \$210,000,”⁵² reports MetroWest Worker Center’s Diego Low. Most of the subcontractors targeted by the state were little more than shell companies that just closed down or changed their names to avoid paying the fines. As Low admits, “We know that a bunch of those subcontractors against whom they made the claims continued to operate, always under new names.”⁵³

After the huge investment of time and resources Low made to file these claims, he sees the failure of the state’s action as “a direct consequence of their refusal to consider, as serious as we see it, the possibility that Pulte itself should have been held responsible. If that’s the way the state is going to enforce the law they are going to continue to be a completely ineffective place to turn for settlement of these issues. In fact, it will dissuade folks from going there.”⁵⁴

In many ways this situation underscores a regulatory structure that is deeply out of synch with the realities of today’s industry, and in this case particularly construction. The state approach is rooted in an earlier era where the assumption was that subcontractors were regularized employers. Indeed there are and have always been stable long-term firms that operated as subcontractors in construction. Yet the subcontractors that Pulte used in Massachusetts were hardly firms at all and ultimately escaped the fines that were imposed on them, stranding workers still unpaid and leaving Massachusetts taxpayers on the hook.

While our focus has been on immigrant workers building Pulte homes—and on the emerging system of production that has robbed them of wages and dignity on the job—this same emerging system, involving many levels of subcontracting, must also have a significant impact of the quality of construction. The 2009 report, “Poorly Built by Pulte, No Different at Del Webb,” released by Building Justice, a co-

aliation of labor and homeowners, states that of the 872 homeowners surveyed, 63 percent reported that their homes had construction defects and 43 percent reported that they would not buy another Pulte or Del Webb home.⁵⁵ “We’re not surprised by the results of the survey,” says John Smirk, the business manager of District Council 15 of the International Union of Painters and Allied Trades. “Workers tell us they are pressured to complete homes very fast. They work through breaks, lack adequate drinking water and safety equipment. Also, many workers report that they are not paid correctly for their work and morale is low.”⁵⁶

Two Massachusetts Pulte homeowners came to the attention of the local carpenters union when they were actually picketing Pulte, something that one rarely sees among disgruntled homeowners. As we met with these two women in a very large townhouse overlooking a golf course one warm summer afternoon, they showed us the flyers they had been passing out and a very long list of the problems they had found in their Pulte homes. Indeed, many were the kinds of things that one might hear from owners of new homes, such as squeaking hardwood floors, improperly installed kitchen faucets, leaking bulkheads, and cracks in the basement floor.⁵⁷

But this is no ordinary grumpy homeowners’ list, given both its length and the severity of the problems. As one of the women goes through a list of relatively minor complaints (leaky faucets and windows that wouldn’t open), we all break into laughter when she reads “ceiling fell down in bedroom.” That is not the kind of problem one would expect to find in a new luxury town home amidst the list of leaky faucets and windows that wouldn’t open. The other woman tells us how her living room ceiling fell down because of water damage due to ice damming. She shows us the pictures. It was part of a much larger problem. She picks up the story: “We found out, because we paid a forensic engineer to come in here and do a report for us...because I had \$6,000 worth of damage to my living room. So they took the vinyl siding off [outside], my unit juts out a little further than my next door neighbor, and they found that from the foundation all the way up to the peak of the roof, there’s not one piece of Tyvek or moisture barrier underneath the vinyl siding.”⁵⁸ On its website Pulte describes the function of the moisture barrier that its contractors failed to install: “House wrap is like a raincoat that helps protect your home from moisture. Installed before siding, brick and stone to help protect your new home against the elements.”⁵⁹

These were not the only major problems that emerged. The owners of one of these homes paid for a three-zone heating system so that she and her family could maintain a constant temperature through all three levels of their home. Yet what Pulte installed was very different. The thermostats were improperly installed, providing uneven cooling so that one room was comfortable, but other floors were unbearably cool. “This is the main unit,” she says as she shows us the controls. “So this unit has to be on for any of the other two thermostats to work. But what it does is, this one goes on, so when he kicked on the central air, it overrides this one here. So this room was lovely at 65 degrees, the basement was in the 50s.”⁶⁰

Serious ice damning continues which requires one of the homeowners to shovel snow off the roof after every snowstorm. "I'm about to turn 69 and I guess I'm really grateful that physically I'm able to do it, but every time we have a storm I go out on that deck, we go out with our shovels, we shovel the deck off. We have to shovel to the bulkhead so we can bring the ladders out. We bring the ladders out; my husband is afraid of heights, so I'm up on the ladders, and roof rake after every single storm. I really can't picture myself doing this when I'm 85."⁶¹

The problems both major and annoying add up to paint a portrait of Pulte as a homebuilder turning out structures described as far less than "quality." This is especially not what the Pulte homeowners we interviewed expected in houses purchased for \$370,000 and over \$500,000. "How do they keep building like this without anything happening?"⁶² one of the homeowners exclaims. Both homeowners made repeated calls, to what one dubbed as Pulte's customer "non-service line," with little avail. As they hired their own engineer and began to explore legal action they were shocked to discover that they could not sue Pulte directly despite having bought their houses from Pulte. "Then because they're an LLC, they say, 'It's not my problem.' No liability."⁶³ Only the general contractors or the subcontractors were liable, and we have seen how ineffective the action against subcontractors was in terms of the action by the state attorney general. This is what led these homeowners to picket Pulte's regional headquarters.

It would be easy in this situation to blame the workers who built these homes for their poor workmanship or lack of concern about quality. Our earlier discussion of how construction is taking place on Pulte job sites suggests a very different situation. We have focused on the real costs that the misclassification of workers and wage theft has on workers lives and livelihood. But here, we see the additional cost of a production system that relies on unscrupulous and fleeting subcontractors who try to squeeze as much production as possible out of chaotic worksites with ever-changing personnel and companies like the ones we describe above. Is it any wonder given this construction model that these Pulte homes ended up with so many problems? Is this why the Pulte contract signed by the two homeowners we spoke to prohibited them from visiting the building site before their home was completed?

In terms of the missing Tyvek: "It wasn't the workers," David Minasian, a Carpenters Union official and former carpenter suggests. They "knew better than to install siding over sheathing that had not been covered with a vapor barrier." He speculates that the scenario would have likely played out with the foreman insisting: "'Put it up.' That's what they were told to do. Workers had no choice, 'OK! I'm going to lose my job unless I put it up.' They are working piecework, so it's how much they get up. You have a subcontractor who's actually not responsible who comes in and is now in a really tight position because so many people have taken money off the top that by the time it's gotten to them their numbers are really, really tight. They're under the gun to get it done at a certain time."⁶⁴

In part, construction errors in these two Pulte homes were not noticed and rectified because of a changing regulatory practice in residential construction. Traditionally in a single-family unit, it would be the responsibility of a local building inspector to inspect the building process at various stages and certify that agreed upon standards had been met. Large developments like the one Pulte built, where the two homeowners have been facing such problems, are regulated through what is called “control construction.” A Pulte vice president for construction explained how it works to one of the exasperated homeowners: “We do control construction, which we pay an engineering firm to certify through the town building inspector, that everything was built according to code.”⁶⁵

David Minasian adds, “The only thing a building inspector would see was that the engineer signed off on it. But clearly with a huge project like this, who knows what kind of oversight or agreements were in place. [With] that many units missing Tyvek, there’s something going on there with the engineer. That’s...not easy to miss. That’s a huge square footage.”⁶⁶ While controlled construction may have made sense in a situation where building was more centralized with more regularized subcontractors, this situation underscores a serious dilemma: in the evolving system of residential construction, there are deleterious consequences when the actual work is performed by a myriad of crews paid by illegitimate independent contractors.

Consequently the end-users of the construction process—the homeowners—also suffer the consequences of the explosion of misclassification and wage theft in residential construction, both in Massachusetts and around the country. As we have seen, the chaotic and unregulated form of construction has a direct impact on the quality of what is being built by Pulte and other homebuilders who have decided to build using this model. And while construction workers and homeowners are often seen on the opposite side of the equation, here they are both the victims of misclassification and wage theft.

It is important to emphasize that the public and citizens of Massachusetts are also losers here. Through this system of the misclassification of residential construction workers and wage theft, massive state and federal tax revenue is lost. Additionally, with so many workers classified as independent, contractor payments to the state workers’ compensation program have plummeted. Mark Erlich, Executive Secretary-Treasurer of the New England Regional Council of Carpenters, describes how this has impacted other states.

In Florida, for example, some years ago, their Workers’ Compensation Bureau announced that they could no longer afford to pay for medical benefits for people who had suffered an injury on the job. The governor, who I believe was still Jeb Bush, appointed a blue ribbon commission to figure out why this happened; why there was no money in the fund. It became clear after they did a study that the reason was no-

*body had any employees anymore in construction....Everybody was an independent contractor; everybody was being paid in cash.*⁶⁷

Not only is the workers' compensation fund damaged by illegally classifying workers as independent contractors, but also, when workers are injured on the job without workers' compensation coverage, that burden is shifted back to taxpayers. Pedro seriously injured his knee on the job in January of 2012. He was working only on and off, and without medical insurance and workers' compensation the commonwealth had to pay for his care.

When we step back and see the ways in which Pulte has shifted its costs onto the public, it essentially amounts to a public subsidy for the company. Without having to pay workers' compensation, unemployment, and other taxes for most of the workers building their homes in Massachusetts, Pulte is able to reduce the cost of building homes and increase their corporate profits at the expense of workers, who are both cheated out of wages and have no safety net when injured; of homeowners, who do not benefit from Pulte's lower construction costs, but are victims of shoddy construction practices with little accountability; and of Massachusetts taxpayers, who have to shoulder many of these costs.

From Pickup Trucks to a New Drywall Industry in New England

In addition to examining wage theft and misclassification of workers in a major firm such as Pulte, we wanted to look more closely at one subcontracting trade to better understand what changes are taking place and to assess their impact on workers in residential construction. Installing and finishing drywall is well known as an industry with tough working conditions, low profit margins, and one that increasingly relies on immigrant workers.⁶⁸ As we came to understand how it operates in central Massachusetts, it became clear that certain practices exist not only within the confines of that state, but extends beyond within a network of subcontracting firms across New England that has reshaped the fundamentals of how this industry operates overall. As we will see this presents a number of challenges to the regulatory structure that is state-based.

Jose had learned carpentry in Mexico before coming to United States. He started working in North Carolina before following friends to Massachusetts, and he took jobs across a number of the New England states, including one with East Coast Drywall as an independent contractor. Soon after starting he went for three weeks without pay. "I figured it out after a while, because in the United States, they almost always do that. So we decided to keep working. At the second week he told me that he still needed a little more time because they paid him every twenty-five days. By that point we didn't have any money to afford going there. We didn't have any food, no gas....So we couldn't work anymore."⁶⁹ Jose couldn't pay his rent and bills until he found another job.⁷⁰

He bounced around and later found a job with New Haven Drywall. The situation was no different. "There also we worked for them for two weeks. They paid the first week then the next week he told us to wait for him and we decided to wait because we needed the work. We waited for the third week...this was on a Friday...and he told us that on Monday he would pay us. But we had to go [back] because we worked even on Saturdays. So we went to work that Saturday—we didn't get overtime though. They would pay the same amount, which was \$18 per hour. There was no contract. Then the month passed and he only paid us for one week over the month."⁷¹ At that point Jose sought out Manny Gines at the Carpenters Union for assistance. Over the past seven years Gines has been an organizer with NERCC working out of Local 107, working mainly with nonunion carpenters in central Massachusetts to secure wages owed to them.

Born in Puerto Rico and raised in New York City, Gines was both a gang member and a boxer. He tells us about his first experience with wage theft as a young man:

I was sitting in front of my sister's house. I had been trying to find a job and I was sitting there after looking for work....A red truck, I'll never forget that—pulled over and [a voice] called to me. I go over to the truck and he tells me, 'You look pretty

strong. Do you want to work?' I said, 'Sure!' He says, 'What do you know about carpentry?' I said, 'I know a little. I know how to measure and stuff.' He says, 'OK, come with me.'...I went with him. We actually hung about eight doors and some windows. I was really happy, especially in carpentry and that was my goal to get hired doing that....After the day's work he told me he'd pick me up at the same place the next morning. The next morning I was there at 6:30; I was supposed to meet him at 7. He never showed up. He screwed me.⁷²

Gines reflects on what he learned: "That's why what I do now with this wage theft stuff, I do with a passion. It really pisses me off when these guys get screwed like that. That was my first experience with wage theft."⁷³

He went on to work in a variety of positions in construction and in the process became a member of the Carpenters Union and an expert drywaller. A number of years later he became part of an experimental program by the Carpenters Union, in which experienced drywallers who were bilingual assisted in the training of Latino drywall crews on the West Coast. For almost two years Gines worked in Arizona and Colorado, not only training novices about drywall, but also was also honing his organizing skills. Seven years ago he returned to Local 107 in Worcester and became an organizer with NERCC. His very first case was with National Carpentry, a subcontractor working for the homebuilder Avalon Bay. "An Ecuadorian kid, 19 years old, fell from the roof all the way down to the basement and died," Gines tells us. "My first mission was, they told me and Mario to go to that job site and try to get information about this accident we heard about and see if we could reach out to the family so we could get them a lawyer. We went to the job site and everybody was told to shut up and not talk about it."⁷⁴ He recounts how it was virtually impossible to find the employer in a web of subcontractors, but as workers started to open up it was clear that they were being highly exploited and were being cheated out their wages regularly. It was clear that wage theft was out there, and there was much for Gines to do. Over the past years he has worked on hundreds of case, recovering what has been estimated to more than \$1 million for workers cheated out of their wages.

For a union that is largely white in New England the idea of having one of their organizers assist undocumented nonunion construction workers goes against expectations and marks an important transition of the union. Mark Erlich recalls the first influx of immigrant workers into construction in Massachusetts in the late 1990s, when he was organizing director for the carpenters union, and one of his organizers in the field called him. "He said, 'Mark I'm out on this job in Waltham....You know how you always tell us to talk to all the nonunion workers?' I said, 'Yeah.' He said, 'I can't.' I said, 'What do you mean, you can't?' He said, 'I literally can't!' I said, 'Why is that?' He said, 'None of them speak English!' Now, this was the first time that this had happened." Erlich continues, "They brought in a crew of Latino folks...to work on this fairly sizeable project called Bear Hill in Waltham. Diane Lewis was a [Boston] *Globe* labor reporter at the time. We got Diane to go out and she talked to

them and it was a front-page story; it was news....It was my first exposure to...the issue of undocumented workers."⁷⁵

Through the work of Manny Gines and other Carpenters Union staffers, who are committed to representing nonunion workers in residential construction in their battle against wage theft, attitudes of rank-and-file carpenters has been changing. As David Minasian describes:

*I know personally folks that I worked with, that their opinion on Immigration in terms of the industry in construction, and what we should be doing as a union, has changed. This is because of the success. Because it's just night and day, the two worlds, and after a while you hear these stories, where time after time all these people are getting screwed. And here we are working in the same trade with the same skills. We have such a better standard of living because we're in the union. That's really the only difference. I think it just wears on people after a while so they become really supportive.*⁷⁶

Erlich states firmly that the role of the union is not just to represent current members. "We want to be known as the advocate for all carpenters in New England, period."⁷⁷

Gines organized a picket line at the New Haven Drywall jobsite that Jose participated in. As an undocumented worker he was concerned at first when the police showed up at the site, but he "felt like a weight was lifted, we felt good because we noticed that the cops didn't do anything to us."⁷⁸ Gines was able to get the company to pay some back wages to the workers. Jose was thrilled: "We're thankful to Manny and the people who helped us. When you receive the money it's so great. Three weeks or a month without pay, at that point you're borrowing money from friends and family for food, lunch, anything. When we got paid it felt great."⁷⁹

Ricardo, also a carpenter trained in Mexico, went to work for New Haven Drywall. He faced the nonpayment of wages right from the start.

*The first week, second week, OK but no pay. Third week I thought something was going on because they didn't pay. I talked to the boss or the owner called Steve. I said, 'My name is Ricardo and nine other people are working with me. I'll give you the names. You need to pay me.' He said, 'Yeah, I'll pay next week.' I said, 'I'm not just going to give you my name. I'm giving you my name, my phone number, my address and you have to send my check for this Friday. If not, I'm not coming back.' He said, 'You can do whatever you want. You can even talk to Obama, I cannot pay you this Friday.' He didn't send me the check. I called him. 'He said, I'm not going to pay you! It doesn't matter who you talk to.'*⁸⁰

Ricardo was learning that this scenario was not out of the ordinary in residential construction in Massachusetts. He describes how "in this country you have to learn that if you don't save for at least one or two months extra rent or for your lunch it's a problem. You have to find a solution, but you learn."⁸¹

When he started with New Haven Drywall Ricardo was also “urged” to become an independent contractor. “They make you sign the W9, right? But at the same time they ask you, ‘How you want to work? Do you want to work like this, or do you want to do piece work? In some places they pay you \$25 to \$27 per hour. It doesn’t sound that bad but then they take your taxes and it’s hard to make a decision about it. But then if you make piece work it’s 45 cents a square foot so it’s \$12 a sheet and if you do fifty sheets, you’ll see \$600; \$300 for me, \$300 for your partner.”⁸²

As Ricardo and his fellow workers were trying to get the employer to pay their wages for hours already worked, officials at New Haven Drywall pulled the immigration card. As Ricardo describes, “There are four of us working, and when you put us together, it’s like \$10,000 that they owe to these people. They make us work until the end of the job and when they finish the job they say, ‘OK, show me a valid driver’s license, or something that proves to me you’re here legally and I’ll pay you!’” This was not something that New Haven Drywall cared at all about when they hired these workers, or while the workers were on the job, but was being used as a justification not to pay them for the work they had already done. The boss told Ricardo, “I’m not going to pay you because those are false documents.”⁸³ Ricardo also turned to Manny Gines for assistance.

Gines has been fighting New Haven Drywall for years, with Jose and Ricardo being only the latest victims of their unethical labor practices. New Haven Drywall, owned by Steve Dostie, was incorporated in 2008 in Connecticut. “Steve Dostie is New Haven Drywall....I have caught Steve Dostie six different times. Then he swears that he won’t do it no more,” Gines tells us.

*The important part about this also is the general contractor, which most of the time is Avalon Bay [another major homebuilding company like Pulte]. They keep hiring him. They know about him; that he’s using and abusing these guys. They say, ‘Oh, we’re not going to use him again.’ Three to six months down the line I find him working for Avalon Bay again. It’s really the general contractor who is taking him back because of the lowball number he gives on the estimate. That’s what they care about—the money.*⁸⁴

These unethical principals of misclassifying workers as independent contractors and stealing their wages was not just a practice at Pulte, but was being used by its competitors as well.

Jose then went to work for Jose Gutierrez, another subcontractor for Avalon Bay on a large housing project. Once again he faced the same nonpayment of wages. “He told us we would be paid every Friday. We’d wait for Friday and he’d say he hadn’t gotten the money.... But because we’d already been through this, we knew they were going to rob us.”⁸⁵ Jose got to meet Gutierrez and confronted him about how he could treat other Mexicans so poorly. “How can he do this to somebody who is the same race as he is? That should not be done between your own people. Not to mention to another human being. I feel like he shouldn’t do it to anybody, but

we're from the same family, pretty much. We're from the same country. He didn't say anything; he just shook his head and moved on."⁸⁶

Jose also reflects on the working conditions they face and sometimes how it is hard to take pride in their work.

*There are some jobs where you feel bad. Because sometimes you have a boss that pushes too much. They want too much to be done. Sometimes they ruin the quality because they make you do more than you're supposed to do. There are some moments when you're working you think, 'What's the point?' The boss or somebody has told you, Oh, I don't like the work you did. In one job they fired me. It was raining so the lights were failing and we were doing framing work. He didn't think we had done enough so he fired us."*⁸⁷

Jose's account helps us understand the situation the Pulte homeowners faced in terms of shoddy construction. Given these working conditions, it is no wonder that the quality of residential home construction is so compromised.

In addition to the quality of the homes built, Diego Low reminds us of the safety and health implications of working at such a breakneck speed.

*It's producing both really, really problematic safety conditions in that industry in what is already the most dangerous part of construction. When you get to bid below \$40 a square [for roofing work]. They themselves say you can't earn money at less than \$60. The going rate out there for the non-immigrant crew is about \$100. So it's an impossible situation. In terms of people having to race through the work to get it done in a single day, and that's part of their calling card too. They will do a job in a third of the time other crews will do it in. They'll appear in some corner of New Hampshire at 7 a.m. and work until 9 p.m. at breakneck speed and it's hard to do that if you're tied off."*⁸⁸

Fernando, also from Mexico, worked for Jose Gutierrez. Like the others he was paid cash. "They tell you they're going to pay you this amount but they're going to pay you in cash so you don't have to pay taxes. They give you this idea." Andres took the job with a similar, innocent hope. "You think it's a big job and that you'll have a lot of work for a long time, so you take it. But we didn't know."⁸⁹

From his extensive experience working to get back wages for immigrant worker, Manny Gines has been following Gutierrez very closely. Jose Gutierrez is one of the biggest labor brokers in New Hampshire.

*He's Mexican and he abuses his own people. He brings a lot of people from Mexico or Texas. He brings them here and sometimes he even trains them in the drywall business. He'll start them off as an apprentice and teach them the trade. So he keeps a foot down on them. They never ask for a raise, or he tells them they're not good enough to make \$20 per hour like the other guy."*⁹⁰

Gutierrez is not just acting as a subcontractor, but also as a labor broker hiring undocumented workers, who are the most vulnerable. Throughout the construction

industry there are individuals like Gutierrez who operate at the intersection of two worlds. Often referred to as “Jeffes,” they come from the same countries and speak the same languages as the workers and their employees, yet they use this relationship to exploit them as employees in the Anglo world.

Gutierrez and his company, Zas Zas Framing Drywall and Finishers, were picketed at the Stow Mountain Lodge in Vermont for his misclassification of workers and for wage theft, both of which the Vermont Labor Department investigated.⁹¹ Gines reports, “Through my work with the Attorney General’s office, they debarred him and he went out of business.” Gines also notes, “He was moving around doing a lot of jobs with this guy named Billy Poulin, who also had a company named All Pro. Billy Poulin had a good take on the prevailing wage jobs and knew the game. So he and Jose Gutierrez got together and partnered up and came up with this company Tri State Drywall.”⁹²

Tri State picked up where All Pro and Gutierrez left off, using the same practice of stealing wages from workers. Carlos, another worker originally from Mexico, worked for Tri State on jobs in New Hampshire and the University of Connecticut. He was working on a prevailing wage job in Malden, Massachusetts. For a prevailing wage job, typical in public construction projects, the employer is required by law to pay his workers the negotiated prevailing wage for the state. As Carlos tells it, “He was paying us at \$18 per hour. He was supposed to be paying us \$58 per hour. That’s a lot of difference.”⁹³ Despite the fact that Tri State was stripping \$40 per hour of the wages they were being paid, they still didn’t pay their workers. “Friday would come and I would talk to him to pay us and he’d say to me, ‘Oh, I don’t have any money! If you want, you can turn me upside down if you doubt it. I don’t have any money!’ He wouldn’t pay us. Sometimes we would last two weeks without them paying us.”⁹⁴ It got so rough for Carlos, as he tells us, “I even got to a point where I had to go pawn my truck.”⁹⁵ Desperate for funds, Carlos says, “Sometimes we’d even go to his house and try to get him to pay us the money. He wouldn’t be at his house sometimes, and we’d wait outside for three or four hours.”⁹⁶

On March 8, 2012, the Massachusetts Attorney General caught up with Tri-State Dry Wall systems, LLC:

[They] have been cited for violating the state prevailing wage law and the obligation to maintain payroll records with regard to public works projects throughout the Commonwealth. The company has been ordered to pay more than \$928,000 in fines and restitution....The Attorney General’s Office determined that Tri State failed to pay its workers the proper prevailing wage rate and failed to submit true and accurate certified payroll records to the awarding authorities for the various construction projects. The investigation further revealed the company classified all its workers as independent contractors and paid the workers with company checks.⁹⁷

What we see here in the New England drywall industry mirrors what we concluded in our examination of the construction of Pulte homes. First, in the case of New Ha-

ven Drywall, despite their repeated violation of the law they continued to be hired by Avalon Bay, one of Pulte's competitors; this lends support to the argument that Pulte is not alone in profiting from low-cost subcontractors who can only achieve their rock bottom quotes by the theft of workers' wages, and not alone in the non-payment (or avoidance) of their workers' compensation or other payroll taxes. Second, through the case of Jose Gutierrez and Tri State Drywall we see how easy it is for firms, once caught, to simply reorganize and start new firms based on the same illegal tactics. By rights, based on the earlier charges, Tri State should never have been licensed, or it should have been more carefully monitored before it committed \$928,000 of wage theft.

The impact of the growth and reach of firms such as New Haven Drywall and Tri State Drywall extend far beyond the job sites where they operate to fundamentally change the drywall industry in Massachusetts. By continuing to hire these subcontractors, major firms like Pulte and Avalon Bay have enabled the kinds of illegal practices we have discussed to grow significantly and in some ways move out of the shadows and threaten legitimate subcontractors. It also allows them to move into markets that are more regulated and highly unionized like the prevailing wage market.

Scott Morrissey and Brian Cote are co-owners of Red Line Wall Systems in Leominster, Massachusetts, which specializes in drywall installation and finishing. For many years they had carved out a space for themselves between the high-end union contractors and what they refer to as the "guys with pickup trucks," the low-end casual subcontractors. Theirs is a professional operation. As they describe it on their website, they have more than 50 employees including a full-time estimating department, a blueprint reproduction department, dedicated project managers, and OSHA certified employees.⁹⁸ In the past the guys with pickup trucks never really challenged Red Line. As Morrissey suggests,

In years past when the economy was good, my guys, because of running efficiently and being smart and working as a team, could always produce equal or better than these guys although they were being paid less. So our client base would see the value in that. If it was a \$100,000 job and someone else bid it at \$90,000 they would still allow me to take the job because they're willing to pay for the higher end value of the work."⁹⁹

Morrissey went on to suggest how the 2009 recession changed the construction market. Now that the gap has widened from \$80,000 to \$100,000, "it's a \$20,000 difference and there's nothing more I can do to lower [my number], or to come to terms to try and get closer to that lower number."¹⁰⁰ Given their employment of full-time workers with benefits, there is just no way they can cut their costs to compete with the firms, like New Haven Drywall and Tri State, that are operate their business with illegal labor practices. "We've seen the profits swing. Boy! Jobs that used to give you

10 percent or 12 percent are now 2 percent and 3 percent—and that’s if you’re doing well,” Morrisey tells us.

Morrisey and his partner reflect on just how much the industry has changed in a very short period of time. “So they say, I want that done today, and they don’t realize that it needs three days. You can do it in a day but it’s not going to be right! That’s the pressure the industry is under.”¹⁰¹ And as they have seen, in terms of labor practices in many situations, “A blind eye is turned as long as a job is getting done. They’ve had to get this contract done for a certain amount of money to appease the bank or the owners or the developers and that’s what they need to do. They’re trying to meet a time schedule.”¹⁰²

Morrisey and Cote also report that the culture on the job site has changed as more subcontractors like New Haven Drywall and Tri State have emerged. “Everybody is passing liability, that’s something we see today....You used to have that safety net that, you know what, if the plumber or the electrician was maybe not getting something done quite right, he might have [kept an] an eye on it.”¹⁰³ With the growth of the large bottom-feeding subcontractors in the industry, the viable or legitimate companies like Red Line are deeply challenged. Looking carefully at this changing situation and the disappearance of any middle ground in the industry, Red Line Drywall decided, “We’re going union, [it was the] only choice, except to go out of business.”¹⁰⁴

As we saw in the case of Tri State, these drywall subcontractors are moving beyond residential construction and venturing into commercial and prevailing wage work. Mark Erlich has seen how “it started out at the fringes, at residential, small-scale commercial, this and that. Now there are multimillion dollar buildings that are being done.”¹⁰⁵ Karen Courtney is the Executive Director of the Foundation for Fair Contracting of Massachusetts, a labor management funds that advocates for prevailing wage enforcement in public construction. She tells how even in large public construction jobs there is growing use of informal subcontractors like we saw at Pulte. “There’s more subbing out of that work, trying to get around that law by subbing to somebody else. A lot of this happens in flooring. A supplier will bid the job and then sub to an installer, which is not legal. Or with glazing, a window contractor will get it then—he’ll be a supplier and then he’ll try and sub it out. We look for those cases and try to prevent it, ‘sub subbing’ is what it’s called.”¹⁰⁶ Last year the Center for Fair Contracting collected over \$1 million for violations of the prevailing wage.

Affordable Housing and the Main South Community Development Corporation

As we saw in the case of Tri State, many of these subcontracting firms are moving into larger and more commercial types of construction, including public construction. To better understand this process we looked at construction work at a community development corporation (CDC). The Main South Community Development Corporation in Worcester, Massachusetts, was founded in 1986 to “maintain and/or create safe affordable housing for low-to-moderate income individuals, support economic opportunities for businesses and residents of Main South, enhance the physical image of the area, and instill a sense of neighborhood pride and commitment.”¹⁰⁷

The CDC faced blight and boarded up buildings, particularly in the Kilby and Hammond area of the city, but Executive Director Steve Teasdale, who has headed the agency since 1988, suggests that the community has made steady progress. “There’s a degree of stability and the latest census data indicates that median incomes are rising in that area. That’s not gentrification, that’s just people coming from abject poverty to being a little bit better off, which is what we’re trying to do. The stability and the influence of home ownership and having an opportunity to own your own home have been good.”¹⁰⁸ The neighborhood borders Clark University, and although the university does not directly fund the CDC, Clark has worked collaboratively with the CDC and recently began offering free tuition to residents of the neighborhood who qualify.

While it does not utilize unionized employees on its redevelopment projects, the CDC had a solid reputation as a fair employer, although beyond basic maintenance on its properties, most of the work on its redevelopment and construction projects is done by outside general contractors hired by the CDC. The Gardner-Kilby-Hammond Revitalization project, a \$32.5 million revitalization effort began in April 2006 and has been one of the major undertakings of the Main South CDC.¹⁰⁹ For the final 22 units, a \$4.2 million contract was awarded to Stutman Contracting, Inc., with the company acting as the general contractor.¹¹⁰ Steve Stutman founded the company in 1982 and remains the president and owner of this central Massachusetts-based firm, which works on commercial, residential, and public projects. Stutman Contracting has fostered relationships with many government agencies—local, state and federal—performing work funded by public tax revenues. The company prides itself on its “long standing reputation working for the City of Worcester, and many Community Development Corporations that showcases our ability to complete governmental projects with relative ease and efficiency.”¹¹¹

To fulfill a state requirement that 15 percent of the work had to go to minority contractors. Stutman hired Yanez Framing to do the framing on the project as well

as the roofing and siding on the project. Eduardo, a Mexican immigrant carpenter from the Worcester area went to the jobsite looking for work.

I spoke to the guy and when we were talking, he offered me a contract to side the house. But I said, "I'm not a contractor, I don't got no license to do a contract." He told me, "Don't worry about it. We can work it out, you know?" But I also know that to be a contractor you have to have the insurance policy, if anything happens at the job site, you have to be covered. He told me, "No don't worry about it," so I said, OK. I took the job. He wanted me to do the siding for \$4,000.¹¹²

So rather than getting a job as an employee working for Stutman or Yanez Framing, Eduardo was coerced into becoming a subcontractor. There was no written agreement signed, only a verbal agreement between parties.

This is a model case of misclassifying a worker as a subcontractor. By paying Eduardo as a subcontractor—although he clearly wasn't one—Yanez Framing avoided having to pay for workers' compensation, either for its own employees or the overhead that a legitimate subcontractor would charge for its workers' compensation. The cost of workers' compensation is not insignificant, typically \$.30 on the dollar in residential construction. Yanez Framing would also avoid the payroll taxes on employees, a burden that Eduardo, as a subcontractor, would have to shoulder. The was a perfect formula to increase Yanez Framing's profit—except that it is illegal to classify Eduardo as an independent contractor, to consequently avoid paying taxes, and to have workers on the jobsite who are not covered by workers' compensation.

Eduardo could either have refused the contract or done all the things required to become an official independent contractor before he took this siding job. But we must be careful here not to blame the victim. As we can see from the exchange above between Eduardo and his contact at Yanez Framing, he came looking for job, not a contract, and despite his protestations the company contact illegally treated him as a contractor even though they knew he did not have a workers' compensation policy and assured him that everything would be o.k.

This situation has been greatly exacerbated by a constellation of swirling events, including the significant loss of employment and the drop in wages after the Great Recession, as well as the presence of a large number of undocumented workers who largely operate outside the formal employment system, and the explosion in misclassification of workers as independent contractors. As Mark Erlich suggests, "The recession has really distorted everything in construction. It's really distorted all the normal ways of doing business. The nonunion compensation just is...people are getting paid now what they were when I came into the business in the 1970s as nonunion. I mean literally the same amount, not for inflation. It's the same dollar number. That's incredible."¹¹³ A union carpenter, who earns the prevailing wage, has little incentive to work off the books given the compensation and benefits his formal employment provides him. The situation is very different for the carpenter working for a subcontractor for \$12 or \$14 an hour. If that employer offers to pay

the carpenter off the books as an independent contractor or simply pays him in cash under the table, then this constitutes a substantial raise. This may be even more substantial given the lack of work and the way that wages dropped precipitously post-2008.

The situation is even more acute for undocumented workers who, even if they pay taxes and Social Security, have no right to Social Security benefits. For example, in 2010 undocumented immigrants in the United States paid \$12 billion into the Social Security system through fictitious Social Security numbers, money they will not have access to, and which is being used to prop up the Social Security system for U.S. citizens.¹¹⁴ Given this dynamic there is a great incentive for undocumented workers to work off the books.

So Eduardo hired a couple of his buddies, rented some pump jacks, and started installing the siding. Work started well, but things changed on the second day of the job. "We came to a corner of the house which had a window that wasn't level... and I was like, 'But you put in the window. You're supposed to level the windows and get everything ready. I'm only supposed to do the outside siding.'" ¹¹⁵ It was not just the windows, but more and more problems surfaced as the work continued and Eduardo and his crew were expected to remedy them. "Every day they were adding on more things to the job, since there was no contract to sign or nothing, and he was saying like, 'I want you to fix this, whatever.' I'd say, 'This is not my job. My job is the siding.' But he'd say, 'Well, you gotta fix it!' We had no other choice but to do it! That was the situation. Either you do it or you walk away and don't get paid."¹¹⁶

What this clearly shows that they were taking direction from Yanez, had no contract and were illegally misclassified. The situation was escalating rapidly as it became clear that the structural work done on the house was substandard. Some weeks later Jim Turner from the Carpenters Union arrived on the job to examine the building that Eduardo had been contracted to side. "'Oh, these guys did terrible work!' I told Eduardo. 'Look at the shoddy workmanship they did.' He's showing me... he's pointing things out that were questionable. But the real problem was that the house was three inches out of plum in that corner. I've been a carpenter for 40 years and I have an eye for this. So I look at the corner of the house and I see that it's at least three inches out of plum." When Turner turned to the supervisor who was keeping a watchful eye, he said, "What do the siders have to do with the fact that your building is at least three inches out of plum?"¹¹⁷

In the middle of the dispute about who was responsible for the extra work one of the supervisors approached Eduardo, who had been carrying tools on and off the jobsite each day. "You can leave them with me and nobody is going to take the tools because we got a guy who comes and checks the place," the supervisor said. He told Eduardo to store them in a locked room on the third floor. "So I left the tools. It happened that it was Friday. When we come back on Monday, somebody had broken down the door, gone in there, and took all the tools. I'm talking about

everything!”¹¹⁸ What was suspicious about the theft was that none the tools on the first floor, which was much more assessable to theft, had been touched. The supervisor was not sympathetic. Eduardo tells us how, “I pressured him and I said, ‘Listen man, they got the tools stolen so how are we going to work this thing out?’ He said, ‘Oh, if you don’t have the tools, how are you going to finish the job?’ So then he didn’t want to pay us! I said, ‘Wow man, you know, this is going to be a problem.’ By that time when I was talking to him, the cops arrived.”¹¹⁹

Eduardo went directly to Stutman, who as the general contractor had an insurance policy that would have covered the loss. Stutman refused to file an insurance claim and, adding insult to injury, refused to pay Eduardo and his crew for all the hours they had worked on the jobsite. Without tools they had no way to finish the work and, as Stutman had informed them, without finishing the work they would not be paid. At this point Eduardo contacted Manny Gines and Jim Turner at the local carpenters union. Manny Gines, the NERCC organizer, reflects back on Eduardo’s situation: “He was doing all types of stuff and that’s why they started clashing. They see that he wasn’t going for that stuff and that’s when they pulled that Houdini trick and made his tools disappear!”¹²⁰ Gines had no doubt that Yanez Framing was punishing Eduardo and wanted him gone from the job.

The union was already assisting two other carpenters, Tom and Charlie, who had worked on the CDC project. They had been contracted to work on a whole house remodel for Stutman. As Charlie explains, “I was told for six weeks straight that I would get paid Friday. Friday comes and no check. Monday comes, no check and I’d be told Friday again. I did this for six weeks and then I showed up on the following Monday and there was no money and I went, I’m done working for free and I walked off the job.”¹²¹ Tom was on the job and in the same situation for more than a month. It hit him hard financially. Without any income he lost his apartment and had to ask his mother for help.

In a situation similar to the one Eduardo had faced, Charlie and Tom were not impressed with the work they saw being done around them. As Tom tells it, “The guy who is supposedly a ‘master’ at stairs, oh my God! They were a nightmare!...They were all over the place! The building inspector will say, ‘What the?’ Not one step was even 3/16th of an inch close to the next step. And that’s all you’re allowed. It was like a half inch or quarter inch. They were all over the place!”¹²² While Tom and his crew were framing walls inside the house, another subcontracted crew was framing a deck in the back of the house. He was shocked when “It just fell apart, everything.” Not unlike the situation we saw at Pulte, the ever-changing cast of carpenters had significant impact on quality.

As in the case with Eduardo, Tom and Charlie were not employees of Stutman or another subcontractor, but were illegally classified by Stutman as independent contractors. In this case, too, there was no written contract or any formal employ-

ment relationship to fall back on, which is why it makes wage theft so easy in this informal employment relationship and so difficult when arguing for recompense.

When they came to the union office Gines had Tom and Charlie complete nonpayment complaint forms, which he filed with the attorney general's office. From his past experience, however, he knew that it was unlikely that the AG's office would respond to such a small claim. In terms of "the AG's office enforcement—if they don't see a lot of names or some big contractor that they know, whatever, they put it on the shelf. They might get to it and they might not. A lot of cases, I put them in two years ago and I still haven't heard nothing."¹²³

So Gines decided to use an approach he has relied on many times, given the reluctance of the AG's office to get involved in small cases like this: he took a copy of the nonpayment of wages complaint forms directly to the "end user," in this case Steve Teasdale, from the CDC that was overseeing the Stutman project. He scheduled a meeting with Teasdale, and confronted him with the evidence of wage theft. Teasdale reported he was unaware of these kinds of practices happening on the jobsite and wrote a check on the spot to cover their lost wages. He told representatives from the Carpenters Union that he would subtract it from the monies owed to Stutman.

While Gines frequently makes these appeals to employers, few pay up so quickly as Teasdale did, yet most are small private employers and not someone with a public profile and commitment to social justice. Teasdale would not, however, cover the cost of the stolen tools, and referred that back to Stutman. In many ways this incident represented a wake-up call for the CDC staff members, who had left the day-to-day operations to the general contractors. As Teasdale suggests, "I think we all learned from that and how we could do it differently going forward."¹²⁴ "We expect that anybody on this job is licensed and insured. You have to get that information; they will sign a release of liens to say that everything has been paid, etcetera. They will also have workers' compensation. We expect to see that documentation and you're responsible for making sure it exists."¹²⁵

Despite Teasdale's own values and commitments, it is important to recognize that he faces pressures on a daily basis, both from contractors who would like to follow the emerging model in the residential construction industry of utilizing a multitude of low-wage subcontractors and wage theft, and from the city council, whose members are always trying to keep renovation and construction costs down. As Teasdale reports, "What happens is we got the shit kicked out of us, the CDC's on the city council. Every time you get some councilor, who wants to jump up and say, 'Well how much does it cost to build a housing unit? I can do it for \$60,000 less in the private sector.'"¹²⁶ This situation is primed for the contractor who follows the low-road approach built on the foundation of wage theft and the misclassification of workers, as we see in the case of Eduardo. But is this the kind of employment practice that local government should be following in the interest of the lowest

housing prices? As Teasdale argues, “There needs to be more of a cooperative voice politically in terms of fair labor practices being aligned with neighborhood development efforts, in terms of getting the political support in the city council [which will] support the work of nonprofit groups who empathize with fair pay for fair work, with benefits and craftsmanship.”¹²⁷ He acknowledges that we sometimes have to make the commitment to spend more for housing to ensure that workers are being fairly compensated. “Instead of \$200,000 for a home we’re going to put \$300,000 in.”¹²⁸

District Councilor Sarai Rivera, in her second two-year term on the Worcester City Council, has been a strong advocate workers’ rights, as a community activist, clinical social worker, and pastor since long before being elected to the council. “As long as I’m in office and even when there comes a time that I am not, I’m going to continue to work on fair labor.”¹²⁹ She has been deeply involved in educating other councilors on these issues. “I have found that most of the councilors I have served with were willing to have this conversation and were willing to pause and say, ‘OK, wait a minute, hold up. OK, we didn’t know that.’”¹³⁰ But while she is good team player working hard to push the council, Rivera is uncompromising in her assessment of wage theft. “If they work, they are paid. It’s really as simple as that. We have the right to be able to work, and when we work, we get paid. We’re not living in a country where we condone slavery. The minute that you’re not paying wages you are not a contractor, you are a slave master.”¹³¹

From Rivera’s perspective the motive behind the designation of workers as independent contractors was from the very beginning to cheat workers out of their wages, essentially enslaving them. “Which is what I think Stutman did,” Tom reflects, based on his experience on the CDC project. “He got a certain amount of work done out of us, he still had money left on the job, he got somebody else in there even cheaper to finish it, and he got a bigger profit.”¹³² This was also the case with Eduardo. Yanez Framing got some work done on the siding job for free. Even though the company ultimately had to hire someone else to do the work, in terms of its profit on the job it was ahead of the game. If Eduardo did the work, and took on the extra load for no additional compensation, then Yanez Framing made a profit. If Eduardo left, as he did—prodded by the theft of his tools—the company was still ahead because some of the work had been completed for free. Either way they won while the workers, underpaid or not paid at all, lost. As Manny Gines suggests:

The tactic of a general contractor is to be like Pac Man eating stuff up—the subcontractors. A lot of them do that. They say, OK, I’ll give you this contract for \$2 million [to do] drywall. You go in there...they start looking for excuses to give you a problem and now I’m not going to pay you because of this and that. Now there’s a fight and before you know it they kick you off the job, right? But now you have most of the stuff all built! Now he owed you like \$60,000 or \$70,000. He’s going to take you to court and say that he ain’t gonna pay you because you did shabby work and

*your workers are no good. You can't afford to hire a lawyer to go to court and fight that battle so you end up in bankruptcy.*¹³³

In terms of Eduardo's stolen tools, Manny Gines worked with him to take Stutman to small claims court to recover the funds to replace his tools. Eduardo was later represented by a lawyer provided by the union in Stutman's appeal of the case but they were unable to convince the court that the contractor was responsible for Eduardo's tools.

The Emerging Model of Residential Construction and the Failure of State Regulation

Our research among subcontractors—at Pulte Homes, in the emerging drywall industry, and at the Main South CDC in Worcester—reveals a great deal about the dynamic interplay between illegal misclassification and wage theft. Although Pulte was not directly involved in wage theft, our research clearly reveals that they knowingly hired and directed subcontractors who were routinely involved in wage theft that built upon the illegal misclassification of workers as independent contractors. Although the Massachusetts Attorney General brought charges against their subcontractors for their illegal practices, Pulte was still able to benefit financially from their illegal and unethical practices to increase their profits, while insulating themselves from any liability. What we see in this case is how companies like Pulte are pulling these practices from the margins into the mainstream of residential construction. “The big boys like Avalon Bay, Pulte...are driving this business model,” says the Carpenter Union’s Mark Erlich, “they have in their contracts or subcontracts, you shall abide by all state and federal laws. You’ve got to be kidding me... they’re completely insulated.”¹³⁴

Resa Spanziani, Field Supervisor in the Wage and Workplace Standards Division in the Connecticut Department of Labor, concurs: “It’s the developers who are really making money. Because even the general contractors a lot of times now are bidding low just to keep their work ...the bar has gone so low. So it’s only the developers who are putting the money in their pocket.”¹³⁵ Spanziani also argues that since the Great Recession and the loss of local tax revenue, that communities are desperate for new development. “So they’re happy they have these developers that will come in and build these shopping centers and apartments in their town. They’re happy because they’re seeing the long-term thing where maybe they are going to generate some tax dollars.”¹³⁶ The problem is that in addition to providing tax incentives, communities may be less than rigorous in their building requirements or inspections. While this approach may increase tax revenue in the short-run, it neither builds high quality buildings nor ensures basic labor standards on the job.

In the drywall industry we have witnessed a dramatic reorganization of the trade based on a foundation of workers’ wage theft. The model of production that was controlled by regularized firms with full-time benefited workers—like Red Line—have been overrun by the proliferation of a large number of firms that are a step up from guys with a pickup truck, whose production process is based on employing large numbers of misclassified workers who are routinely cheated out of their wages. Enabled by construction firms such as Pulte and Avalon Bay, contractors that operate illegally and have a significantly lower overhead are becoming the industry standard. The prevalence of illegal business practices are making bids so low that no legitimate contractor could match them and still stay in business. Legitimate

contractors that obey the law are forced to either go out of business or follow their competitors that lower costs by committing tax and insurance fraud and even wage theft.

At the CDC's construction project we saw the same kinds of practices, which developed at the margins, move into a quasi-public market even within an agency that has strong social justice principles. The practices that we saw in the drywall industry have created a network of low-wage contractors ready and able to move beyond residential construction into more regularized types of work. "It's not just informal relationships but a sophisticated social network,"¹³⁷ David Minasian tells us. "The presence of these low-wage firms has also created new expectations of how cheaply construction can be done, but hidden from public scrutiny is the fact that their businesses are built on illegal and immoral construction practices.

This research has also identified how inadequately the current regulatory system has kept pace with these developments during the emergence of a new regime of wage-theft-based construction. As Diego Low suggests, "You're creating a hole the size of a Mack truck in terms of enforcing the law. If somebody who the public clearly perceives to be an employee of a company is not their legal responsibility, then how do we enforce wage law at all?"¹³⁸

One of the issues facing workers in the residential construction industry is that wage theft and misclassification violations, if seen individually, appear to be small, minor cases. As Karen Courtney, Director of the Center for Fair Contracting suggests, they don't make the kinds of headlines that politicians and state officials crave: "We had a chief who had a different philosophy than we had for a while. He wanted big cases. He didn't want to take any small cases. He wanted to make a big splash."¹³⁹ She goes on to argue, however, "You can't really tell from looking at a case, on its face, whether it's a big one or not."¹⁴⁰ Similarly, the Pulte case shows that when taken individually the wage theft committed by each individual subcontractor was relatively modest compared to the total amount. When the entire situation was taken in concert it represented a major violation.

As we saw in the national study done in 2009 by the GAO, not enough resources are dedicated to enforcement and not enough cases are being investigated. In Massachusetts, as Mark Erlich suggests, "David [Minasian] and Manny [Gines] have to go and build a case and get people and get evidence and get cancelled paychecks, affidavits, this and that, and hand it to them with a bow tied around it and say, Do something about it. Then it disappears into a black hole for six to twelve months."¹⁴¹ Courtney suggests that even when cases are included for review, "it takes between one and two years for a complaint to be processed, which is very frustrating for the worker."¹⁴²

The time delay is not insignificant especially for transient immigrant workers. Manny Gines recalls the National Carpentry case in which the AG issued fines and back-pay orders. "A year and a half later they call me and say, 'Where are these guys?

We're trying to get them their money and they're not...they're gone. The phone numbers are no good.' I went up to Lawrence and started putting flyers on the windows of the stores. People allowed me to put them there when I explained. They said, 'If you were involved in this group call Manny Gines because we have your money.' Two guys called me. One guy was in Florida. He said he was going to come up but he never did. I guess it wasn't worth it for him. The other guy he got his money. One out of thirteen guys."¹⁴³ Karen Courtney has had a similar experience even in larger construction jobs. "It takes a long time to get through these cases and you lose people. Especially with crews that aren't from here and companies that aren't from here. We had a case where actually there were a bunch of workers not from here and were traveling with a contractor. That case will probably be [worth] \$2M....But we may never find those guys. It's been so long."¹⁴⁴

The lack of contact information for these workers is not the only impediment to getting them their back pay. As we saw in the case of Pulte, many subcontractors simply ceased to do business rather than pay back wages and fines. Unlike legitimate contractors such as Red Line, who have offices, equipment and long-term commitments to staff, illegitimate drywall contractors operating in this emerging pattern have virtually no business footprint. They depend on other subcontractors and individuals—illegally misclassifying them as independent contractors and to supply tools and equipment or else lose the work—and thus they get away with little need for a central facility. Without the usual trappings associated with established business, it takes very little to cease operations to avoid fines.

As we have seen in the case of Jose Gutierrez and Tri State Drywall, despite having been charged by the Massachusetts Attorney General, there are no impediments to re-form as a new company in the same industry. "In the private sector it's like the Wild West because there are absolutely no reporting requirements, there are no regulatory requirements of any kind," notes Mark Erlich. "In the private sector there are literally no regulations. All you have to do is have a workers' compensation policy."¹⁴⁵ Although the Massachusetts Attorney General's office clearly has records of past infractions, it neither makes them public nor does it seem to use them in any way to prevent past violators to reenter the industry with a new identity so that it can continue with its illegal practices of misclassification and the theft of workers' wages.

With only weak and ultimately ineffective regulations, a growing number of employers have built a business model based on wage theft by simply being willing to take the risk of getting caught. As Erlich suggests:

In terms of the business calculation they're making, the chances of getting caught are minimal because of the difficulty of building cases. People don't want to come forward and there's no paperwork. There are no certified payroll records. So they make a calculated decision...I know it's illegal, but what are the chances of me getting caught? Maybe I'll get caught and get a \$20,000 fine. It works. I just bid a

*\$700,000 job, but I still underbid these guys by \$100,000 and I made a bigger profit. That's the calculation they make. It's really no more complicated than that.*¹⁴⁶

Resa Spanziani, from the Connecticut Department of Labor, tells us, "I got a contractor once with \$400,000 worth of wages because he was working everybody on weekends and not paying his workers. His fine was \$151,000. Do you know that he never even made a phone call? He sent the checks. It's the cost of doing business."¹⁴⁷ As Erlich describes it, "If there's a dysfunctional system and it keeps staying in place, at some point it's not dysfunctional because it's functional for somebody. This current purgatory that we have [with] non-enforcement ... has served many people extremely well."¹⁴⁸

With the commonwealth taking on only a fraction of cases, and with the obstacles workers face to achieve justice even when the state issues fines and penalties, we have seen how workers in residential construction have turned for assistance to other individuals and organization—such as Diego Low at the MetroWest Worker Center, and Manny Gines and other staffers from the New England Regional Council of Carpenters. Without strong state regulations and enforcement procedures these community-based organizations have stepped in to fill the gap. As we saw in the case of Diego Low's work in researching and assembling the Pulte case, these organizations are acting as the ears and eyes for the Joint Task Force and other state agencies providing them information and access to workers. This is work that should have been performed by state agencies that police fair labor standards.

Based on their own experience and frustration with state regulations, both NERCC and the MetroWest Workers Center have not been content to simply feed information into a dysfunctional regulatory system. They use the enforcement mechanisms yet are forced to do much more to intervene in wage theft disputes. At MetroWest they have been experimenting using "mechanic's liens" or what are sometimes referred to as a "construction liens" as another mechanism to bring legal pressure on recalcitrant employers. "By putting a lien on a property, in theory you're insuring that ultimately, even if its twenty years down the line, somebody has the right to get paid. Because that lien is registered in the Country Registry of Deeds and the property can't be sold until that's satisfied."¹⁴⁹

Manny Gines and the NERCC staff located at Local 107 also use the official system, completing nonpayment complaint forms when appropriate, but as we saw in the case of the CDC in Worcester and among Pulte contractors they also are involved in direct action to stop wage theft right away. They hold rallies and picket lines on job sites and at company offices and often bring aggrieved workers to meet directly with supervisors. They also bring other community partners and allies into the fight and use the political process when it can help bring pressure to bear on an employer violating the law. More recently Manny has also been working with established work crews to self-organize, setting minimum-wage rates and standards.

The NERCC staff at Local 107 and MetroWest are not alone in stepping into this void created by rapidly transforming industries and an outdated regulatory structure. Nationwide workers centers and unions have increasingly advocated for workers in terms of being cheated out of wages. Janice Fine has documented how fighting wage theft is one of the reasons why many workers centers arise.¹⁵⁰ Much of the work of the Restaurant Opportunities Center (ROC), an organization launched in 2008 to conduct restaurant workplace justice campaigns and provide job training and placement, has focused on wage theft in that industry.¹⁵¹ Given the significant role that workers centers are playing both in advocating for workers and in policing employers—as we saw in the case of MetroWest and Pulte—Fine and Gordon propose “augmenting labor inspectorates by giving public interest groups like unions and workers centers a formal ongoing role in enforcement in low-wage sectors.”¹⁵²

Yet David Minasian reminds us that without a strong regulatory structure and better enforcement, these efforts are holding the line at best.

*If you step back from this, what we're doing in getting unpaid wages for workers is great. But if you put it against the historical backdrop of living standards, we're literally clapping for them just getting paid. It's not raising standards even a little bit-- that's how far down this industry has fallen. It is a huge deal and it is really important. But taken more broadly, what we're up against is pretty scary.*¹⁵³

The Adjacent Possible: Connecticut Responds to a Changing Residential Construction Model

As we have seen, Massachusetts, along with many states, is struggling in its efforts to adapt its regulatory structure to a very different reality in residential construction. In the adjacent state of Connecticut, however, we have witnessed a very different response by the state agencies that enforce wage and hour laws. It is not that wage theft and associated worker abuse is any less an issue in Connecticut. Resa Spaziani, Field Supervisor in the Wage and Workplace Standards Division in the Connecticut Department of Labor, describes one recent case her unit investigated.

*There was asbestos and no chutes or anything. They're just ripping it out; no masks, no nothing. There was lead paint in the building and an oil spill. DEP was having a field day! OSHA was doing the health tests on the lead and things like that. So I start talking to the workers. There were five workers picked up for the day, they'd been there a couple of weeks. One guy picked them up every day and brought them to the job. They hadn't been paid yet. They're getting cash, if they get paid—it's in cash. There are no permits on that building. So these guys have no protection at all. They're ripping out asbestos and there's no protection for anything.*¹⁵⁴

In another case, she tells us, “One guy died [on the job] and his two brothers were on site and saw him die. He picked up a piece of metal roofing and it caught in the wind and he blew off and died. His brothers saw him and saw the owner of the company holding off the ambulance while he put safety gear on the dead man.” The brothers were undocumented and “they hadn't been paid for weeks.” The contractor “brought them checks to pay for the funeral and all the checks bounced.”¹⁵⁵

There are three major features that distinguish wage and hour enforcement in Connecticut from Massachusetts: the coordination of various agencies, the agencies' on-the-ground operations, and how the operations are financed. Many state agencies and departments are involved in the investigation and prosecution of wage theft. To look first at coordination, in Massachusetts these agencies are only loosely integrated. As one high-level state official describes it, the ability of the state to be effective in prosecuting wage theft has more to do with the people heading the various departments and their will to combat this problem than the actual structural relationships between departments and agencies. Spaziani observes that in Massachusetts “it's always confusing even to me—they have a lot of different agencies that do pieces of the puzzle. I think this is probably part of the problem.” In contrast in Connecticut she describes, “A lot of our stuff is under one roof.”¹⁵⁶

Second, looking at on-the-ground operations, while workplace raids in Massachusetts are infrequent, they are an everyday part of the wage and hour enforcement in Connecticut where there are, Spaziani tells us, “a minimum of twenty a week depending on what we have in that area....and if we have a complaint in one area we try to hit five or six sites. We're more proactive than other states. I mean, I did

nine in one day and nine last Thursday.”¹⁵⁷ In addition to the frequency of these raids, one of the reasons why they have been effective in Connecticut is that they build on the interagency cooperation already in place. As Spaziani describes it:

*We have a very good system. As soon as we go on the site and we start talking to the workers, we have somebody running it in the car. We have access right away to find out first of all if they are a registered business in the state of Connecticut, if they're paying taxes, if they're reporting people as employees, if they have workers' comp—and, if they have workers' compensation how much they're actually showing for the payroll. One of the big schemes is what they call a ghost policy. Somebody gets a workers' comp policy but it shows they have zero payroll. But we have access to that right there at that moment. So the guys that say to us, 'Yeah, I've worked for him for three months.' Well how come you're not on his payroll? Because we can run that right then and there.*¹⁵⁸

The interagency cooperation pays off immediately. Without the ability to access workers' compensation policies right on site, it is unlikely that the Connecticut team would be able to shut down as many worksites. The cooperation does not end at the site itself. “When we issue a stop-work order on a job site, we immediately feed that to unemployment for their investigation and to the Department of Revenue for their investigation into the state tax part of it,” Spaziani says. “It's immediate. It's fed to them immediately.”¹⁵⁹ This coordination is also felt on the ground for activists trying to combat wage theft. Manny Gines, NERCC organizer working out of Carpenters Local 107, tells how he provided information on a subcontractor to Massachusetts and that they “didn't find anything.” Meanwhile “Resa found that same company was Toll Brothers...found the same company in Connecticut and was able to give them stop-work orders and fines and such.”

The Department of Revenue in Connecticut gets leads from a variety of people and organizations, including workers and union representatives, and given the rapidly changing nature of residential construction they increasingly receive them from other employers. “The contractors call me and say, 'We bid that at zero profit just to keep a cash flow going in our business, to keep our guys working, and we got beat out by \$500,000. We got beat out by \$300,000. We got beat out by \$1.1 million.' The cost of the material is the same, so where are they going to make that up? I see a lot of shell companies where they're bidding and getting all this work but they have zero employees.”

The third difference between the two states in terms of wage theft enforcement is that in Massachusetts all fines collected go back to the state general funds. In Connecticut, however, the funds remain in the investigative unit and are used to build its capacity. “We fund seven positions out of those fines,” says Spaziani. This incentivizes the work of prosecuting wage theft and is a considerably more streamlined way to build capacity than through state allocations.

Recommendations

Our research has documented an epidemic of wage theft and illegal classification of workers in residential construction in Massachusetts. We have also seen how woefully inadequate the regulatory structure has been and watched the emergence of a whole new production regime in residential construction built upon a foundation of wage theft. Without concerted change, these new methods of production will both intensify and spread to other forms of construction victimizing largely immigrant workers in the industry. The quality of construction will continue to decline delivering a poor value to homeowners while leaving the taxpayer on the hook to cover lost revenue and the medical cost of those not covered by workers' compensation.

Yet there are a number of policy changes that could make a significant difference in turning this tide:

- **Real National Immigrant Reform.** Without real immigration reform that will provide a path to citizenship for the more than 10 million undocumented workers in the United States, it will be difficult to control forced misclassification of work and the theft of workers' wages. As long as immigrants remain hidden in the shadows and largely excluded from regularized employment, unscrupulous employers will continue to exploit their vulnerability to increase their own profit. The single, most important policy action to combat wage theft and misclassification is genuine immigration reform.
- **Identification of Misclassification and Wage Theft Violators.** The Massachusetts Attorney General's office keeps records of violators, but unless the case is large enough to make the press, this information is not currently publicly available. The AG's office should use this information to create a database of wage theft and illegal misclassification violators. This information should be easily available for workers and their advocates, for homebuyers and purchasers of other construction services, and for the public at large. Citizens of the commonwealth have the right to know who has been violating the law and abusing workers' rights.
- **Create Barriers for Law-Breaking Firms and Individuals To Reenter the Market Place.** Currently there are no impediments for individuals or firms who have been found guilty of wage theft and misclassification to starting new firms and reentering the market. Having a public database of violators will be an important first step, but it must also be used to disbar or carefully monitor past violators.
- **Real Penalties and Fines.** The fines and penalties for the theft of workers wages and for illegally identifying them as independent contractors are too low, and as we have seen they do not act as deterrents. These fines and penalties need to be significantly increased, and repeat offenders should be assessed additional fines.

- **Better Permanent Interagency Coordination.** We applaud the work of the Joint Task Force in Massachusetts and the efforts to make it a permanent feature of state government. While it is an important first step, a permanent institutional coordination must be established among the various agencies involved in investigating and prosecuting wage theft and misclassification. Efforts in nearby Connecticut provide an excellent model for this kind of interagency coordination.
- **Dramatic Increase in Workplace Raids.** While there have been some important large cases that the commonwealth has investigated and prosecuted in the past several years, there needs to be a more active presence of the various agencies at a diversity of workplaces throughout the state. Not only will these workplace raids help to identify more violators, but their presence will also act as a deterrent. Here too, the work done in Connecticut provides an excellent model for Massachusetts.
- **New Funding Mechanism for the Council on the Underground Economy.** We clearly need more resources dedicated to fighting misclassification and wage theft in the commonwealth. In its current funding structure there are no incentives for the Joint Task Force to investigate more cases, with staffing levels determined by state appropriations. The model employed in Connecticut, where a portion of funds collected are allowed to stay in the department and used to expand the staff and the state's capacity to combat the illegal theft of wages and misclassification, is a much better model and one that should be explored.
- **Firms at the Top of the Supply Chain Must Be Held Responsible.** We will not be able to stop wage theft and illegal misclassification unless we can prosecute those at the top of the supply chain who stand to gain the most from it. Fines and penalties cannot only be restricted to those directly involved in wage theft, but must also be applied to those who directly and financially gain from it.
- **Formalize Relationship with Worker Centers and Unions Already in the Fight Against Wage Theft.** Given the important work that unions and workers center have played in the fight against wage theft in the commonwealth, the state should consider ways in which it could help these groups formalize their relationship. The Los Angeles Unified School District, the California Janitorial Enforcement Team, and the New York-based Wage and Hour Watch provide powerful examples of what is possible.¹⁶³

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