

Wage Theft Prosecution: How Prosecutors Can Help Workers and Create More Widespread Adoption

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ABSTRACT

Wage theft is a problem affecting workers around the world, including the United States. Wage theft not only affects workers generally; it disproportionately affects low-wage workers. While there has been a lack of criminal prosecution historically, some jurisdictions changed direction in recent years by enacting stricter wage theft laws and prosecuting wage theft as a criminal offense. However, the change in direction comes with challenges for both workers and prosecutors and criticisms that the criminal justice system is not the appropriate vehicle through which to seek redress. In order to address the challenges and criticisms associated with wage theft prosecution, help workers, and create more widespread adoption, this Note will conclude by proposing that prosecutors enact four directives: (1) implementing an office-wide policy, (2) creating dedicated units, (3) collaborating with other institutions, and (4) targeting specific industries.

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I. INTRODUCTION

Imagine an individual who steals another individual's wallet on the street. In comparison, imagine an employer who refuses to pay a worker his or her wages for a specific period of time. Historically, prosecutors treated both situations very differently.¹ While a prosecutor may charge the individual with theft, the same prosecutor would likely decline to charge the employer with any offense.

Wage theft is a problem for workers in the United States² that has increasingly become worth addressing.³ Wage theft refers to the failure of an employer to pay a worker for hours worked.⁴ Not only does wage theft affect all workers,⁵ it disproportionately affects low-wage workers due to the nature of their work.⁶ Workers who are the victims of wage theft cannot effectively use civil remedies to address employer wrongdoing.⁷ Historically, there has been an alarming lack of criminal prosecution of wage theft in the United States despite laws allowing for criminal prosecution.⁸ Notwithstanding this lack of prosecution, attitudes changed in the last five years in different jurisdictions, due to legislatures enacting

1. TERRI GERSTEIN, ECON. POL'Y INST., HOW DISTRICT ATTORNEY ATTORNEYS AND STATE ATTORNEYS GENERAL ARE FIGHTING WORKPLACE ABUSES: AN INTRODUCTION TO CRIMINAL PROSECUTIONS OF WAGE THEFT AND OTHER EMPLOYER CRIMES AGAINST WORKERS 2 (2021), <https://files.epi.org/uploads/224957.pdf>.

2. Richard G. Mack, Jr. & Jon Cakmakci, *The Tale of Two Thieves: Practical Steps to Confront Wage Theft as Vigorously as "Common" Theft*, 20 J.L. SOC'Y 273, 275–76 (2020).

3. Benjamin Levin, *Wage Theft Criminalization*, 54 UC DAVIS L. REV. 1429, 1433–34 (2021).

4. Llezlie L. Green, *Wage Theft in Lawless Courts*, 107 CALIF. L. REV. 1303, 1308 (2019).

5. Jennifer J. Lee & Annie Smith, *Regulating Wage Theft*, 94 WASH. L. REV. 759, 764 (2019).

6. *Id.* at 768.

7. KIM BOBO, WAGE THEFT IN AMERICA: WHY MILLIONS OF WORKING AMERICANS ARE NOT GETTING PAID—AND WHAT WE CAN DO ABOUT IT 57 (2009).

8. Nicole Hallett, *The Problem of Wage Theft*, 37 YALE L. & POL'Y REV. 93, 120 (2018).

stricter wage theft laws⁹ and heightening enforcement by state attorneys general offices and prosecutors of wage theft.¹⁰

Several challenges prevent wage theft prosecution from being more widespread, including that (1) prosecution of wage theft requires additional resources compared with other crimes,¹¹ (2) witness cooperation can prove difficult given the immigration consequences for the employee that may be associated with prosecuting an employer,¹² and (3) the current enforcement structure is incomplete.¹³ In addition to the challenges associated with prosecuting wage theft, at least one commentator believes that prosecution is not the appropriate vehicle through which to address wage theft.¹⁴

In order to address the challenges¹⁵ and criticisms¹⁶ associated with wage theft prosecution, help workers, and create more widespread adoption, this Note will conclude by proposing that prosecutors enact four directives: (1) implementing an office-wide policy that wage theft will be prosecuted, akin to the approach taken with domestic violence, where a policy change effected a shift towards prosecution of domestic violence,¹⁷ (2) creating dedicated units that specialize in wage theft, (3) collaborating with other institutions, and (4) targeting specific industries. These actions, taken together, can benefit workers and create more widespread adoption of wage theft prosecution across the United States.

II. WAGE THEFT AND ITS EFFECTS

This Section will discuss (A) wage theft, (B) the history of wage theft, (C) how wage theft affects workers generally, (D) how wage theft disproportionately affects low-wage workers, and (E) why civil remedies adequately fail to address employer wrongdoing.

A. What is Wage Theft?

Lawyers are not used to using the phrase “wage theft.”¹⁸ In fact, wage theft did not constitute theft under the common law, in part, because theft required

9. See Adil Syed Ahmed & David Tykulsker, *Revamped Wage Theft Law to Provide Unprecedented Relief for NJ Workers*, N.J. L. J. (Nov. 26, 2019), <https://www.law.com/njlawjournal/2019/11/26/revamped-wage-theft-law-to-provide-unprecedented-relief-for-nj-workers/>.

10. Anthony Damelio, Note, *Making Wage Theft Costly: District Attorneys and Attorneys General Enforcing Wage and Hour Law*, 49 FORDHAM URB. L.J. 109, 132–33 (2021).

11. GERSTEIN, *supra* note 1, at 14.

12. César F. Rosado Marzán, *Wage Theft as Crime: An Institutional View*, 20 J.L. SOC'Y 300, 305 (2020).

13. Lee & Smith, *supra* note 5, at 769.

14. Levin, *supra* note 3, at 1430.

15. GERSTEIN, *supra* note 1, at 14; Rosado Marzán, *supra* note 12, at 305; Lee & Smith, *supra* note 5, at 769.

16. Levin, *supra* note 3, at 1430.

17. Leigh Goodmark, *Should Domestic Violence Be Decriminalized*, 40 HARV. WOMEN'S L.J. 53, 53 (2017).

18. Alexia Fernández Campbell, *Facing Wage Theft? Here's What You Should Know*, CTR. FOR PUB. INTEGRITY (May 4, 2021), <https://publicintegrity.org/inequality-poverty-opportunity/workers-rights/cheated-at-work/wage-theft-what-you-should-know-minimum-overtime-pay/>.

unlawful taking or unlawful control.¹⁹ While varying definitions of wage theft exist, wage theft can be best understood as “the illegal non-payment or underpayment of wages in violation of wage and hour law or contract law.”²⁰ Wage theft comes in many forms.²¹

[Wage theft] includes . . . the various ways in which employers may fail to properly compensate employees, including, for example, the failure to: (1) pay the minimum wage or the agreed-upon wage; (2) pay time and a half for overtime hours; (3) pay at all or for all of the hours worked; (4) pay tips earned; (5) make up the difference between the tipped minimum wage and the standard minimum wage when tips do not make up the gap between them. Wage theft also includes the failure to properly pay workers based upon misclassifying them either as exempt from wage and hour laws or as independent contractors.²²

Wage theft also involves “off the clock” work whereby a worker begins working but does not clock in until a specified time or clocks out at a specified time but continues working.²³ Off-the-clock work is especially prevalent in the retail industry because workers must prepare the store before any customers arrive when the store opens.²⁴ Widespread knowledge of wage theft is only a recent phenomenon.²⁵

B. *The History of Wage Theft*

The criminalization of wage theft is a relatively recent development, with the first reference of wage theft in academic literature not appearing until 1988.²⁶ However, Karl Marx addressed wage theft as early as the 1850s in *Factory Reports* where he stated that employers committed “‘small thefts . . . from the workers’ meal-times and recreation times’ and ‘petty pilferings of minutes.’”²⁷ Wage theft first appeared in a judicial opinion to describe employer misconduct in 2007.²⁸ In *Kreisler v. Latin Union, Inc.*, the plaintiff entered into a contract with an individual to perform drywall work, and the individual used a day laborer employed by a union to “perform drywall, taping and paster work.”²⁹ After the individual

19. Rosado Marzán, *supra* note 12, at 303.

20. Lee & Smith, *supra* note 5, at 765.

21. Green, *supra* note 4, at 1308 (footnotes omitted).

22. *Id.*

23. Julie A. Su, Labor Commissioner, Cal. Lab. Comm’r, *Enforcing Labor Laws: Wage Theft, the Myth of Neutrality, and Agency Transformation*, (Apr. 14, 2015) in 37 BERKELEY J. EMP. & LAB. L. 143, 147 (2016).

24. *Id.*

25. Levin, *supra* note 3, at 1440.

26. *Id.*

27. Matthew Cole, *The Wage Theft Epidemic*, MATT COLE (Feb. 14, 2022), <https://mattcole.work/2022/02/14/the-wage-theft-epidemic/>.

28. Levin, *supra* note 3, at 1442.

29. *Kreisler v. Latino Union, Inc.*, No. 06-cv-03968, 2007 WL 1118408, at *1 (N.D. Ill. Apr. 12, 2007).

allegedly failed to pay the day laborer, the day laborer and a wage theft advocate employed by the union demanded payment from plaintiff. The plaintiff, in turn, sued the union and wage theft advocate for violations of the Fair Debt Collection Practices Act.³⁰

Labor activists and progressive scholars are largely responsible for wage theft's popularity in describing employer misconduct.³¹ Typically, worker advocates "use[] the term 'wage theft' . . . [because the] term . . . expresses the seriousness of the act and the moral culpability of [employers]."³² Throughout the 2000s and 2010s, wage theft as a term continued to gain traction.³³ "In 2009, the U.S. Government Accountability Office published a major report identifying systemic violations of wage-and-hour laws as 'wage theft.'"³⁴ One year later, in 2010, the National Employment Law Project ("NELP") adopted wage theft to describe employer misconduct.³⁵ In 2014, Julie Su, the California Labor Commissioner at the time, created a campaign with the slogan: "wage theft is a crime."³⁶ The rise in the use of wage theft as a term coincided with the release of published reports indicating how much wage theft affects workers in the United States in terms of the amount of lost wages and types of employer violations.³⁷

C. *The Effect of Wage Theft on Workers Generally*

Wage theft has a devastating impact on the overall working population in the United States.³⁸ According to one study, wage theft affects "millions of U.S. workers each year."³⁹ In Los Angeles, specifically, researchers estimate that approximately 655,000 Los Angeles-based workers "suffer at least one pay-based violation in any given week."⁴⁰ Wage theft weakens workers' bargaining power because it "put[s] downward pressure on hourly wages in affected industries and occupations."⁴¹ Wage theft also indirectly affects local businesses in those communities in which workers experience wage theft because affected workers have less money to spend.⁴² In fact, wage theft negatively impacts law-abiding businesses as those

30. *Id.* at *1–2.

31. Hallett, *supra* note 8, at 98.

32. *Id.*

33. Levin, *supra* note 3, at 1444.

34. *Id.*

35. *Id.*

36. *Id.* at 1445.

37. ANNETTE BERNHARDT ET AL., *BROKEN LAWS, UNPROTECTED WORKERS: VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICA'S CITIES* 5 (2009), <https://s27147.pcdn.co/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>.

38. See DAVID COOPER & TERESA KROEGER, *EMPLOYERS STEAL BILLIONS FROM WORKERS' PAYCHECKS EACH YEAR* 1 (2017), <https://files.epi.org/pdf/125116.pdf>.

39. *Id.* at 1–2.

40. Matthew Fritz-Mauer, *Lofty Laws, Broken Promises: Wage Theft and the Degradation of Low-Wage Workers*, 20 *EMP. RTS. & EMP. POL'Y J.* 71, 97 (2016).

41. COOPER & KROEGER, *supra* note 38, at 2.

42. GERSTEIN, *supra* note 1, at 9.

businesses that do not commit wage theft “must operate at a disadvantage relative to competitors that save money through breaking the law.”⁴³

The statistics regarding unpaid wages in the United States are alarming. “[I]n 2012, the total value of property taken in robberies reported to police across the United States was \$341 million, compared with \$933 million in wages recovered for known victims of wage theft.”⁴⁴ In 2017, one study surveyed the ten most populous states and found that over 2.4 million workers paid minimum wage at either the federal or state level “report being paid less than the applicable minimum wage.”⁴⁵ The study further found that:

The total underpayment of wages to [the approximately 2.4 million workers] amounts to over \$8 billion annually. If the findings for these states are representative for the rest of the country, [the findings] suggest that the total wages stolen from workers due to minimum wage violations exceeds \$15 billion each year.

Workers suffering minimum wage violations are underpaid an average of \$64 per week, nearly one-quarter of their weekly earnings. This means that a victim who works year-round is losing, on average, \$3,300 per year and receiving only \$10,500 in annual wages.⁴⁶

The \$15 billion in total stolen wages trumps the “total [\$12.7 billion] value of all robberies, burglaries, larceny, and motor vehicle theft in the United States in 2015.”⁴⁷

A 2008 settlement involving Walmart demonstrates that wage theft occurs in many jurisdictions throughout the United States.⁴⁸ Walmart settled sixty-three different unpaid wages lawsuits across forty-two states totaling \$352 million.⁴⁹ While wage theft affects workers generally, it disproportionately affects low-wage workers.⁵⁰

D. How Wage Theft Disproportionately Affects Low-Wage Workers

Wage theft has a devastating impact on low-wage workers.⁵¹ Several commentators define a low-wage worker as someone “whose hourly wage rate[] [is] so low that even if they worked full-time, full-year their annual earnings would

43. *Id.* at 10.

44. *Id.* at 9.

45. COOPER & KROEGER, *supra* note 38, at 2.

46. *Id.*

47. *Id.* at 28.

48. Nantiya Ruan, *What's Left to Remedy Wage Theft: How Arbitration Mandates that Bar Class Actions Impact Low-Wage Workers*, 2012 MICH. ST. L. REV. 1103, 1109 (2012).

49. *Id.*

50. Lee & Smith, *supra* note 5, at 768.

51. *Id.*

fall below the poverty line for a family of four.”⁵² In other words, a low-wage worker might be someone who works at least thirty hours per week and earns \$27,000 per year or less.⁵³ Using such metrics, 25% of all adults in the United States are low-wage workers.⁵⁴

Wage theft has adverse consequences for low-wage workers outside the workplace, including an inability to pay for rent, groceries, and utilities.⁵⁵ An inability to pay necessities may also result in difficulty paying for medical care and lead to homelessness.⁵⁶ Other than monetary consequences, wage theft impacts mental health for low-wage workers, “resulting in feelings of anger, anxiety, and powerlessness.”⁵⁷

Workers “who are women, foreign-born, and non-English speaking” experience a high rate of minimum wage violations.⁵⁸ A 2017 report studied the demographic information of workers in San Diego who filed wage theft complaints.⁵⁹ The study found “more Latinx and Black claimants, as well as those with limited English, than their share of the regional workforce, as would be expected since they are disproportionately in low-wage jobs where wage theft is much more prevalent.”⁶⁰ A 2009 NELP report surveyed more than 4,000 workers in low-wage industries in Chicago, Los Angeles, and New York City.⁶¹ The study found that 26% of workers surveyed experienced a minimum wage violation in the previous week, meaning employers paid less than the mandated minimum wage.⁶² In addition, employers underpaid 60% of workers surveyed by more than \$1 per hour.⁶³ Other violations included (1) overtime violations, (2) “off the clock” violations, (3) meal break violations, (4) pay stub violations, and (5) tipped job violations.⁶⁴

Wage theft disproportionately affects specific low-wage industries.⁶⁵ Those occupations most affected “include construction workers, caregivers for children and the elderly, factory workers, landscapers, restaurant staff, cashiers, and office clerks.”⁶⁶ However, “the highest levels of wage theft occur in the leisure and hospitality industry.”⁶⁷ This is especially true for the home care industry.⁶⁸ The home care industry is primarily composed of female immigrants, who earn a \$9.83 median

52. PAMELA LOPREST ET AL., ASPE RESEARCH BRIEF 1 (2009), https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/138761/rb.pdf.

53. Ruan, *supra* note 48, at 1107–08.

54. *Id.* at 1107.

55. GERSTEIN, *supra* note 1, at 10.

56. *Id.*

57. Lee & Smith, *supra* note 5, at 766.

58. JILL ESBENSHADE, CONFRONTING WAGE THEFT 4 (2017), https://ccre.sdsu.edu/_resources/docs/reports/labor/Confronting-Wage-Theft.pdf.

59. *Id.*

60. *Id.* (footnote omitted).

61. BERNHARDT ET AL., *supra* note 37, at 2.

62. *Id.*

63. *Id.*

64. *Id.* at 2–3.

65. Lee & Smith, *supra* note 5, at 768.

66. *Id.*

67. *Id.*

68. Elizabeth J. Kennedy, *Wage Theft as Public Larceny*, 81 BROOK. L. REV. 517, 530 (2016).

hourly wage, which translates to approximately \$21,000 annually.⁶⁹ To compound the problem, “[m]ore than 20% of home care workers and their families rely on public assistance.”⁷⁰ Wage theft is rampant in the home care industry because home care workers perform their work in private homes, which allows for unscrupulous practices to escape the public eye.⁷¹ For example, “[a]n investigation by the New York Attorney General . . . found that two home health care companies had cheated 12,000 aides out of nearly \$19 million.”⁷² The effect of wage theft on low-wage workers is especially troubling given the inadequacy of civil remedies.⁷³

E. Why the Civil System Fails Workers

In their current state, civil remedies are wholly inadequate to address wage theft in the United States.⁷⁴ One reason why the civil system fails workers who are victims of wage theft is because reporting violations requires reporting to several different government agencies.⁷⁵

If [a worker] had wanted to report the problems in [his or her] workplace and had known where to report them, [the worker] would have needed to contact the Department of Labor’s Wage and Hour Division or the Illinois Department of Labor for the overtime issues and the stealing of tips, the Equal Employment Opportunities Commission about the discrimination against Latinos, the Occupational Safety and Health Administration about the workplace safety issues, and the state Workers Comp Commission about workers not getting workers compensation.⁷⁶

No worker has the time nor information to pursue such redress, especially considering that agencies have different enforcement responsibilities.⁷⁷

In addition, workers often misunderstand labor laws.⁷⁸ “In one study, for instance, fifty-nine percent of workers surveyed misunderstood their minimum wage or overtime rights.”⁷⁹ One possible explanation is that immigrants, who may be unfamiliar with the United States legal system, constitute a large percentage of the low-wage workforce.⁸⁰ Not only do workers

69. *Id.* at 525.

70. *Id.*

71. *Id.* at 530.

72. Grace DuBois, *Protecting Workers by Prosecuting Wage Theft as a Crime*, CTR. FOR PROGRESSIVE REFORM (July 19, 2022), <https://progressivereform.org/cpr-blog/protecting-workers-prosecuting-wage-theft-crime/>.

73. BOBO, *supra* note 7, at 57.

74. *Id.*

75. *Id.*

76. *Id.* at 56–57.

77. *Id.* at 57.

78. Hallett, *supra* note 8, at 105.

79. *Id.*

80. Stephen Lee, *Policing Wage Theft in the Day Labor Market*, 4 U.C. IRVINE L. REV. 655, 659 (2014).

potentially misunderstand labor laws,⁸¹ they are often unaware of how employers steal wages.⁸² This is especially true for those positions such as delivery drivers that rely on tips.⁸³ A delivery driver for a pizza chain in Maryland stated that “[y]ou’re tipped . . . and it’s very complicated and difficult to track It’s hard to tell whether you’re getting the amount of tips you deserve.”⁸⁴ Employers are incentivized to commit wage theft because the civil fine imposed may be smaller than the profit gained from committing a workplace violation.⁸⁵

Even if a worker is aware of his or her rights, the worker must not only file in the correct court, he or she must also file a complaint *pro se*, which may be burdensome, or hire an attorney, which may be costly.⁸⁶ When choosing a lawyer, a plaintiff-side lawyer will take cases based on a contingency fee,⁸⁷ which means that the attorney will only be paid when the plaintiff receives monetary recovery.⁸⁸ As a result, plaintiff-side attorneys will often be very selective when choosing clients.⁸⁹ On the other hand, other attorneys may be too expensive for workers to pay out-of-pocket.⁹⁰ If an employee hires an attorney for a wage theft claim and wins the case, “[f]iling fees and court costs alone might dwarf the amount that the worker might recover in damages at the end of the case.”⁹¹

A worker can also forego hiring an attorney altogether and file a complaint directly with a government agency such as the Department of Labor.⁹² However, government agencies often lack funding and staffing which translates to long processing times or a failure to investigate a complaint.⁹³ It is “estimated [that] 98% of workers in the private sector will not file claims due to these . . . obstacles.”⁹⁴ Those enforcers that typically staff government agencies are known as inspectors,⁹⁵ and their specialist enforcement creates additional problems for workers.⁹⁶

81. Hallett, *supra* note 8, at 105.

82. Mark Gruenberg, *Wage Theft Enforcement Against Corporate Thieves on the Rise*, PEOPLE’S WORLD (May 20, 2021), <https://peoplesworld.org/article/wage-theft-enforcement-against-corporate-thieves-on-the-rise/>.

83. *Id.*

84. *Id.*

85. Hallett, *supra* note 8, at 118–19.

86. *Id.* at 105.

87. *Id.*

88. Curtis Lee, *What Is a Contingency Fee?*, NOLO, <https://www.nolo.com/legal-encyclopedia/what-is-a-contingency-fee.html> (last visited Mar. 20, 2023).

89. Hallett, *supra* note 8, at 105.

90. *Id.*

91. *Id.*

92. *Id.* at 106.

93. *Id.*

94. INST. FOR INNOVATION IN PROSECUTION, PROTECTING WORKERS: WAGE THEFT ENFORCEMENT FOR THE LOCAL PROSECUTOR 3 (2022), <https://static1.squarespace.com/static/63865b7996058b7822aa193d/t/639759d85d7bec08ce70ebc9/1670863326381/Protecting%2BWorkers%2BWage%2BTheft%2BEnforcement%2Bfor%2Bthe%2BLocal%2BProsecutor.pdf>.

95. Damelio, *supra* note 10, at 115.

96. *Id.* at 118–19.

Historically, government agency inspectors enforced labor laws.⁹⁷ The primary enforcement mechanism for inspectors is the imposition of civil fines.⁹⁸ Rather than inspectors being trained across different federal agencies, “[d]ifferent federal agencies and their inspectors are tasked with enforcing particular labor laws,”⁹⁹ which contributes to the inadequacy of civil remedies to combat wage theft.¹⁰⁰ Inspectors became specialists as a response to the mass industrial unionism that occurred after World War II.¹⁰¹ As a result of changes in the United States labor market, inspector specialization became less useful and numbers declined.¹⁰² “As of 2008, the United States had one inspector per 75,000 workers, a ratio similar to Jamaica, Zambia, and Thailand.”¹⁰³ Even more troubling is the rate of investigation: as of 2012, the probability that the Wage and Hour Division investigates an employer for workplace violations was as low as 0.5%.¹⁰⁴ Unlike state attorneys general offices and prosecutors who can collaborate with other institutions, inspectors are often prevented from collaborating with other government agencies.¹⁰⁵ In addition, civil penalties for willful employer violations are capped at just over \$2,000, and inspectors cannot impose criminal penalties unless “the employer has been convicted once, but they are capped at six months in jail and \$10,000.”¹⁰⁶ The deficiencies of the civil system in the United States¹⁰⁷ create an interesting comparison when compared with criminal prosecution of wage theft.¹⁰⁸

III. WAGE THEFT PROSECUTION: OVERVIEW, CHALLENGES, AND CRITICISMS

This Section will discuss (A) the historical lack of criminal prosecution of wage theft, (B) the change in prosecution in recent years, including those state actors primarily responsible for the change, (C) challenges associated with prosecution of wage theft, and (D) criticisms levied against prosecution of wage theft.

A. *The Historical Lack of Criminal Prosecution of Wage Theft*

Historically, state prosecutors did not have interest in prosecuting wage theft as a criminal offense.¹⁰⁹ Terri Gerstein, the former Labor Bureau Chief for the New York State Attorney General’s Office, believes that “prosecutors . . .

97. *Id.* at 115.

98. *Id.* at 116.

99. *Id.* at 117.

100. BOBO, *supra* note 7, at 57.

101. Damelio, *supra* note 10, at 117–18.

102. *Id.* at 119.

103. *Id.* at 119–20.

104. *Id.* at 119.

105. *Id.* at 120.

106. *Id.* at 122.

107. BOBO, *supra* note 7, at 57.

108. GERSTEIN, *supra* note 1, at 2.

109. Jesse Marx & Maya Srikrishnan, *Wage Theft Is Common for Low-Level Workers, and Officials Are Starting to Take Notice*, VOICE OF SAN DIEGO (May 19, 2021), <https://voiceofsandiego.org/2021/05/19/wage-theft-is-common-for-low-level-workers-and-officials-are-starting-to-take-notice/>.

traditionally focused on crime rates and conviction rates.¹¹⁰ This view might explain why prosecutors would typically prosecute a worker who steals from an employer but not prosecute an employer who steals from a worker.¹¹¹ Even though wage theft gained more notoriety throughout the 2000s,¹¹² prosecutors continued to not prosecute wage theft.¹¹³ States enacted 255 wage theft laws between 2004 and 2012.¹¹⁴ Despite the number of laws enacted, very few wage theft prosecutions occurred throughout the United States.¹¹⁵ In fact, between 2011 and 2013, only eleven wage theft prosecutions occurred.¹¹⁶ In recent years, however, prosecutors and other actors started to increasingly encourage the prosecution of wage theft in specific jurisdictions.¹¹⁷

B. *The Change in Prosecution in Recent Years*

In recent years, states and localities became more involved with labor protection, including prosecution of wage theft.¹¹⁸ Such a change can, in part, be explained as a response to President Trump's employer-focused policies.¹¹⁹ For example, the Department of Labor under President Trump, initiated an amnesty program for employers who violated the law.¹²⁰

The primary state actors increasingly involved in encouraging the prosecution of wage theft, through various means, are (1) legislators,¹²¹ (2) state attorneys general offices,¹²² (3) prosecutors,¹²³ and (4) inspectors.¹²⁴

1. Legislators

Legislators in some jurisdictions are primarily responsible for the change in prosecution in recent years by passing laws aimed at protecting workers from wage theft.¹²⁵ Those states include Colorado,¹²⁶ Minnesota,¹²⁷ New Jersey,¹²⁸ and

110. Jon Collins, *Moriarty Comes to Role of Chief Prosecutor as Former Advocate for the Prosecuted*, MPR NEWS (Jan. 18, 2023), <https://www.mprnews.org/story/2023/01/18/moriarty-comes-to-role-as-chief-prosecutor-as-former-advocate-for-the-prosecuted>.

111. GERSTEIN, *supra* note 1, at 2.

112. Levin, *supra* note 3, at 1444.

113. Hallett, *supra* note 8, at 120.

114. *Id.* at 114.

115. *Id.* at 120.

116. *Id.*

117. Damelio, *supra* note 10, at 132–33.

118. Terri Gerstein, *State and Local Workers' Rights Innovations: New Players, New Laws, New Methods of Enforcement*, 65 ST. LOUIS U. L.J. 45, 50 (2020).

119. *Id.* at 48.

120. *Id.*

121. Gerstein, *supra* note 118, at 71.

122. *Id.* at 51–52.

123. *Id.* at 63–64.

124. Damelio, *supra* note 10, at 110.

125. Gerstein, *supra* note 118, at 71.

126. GERSTEIN, *supra* note 1, at 23.

127. *Id.*

128. Ahmed & Tykulsker, *supra* note 9.

others.¹²⁹ In 2019, the Colorado General Assembly passed HB 19-1267, which criminalized wage theft.¹³⁰ Now, wage theft over \$2,000 is a felony, while wage theft above \$50 is a misdemeanor.¹³¹ In that same year, the Minnesota Legislature passed the Wage Theft Prevention Act.¹³² The Wage Theft Prevention Act explicitly made wage theft a crime “with potential criminal penalties of imprisonment of up to 20 years and up to a \$100,000 fine for any wage theft in excess of an aggregate amount of \$35,000.”¹³³ Despite these protections, the New Jersey Wage Theft Prevention Act is arguably the strongest of all.¹³⁴ The Act prohibits employer retaliation for reporting workplace violations, increases financial penalties for workplace violations, and extends the statute of limitations for wage theft claims to six years.¹³⁵ The retaliation provision is particularly noteworthy because “[a]ny adverse action taken within 90 days of making a complaint for wage theft is presumed to be illegally retaliatory.”¹³⁶

The recent changes are interesting given that 33 states have theft of services provisions within their criminal codes.¹³⁷ The vast majority of existing theft of services laws in these states include labor as a service.¹³⁸ In 2011, Texas passed legislation that strengthened its preexisting theft of services law by including language that specified “partial payment of wages is not sufficient to negate the intent to avoid payment by an actor.”¹³⁹ While theft of services provisions are useful because they shift wage theft prosecution from government agencies to prosecutors, they are insufficient in that “workers can recover only wages owed, regardless of whether those wages meet minimum wage or overtime requirements.”¹⁴⁰ Such a significant drawback might explain why legislators opted for stronger protection. Laws require enforcement, and to that end, state attorneys general offices are now involved in the movement against wage theft.¹⁴¹

2. State Attorneys General Offices

Since 2015, state attorneys general offices became increasingly involved in workers’ rights.¹⁴² Some states, such as Illinois and Minnesota, grant state attorneys general offices jurisdiction over labor laws, while other states permit jurisdiction through

129. GERSTEIN, *supra* note 1, at 23.

130. *Wage Theft*, DIST. ATT’Y 18TH JUD. DIST., <https://www.da18.org/community-outreach/consumer-protection/wage-theft/> (last visited Mar. 20, 2023).

131. *Id.*

132. *Wage Theft Law*, MINN. DEP’T OF LAB. & INDUS., <https://www.dli.mn.gov/business/employment-practices/wage-theft-law> (last visited Mar. 20, 2023).

133. John Lassetter & Shirley Lerner, *Minnesota Wage Theft Law Update*, LITTLER (Aug. 2, 2019), <https://www.littler.com/publication-press/publication/minnesota-wage-theft-law-update>.

134. Ahmed & Tykulska, *supra* note 9.

135. *Id.*

136. *Id.*

137. Rita J. Verga, *An Advocate’s Toolkit: Using Criminal “Theft of Services” Laws to Enforce Workers’ Rights to Be Paid*, 8 N.Y. CITY L. REV. 283, 284 (2005).

138. *Id.* at n.5.

139. GERSTEIN, *supra* note 1, at 23.

140. Verga, *supra* note 137, at 289.

141. Gerstein, *supra* note 118, at 51–52.

142. *Id.* at 52.

general statutes.¹⁴³ State attorneys general offices pursue wage theft prosecution in a number of ways.¹⁴⁴ One such way is by creating dedicated units focused on helping workers in their respective jurisdictions.¹⁴⁵

At the start of 2015, only three AG offices had dedicated units focusing on workers' rights: California, Massachusetts, and New York. Since then, seven additional offices have created such units: the District of Columbia, Illinois, Michigan, Minnesota, New Jersey, Pennsylvania, and Virginia. These units vary in size, as some started with only one attorney, while others are more robustly staffed . . . [T]hey all represent a commitment by these AGs to devote resources and institutionalize a section within their offices to focus on worker protection.¹⁴⁶

For example, in 2019, Minnesota Attorney General Keith Ellison launched a new Wage Theft Unit.¹⁴⁷ The Wage Theft Unit, staffed by two attorneys, promises to protect those Minnesota workers most vulnerable to wage theft, who may not have access to the legal system otherwise.¹⁴⁸ In addition, Minnesota's Wage Theft Unit further promises to collaborate with other institutions including "government entities, community groups, and the business community" to increase awareness around workers' rights and workplace violations.¹⁴⁹ In a press release, Attorney General Keith Ellison stated that, "[w]age theft is theft, pure and simple . . . it's been hard to hold bad employers accountable for stealing wages from their workers."¹⁵⁰

Similarly, in 2021, Virginia Attorney General Mark Herring created the Worker Protection Unit with the goal of "investigating, stopping and prosecuting individuals and businesses who unlawfully engage in worker exploitation."¹⁵¹ Unlike Minnesota's Wage Theft Unit, Virginia's Worker Protection Unit focuses on specific crimes, including "worker misclassification, wage theft and payroll fraud."¹⁵² The makeup of the Worker Protection Unit also differs in that a former criminal prosecutor leads the unit.¹⁵³ However, collaboration with other government agencies remains a top priority.¹⁵⁴ One commentator questioned whether the Worker

143. *Id.* at 51–52.

144. *Id.* at 52.

145. *Id.*

146. *Id.* at 52–53 (footnotes omitted).

147. *Attorney General Ellison Announces New Wage Theft Unit in AGO*, OFF. OF MINN. ATT'Y GEN. KEITH ELLISON (July 15, 2019), https://www.ag.state.mn.us/Office/Communications/2019/07/15_WageTheftUnit.asp.

148. *Id.*

149. *Id.*

150. *Id.*

151. McKinley Strother, *Attorney General Mark Herring Creates Virginia's First Worker Protection Unit*, WSLs 10 NEWS (Mar. 3, 2021), <https://www.wsls.com/news/local/2021/03/03/attorney-general-mark-herring-creates-virginias-first-worker-protection-unit/>.

152. *Id.*

153. *Id.*

154. *Id.*

Protection Unit would protect unionization efforts considering that union membership declined in the United States for many years.¹⁵⁵

State attorneys general offices achieved results in pursuing wage theft violations partly because they can initiate both criminal and civil lawsuits and have the power to issue subpoenas.¹⁵⁶ For example, in 2021, Pennsylvania Attorney General Josh Shapiro announced that a company pled guilty to wage theft violations in the amount of \$20 million for wages stolen from more than 1,000 workers.¹⁵⁷ In 2022, the New York Attorney General's Wage Theft Task Force secured \$3 million for victims of wage theft resulting from several felony convictions.¹⁵⁸ One such wrongdoer, a restaurant owner, pled guilty to a misdemeanor after failing to pay his workers \$23,114.¹⁵⁹ However, state attorneys general offices are not alone in actively prosecuting wage theft. In recent years, other prosecutors have taken similar action.¹⁶⁰

3. Prosecutors

Similar to the involvement of state attorneys general offices,¹⁶¹ prosecutors in some jurisdictions, including district attorneys and county attorneys, are now prosecuting wage theft.¹⁶² Historically, prosecutors, whether federal or state, did not prosecute crimes against workers.¹⁶³ Exceptions include “the unsuccessful prosecution of the owners of the Triangle Shirtwaist Factory after the deadly fire in 1911, or the successful federal prosecution of . . . CEO Donald Blankenship, which was based on the . . . mine explosion that killed twenty-nine people.”¹⁶⁴ In recent years, prosecutors “investigate[d] and prosecute[d] a range of crimes against workers,” ranging from wage theft to workplace sexual assault in different jurisdictions throughout the United States.¹⁶⁵ To pursue these crimes, prosecutors avail themselves of the wage theft laws some states recently enacted.¹⁶⁶

Philadelphia District Attorney Larry Krasner is one prosecutor pursuing wage theft.¹⁶⁷ In 2019, Krasner created a new position within his office “to support the Economic Crimes Unit in investigating and prosecuting crimes against

155. *What Is the Attorney General's Worker Protection Unit?*, DOGWOOD (Mar. 20, 2021), <https://vadogwood.com/2021/03/20/what-is-the-attorney-generals-worker-protection-unit/>.

156. Damelio, *supra* note 10, at 132.

157. *Hawbaker Sentenced, Will Pay Workers More than \$20 Million in Stolen Wages*, OFF. OF ATT'Y GEN. MICHELLE HENRY, ACTING ATT'Y GEN. (Aug. 3, 2021), <https://www.attorneygeneral.gov/taking-action/hawbaker-sentenced-will-pay-workers-more-than-20-million-in-stolen-wages/>.

158. Denis Slattery, *New York Task Force Cracks Down on Wage Theft, Recovers \$3M*, N.Y. DAILY NEWS (July 20, 2022), <https://www.governing.com/work/new-york-task-force-cracks-down-on-wage-theft-recovers-3m>.

159. *Id.*

160. Damelio, *supra* note 10, at 133.

161. Gerstein, *supra* note 118, at 52.

162. *Id.* at 63–64.

163. *Id.* at 64.

164. *Id.*

165. *Id.* at 65–67.

166. *Id.* at 68.

167. Philadelphia Dist. Att'y's Off., *District Attorney Krasner Announces New Labor Liaison to Bolster Protections for Workers*, MEDIUM (Oct. 8, 2019), <https://medium.com/philadelphia-justice/release-district-attorney-krasner-announces-new-labor-liaison-to-bolster-protections-for-workers-62159359ddca>.

workers.”¹⁶⁸ His mission is to hold employers accountable when they commit workplace violations and help those workers lacking access to the legal system.¹⁶⁹ Former San Francisco District Attorney Chesa Boudin was another such prosecutor.¹⁷⁰ Boudin announced in 2020 the creation of the Economic Crimes Against Workers Unit to prosecute wage theft and other related crimes.¹⁷¹ Boudin stated that the “unit . . . will safeguard the rights of some of the most vulnerable people in our society.”¹⁷² Other prosecutors, such as the Alameda County District Attorney in California¹⁷³ and the Manhattan District Attorney in New York,¹⁷⁴ secured convictions for wage theft victims in the last six years. Despite the increased involvement of prosecutors,¹⁷⁵ wage theft prosecution still presents several challenges.¹⁷⁶

C. Challenges Associated with Wage Theft Prosecution

Wage theft prosecution presents challenges for both the state actors¹⁷⁷ and workers involved.¹⁷⁸ Criminally prosecuting wage theft requires additional resources compared to prosecuting other crimes.¹⁷⁹ These additional resources involve both witness testimony and audits of employer documents.¹⁸⁰ Prosecutors may lack expertise when it comes to building a wage theft case.¹⁸¹ Law enforcement is often similarly unfamiliar with investigating wage theft.¹⁸² For example, in Oregon, “if a worker calls the police to report [wage theft], police are likely to tell them it’s a civil issue, and the worker will end up going through [Oregon’s Bureau of Labor & Industries’] wage theft process.”¹⁸³

Prosecutors and law enforcement may view wage theft as beyond the purview of their positions.¹⁸⁴ Prosecutors may also be afraid to prosecute businesses that are influential for fear that prosecution “will harm their chances

168. *Id.*

169. *Id.*

170. *District Attorney Launches New Economic Crimes Unit to Protect Workers’ Rights*, S.F. DIST. ATT’Y (Apr. 21, 2020), <https://www.sfdistrictattorney.org/archive-press-release/new-economic-crimes-unit-to-protect-workers/>.

171. *Id.*

172. *Id.*

173. Joseph Geha, *Restaurant Owners Ordered to Pay More than \$1 Million in Back Pay to Workers*, MERCURY NEWS (Jan. 10, 2019), <https://www.mercurynews.com/2019/01/10/restaurant-owners-ordered-to-pay-more-than-1-million-in-back-pay-to-workers/>.

174. Press Release, Cyrus R. Vance, Jr., Dist. Att’y, Construction Company Pleads Guilty to Manslaughter, Pays Full Restitution to Workers (July 13, 2018), https://www.nyc.gov/assets/doi/press-releases/2018/jul/pr_SSCHighrise_7132018.pdf.

175. Gerstein, *supra* note 118, at 63–64.

176. *See* INST. FOR INNOVATION IN PROSECUTION, *supra* note 94, at 4–5.

177. *Id.*

178. Rosado Marzán, *supra* note 12, at 305.

179. GERSTEIN, *supra* note 1, at 14.

180. *Id.*

181. INST. FOR INNOVATION IN PROSECUTION, *supra* note 94, at 4.

182. *Id.* at 5.

183. Colin Staub, *Wage Thieves Will Soon Face Criminal Prosecution in Multnomah County*, NW LAB. PRESS (Aug. 17, 2022), <https://nwlaborpress.org/2022/08/wage-thieves-will-soon-face-criminal-prosecution-in-multnomah-county/>.

184. Lee & Smith, *supra* note 5, at 796.

of reelection.”¹⁸⁵ Further, this lack of expertise could also extend to members of the judiciary who are unaware of “wage theft schemes, related statutes, and the harms of [the] crime.”¹⁸⁶ The judicial lack of expertise might explain why “judges rarely impose jail time for wage theft.”¹⁸⁷

On the workers’ end, prosecuting wage theft can involve immigration consequences for undocumented workers.¹⁸⁸ In some jurisdictions, law enforcement is responsible for enforcing immigration laws.¹⁸⁹ Immigration status may explain why workers fear retaliation from their employers if they report workplace violations.¹⁹⁰ Retaliation especially affects low-wage workers because they usually live paycheck-to-paycheck.¹⁹¹ Employers view low-wage workers—and especially those in low-skill jobs—as replaceable.¹⁹² In addition, retaliation is often difficult to prove, and “anti-retaliation protection triggers only after the employer has engaged in the harmful act of retaliation.”¹⁹³ If a prosecutor charges an employer with wage theft and the employer is convicted, not only might the affected worker be retaliated against, but other workers might also lose their jobs if the employer goes out of business.¹⁹⁴

Wage theft enforcement is insufficient in most states.¹⁹⁵ As of 2018, “six states lacked a single investigator [at a government agency] to investigate minimum wage violations. Of the remaining states, twenty-six had no more than ten investigators.”¹⁹⁶ In Florida, “no state agency is wholly dedicated to investigating wage theft or reviewing claims.”¹⁹⁷ In fact, Florida abolished its labor department in 2002.¹⁹⁸ Such actions are particularly devastating for immigrant workers, who comprise a large percentage of the working population in Florida.¹⁹⁹

Even in some jurisdictions that enacted wage theft legislation,²⁰⁰ wage theft prosecution is still lacking.²⁰¹ In recent years in California, for example,

185. *Id.*

186. INST. FOR INNOVATION IN PROSECUTION, *supra* note 94, at 5.

187. Michael Migiel-Schwartz, *Why District Attorneys Should Take Up Wage Theft Criminalization*, ONLABOR (Feb. 22, 2021), <https://onlabor.org/why-district-attorneys-should-take-up-wage-theft-criminalization/>.

188. Rosado Marzán, *supra* note 12, at 305.

189. *Id.*

190. Lee & Smith, *supra* note 5, at 803.

191. Ruan, *supra* note 48, at 1120.

192. *Id.*

193. Lee & Smith, *supra* note 5, at 789.

194. Jeanne Kuang & Lil Kalish, *Though Wage Theft Is a Crime, Few California DAs File Charges for It*, CALMATTERS (Oct. 24, 2022), <https://calmatters.org/california-divide/2022/10/california-wage-theft/>.

195. Lee & Smith, *supra* note 5, at 769.

196. *Id.* (footnote omitted).

197. Susan Ferriss & Joe Yerardi, *Wage Theft Hits Immigrants – Hard*, PBS NEWSHOUR (Oct. 14, 2021), <https://www.pbs.org/newshour/economy/wage-theft-hits-immigrants-hard>.

198. *Id.*

199. *Id.*

200. Toni Vranjes, *California Strengthens Wage-Theft Laws*, SHRM (Mar. 7, 2018), <https://www.shrm.org/topics-tools/employment-law-compliance/california-strengthens-wagetheft-laws>.

201. Kuang & Kalish, *supra* note 194.

“prosecutors across the state rarely filed criminal charges based solely on wage theft.”²⁰² According to an investigator with the Santa Clara County District Attorney’s Office, “few workers were willing to come forward to testify as victims,” and as a result, prosecutors only filed charges intermittently.²⁰³ Prosecutors in California must also navigate the higher burden of proof required in criminal cases.²⁰⁴ With these challenges as a backdrop, Professor Benjamin Levin levied criticisms against wage theft prosecution.²⁰⁵

D. Criticisms Levied Against Wage Theft Prosecution

Professor Levin criticizes the growing increase in criminal prosecution of wage theft in the United States.²⁰⁶ Levin argues that wage theft does not justify a carceral punishment, and the better framework for wage theft involves tort and breach-of-contract remedies aimed at making victims whole.²⁰⁷ Even though wage theft may inflict harms other than monetary loss, Levin believes that argument can be extended to all crimes, thus diminishing the argument’s value.²⁰⁸

Regarding deterrence, Levin argues that in order for deterrence to effectively prevent crime, employers must not only be aware of the law but also be in a situation to conduct a cost-benefit analysis where “the chances of evading punishment . . . outweigh the costs of a potential fine.”²⁰⁹ After all, wage theft is rampant in those industries in which small businesses dominate the market.²¹⁰ As such, small businesses do not have the same resources as corporations to be aware of the law and act accordingly.²¹¹ According to Levin, studies suggest an inconclusiveness as to whether deterrence actually prevents crime, with some studies suggesting that swiftness and certainty rather than severity are more important when it comes to punishment.²¹²

As a response to Levin’s criticisms against wage theft criminal prosecution effectively deterring employers from committing workplace violations,²¹³ Terri Gerstein and David Seligman argue that anecdotal evidence suggests that employers fear criminal penalties.²¹⁴

[A]s for deterrence, we’ve both seen how employers who do not fear serious sanction for violations engage in persistent wage theft and payroll

202. *Id.*

203. *Id.*

204. *Id.*

205. Levin, *supra* note 3, at 1429–30.

206. *Id.*

207. *Id.* at 1450–51.

208. *Id.* at 1454.

209. *Id.* at 1459–60.

210. *Id.* at 1460.

211. *Id.*

212. *Id.* at 1461–62.

213. *Id.*

214. Terri Gerstein & David Seligman, *A Response to “Rethinking Wage Theft Criminalization,”* ONLABOR (Apr. 20, 2018), <https://onlabor.org/a-response-to-rethinking-wage-theft-criminalization/>.

fraud [A]mple anecdotal evidence exists to support the common-sense notion that fear of arrest draws attention from employers and changes their conduct more meaningfully than the threat of civil enforcement. We've both witnessed how openly some employers flout the law when they don't think they'll ever be held accountable, and while heavy civil penalties are sometimes enough to deter some bad actors, others do everything they can to hide assets, even telling their employees that no one will ever find their money. In these cases, the threat of jail, however unlikely, seems to be the only way of deterring misconduct.²¹⁵

The prosecution of an employer in California where the employer agreed to pay restitution in lieu of jail time for thirty-three felony charges supports Gerstein and Seligman's response.²¹⁶ Prosecutors in the United States can address the challenges and criticisms associated with wage theft prosecution, help workers, and create more widespread adoption by implementing the following proposed directives.

IV. PROPOSED DIRECTIVES TO HELP WORKERS AND CREATE MORE WIDESPREAD ADOPTION

This Section will propose four directives prosecutors can enact to help workers and create more widespread adoption including (A) implementing an office-wide policy, (B) creating dedicated units, (C) collaborating with other institutions, and (D) targeting specific industries.

A. Implementing an Office-Wide Policy

One directive for prosecutors to help workers and create more widespread adoption is implementing an office-wide policy to pursue wage theft cases. Such a policy has the added benefit of making prosecutor offices more well-versed with wage theft.²¹⁷ For example, former King County, Washington, prosecuting attorney candidate Jim Ferrell stated that, "I think that's probably why prosecutors don't understand [wage theft], they aren't well-versed in [wage theft] When I first started to run, I made this a central piece of my campaign."²¹⁸ In 2021, Diana Florence, a candidate who ran for Manhattan District Attorney, stated that "prosecutors [need to] stop viewing the enforcement of [wage theft] crimes as optional and start investigating them like other crimes."²¹⁹

215. *Id.*

216. Kuang & Kalish, *supra* note 194.

217. Guy Oron, *Prosecuting Attorney Candidate Jim Ferrell Speaks with Real Change*, REAL CHANGE NEWS (Sept. 28, 2022), <https://www.realchangenews.org/news/2022/09/28/prosecuting-attorney-candidate-jim-ferrell-speaks-real-change>.

218. *Id.*

219. Nathan Newman, *Progressive Policy Requires a Well-Funded War on Corporate Crime*, AM. PROSPECT (Feb. 2, 2021), <https://prospect.org/justice/progressive-policing-requires-well-funded-war-on-corporate-crime/>.

Prosecutors can enact an office-wide policy because “[p]rosecutors are significant policymakers in the American penal system.”²²⁰ State prosecutors handle 95% of all criminal cases in the United States and have a large amount of “discretion over prosecution, case strategy, and bail decisions.”²²¹ One commentator argues that change can happen in the criminal justice system only when “good, progressive people run for the office of District Attorney,” noting that “[t]he chief prosecutor can change the goals and culture of a prosecution office.”²²² One such example is “Philadelphia District Attorney Larry Krasner[, who] was a civil rights lawyer and defense attorney before becoming the city’s chief prosecutor.”²²³ Progressive prosecutors are especially important in those jurisdictions that are traditionally conservative considering that 67% of states and 96% of localities enacting wage theft legislation lean Democratic.²²⁴

The policy change towards prosecuting domestic violence in the United States²²⁵ supports the argument that policy can increase prosecution of offenses not typically perceived as “crime.” Historically, much like the view towards wage theft,²²⁶ the criminal justice system viewed domestic violence as a private dispute, best reserved for resolution between the parties involved.²²⁷ Law enforcement encouraged male perpetrators to “cool down” rather than make an arrest.²²⁸ If an arrest occurred, prosecution often did not follow.²²⁹ However, a policy change that encouraged the criminalization of domestic violence led to increased prosecution, contrary to past beliefs.²³⁰ “In 1984, the United States Attorney General’s Task Force on Domestic Violence called for strengthening the criminal legal response to domestic violence in the United States.”²³¹ This change started “the United States . . . down a path toward the criminalization of domestic violence that it has steadfastly continued to follow.”²³² The United States further supported prosecution of domestic violence when it passed the Violence Against Women Act in 1994, which provided hundreds of millions of dollars for the domestic violence training and support of state actors including prosecutors and law enforcement.²³³ In 2003, President George W. Bush indirectly supported the policy shift when he stated:

220. Heather L. Pickerell, *How to Assess Whether Your Attorney Is a Bona Fide Progressive Prosecutor*, 15 HARV. L. & POL’Y REV. 285, 288 (2020).

221. *Id.* at 290–91.

222. Angela J. Davis, *The Progressive Prosecutor: An Imperative for Criminal Justice Reform*, 87 FORDHAM L. REV. ONLINE 8, 10 (2018).

223. *Id.*

224. Lee & Smith, *supra* note 5, at 774.

225. Goodmark, *supra* note 17, at 53.

226. See GERSTEIN, *supra* note 1, at 1.

227. Goodmark, *supra* note 17, at 61.

228. *Id.*

229. *Id.*

230. *Id.* at 55.

231. *Id.* at 54.

232. *Id.* at 55.

233. *Id.* at 65.

Government has got a duty to treat domestic violence as a serious crime, as part of our duty. If you treat something as a serious crime, then there must be serious consequences, otherwise it's not very serious. . . . Our prosecutors are doing their jobs. They're finding the abusers, and they're throwing the book at them. And that's important.²³⁴

To bring about a similar attitude shift towards wage theft, prosecutors can implement an office-wide policy and legislators can provide funding for wage theft training.

Prosecutors who wish to induce change in wage theft through policy can also look to the change in marijuana-related prosecution in many jurisdictions across the United States.²³⁵ For example, in 2019, prosecutors in Jefferson County, Kentucky, and Marion County, Indiana, announced they would no longer prosecute simple marijuana possession.²³⁶ The District Attorney's Office in Westchester County, New York, no longer prosecutes specific marijuana-related offenses.²³⁷

As a result of prosecutors deciding to not prosecute marijuana related offenses, drug arrests decreased in some jurisdictions.²³⁸ According to one study, drugs arrests in Baltimore City significantly decreased after the State's Attorney announced in March 2020 that drug and paraphernalia possession would no longer be prosecuted.²³⁹ In 2019, after the Dallas County, Texas District Attorney's Office announced it would no longer prosecute first-time marijuana possession offenses, the number of arrests decreased.²⁴⁰ "In 2018, 23 municipal departments made 6,620 arrests that they sent to the Dallas County District Attorney's Office for prosecution. In 2019, 21 of those agencies reduced their respective arrest volumes by at least 11%."²⁴¹ The correlation between not prosecuting marijuana

234. *Id.*

235. Charles Gazaway, *Jefferson County Will No Longer Prosecute Simple Marijuana Possession Cases*, WAVE (Aug. 28, 2019), <https://www.wave3.com/2019/08/28/jefferson-county-will-no-longer-prosecute-simple-marijuana-possession-cases/>; Crystal Hill & Ryan Martin, *Marion County Will No Longer Prosecute Simple Marijuana Possession*, INDY STAR (Sept. 30, 2019), <https://www.indystar.com/story/news/2019/09/30/marion-county-no-longer-prosecute-marijuana-possession-officials-say/3818748002/>.

236. *Id.*

237. *Marijuana Prosecution Reform Goes into Effect*, WESTCHESTER CNTY., N.Y. OFF. DIST. ATT'Y MIRIAM E. ROCAH (Jan. 11, 2019), <https://www.westchesterda.net/media-center/in-the-news/6246-marijuana-prosecution-reform-goes-into-effect>.

238. SABA ROUHANI ET AL., EVALUATION OF PROSECUTORIAL POLICY REFORMS ELIMINATING CRIMINAL PENALTIES FOR DRUG POSSESSION AND SEX WORK IN BALTIMORE, MARYLAND 3 (2021), <https://publichealth.jhu.edu/sites/default/files/2021-10/prosecutorial-policy-evaluation-report-20211019.pdf>; PAMELA METZGER, VICTORIA SMIEGOCKI, & KRISTIN MEEKS, BUDDING CHANGE: MARIJUANA PROSECUTION POLICIES AND POLICE PRACTICES IN DALLAS COUNTY, 2019 4 (2021), <https://www.smu.edu/-/media/Site/Law/Deason-Center/Publications/Prosecution/DALLAS/DALLAS-Budding-Change-v1.pdf?la=en>.

239. ROUHANI ET AL., *supra* note 238, at 3.

240. METZGER, SMIEGOCKI, & MEEKS, *supra* note 238, at 3–4.

241. *Id.* at 4.

related offenses and fewer drug related arrests²⁴² suggests that implementing an office-wide policy to pursue wage theft will result in more arrests related to workplace violations, thus benefitting workers.

Opponents may argue that implementing an office-wide policy to prosecute wage theft might create a nuisance for prosecutors intending to only prosecute “real crimes.” For example, in his book, John Kroger, a former Assistant United States Attorney in the Eastern District of New York, detailed how EDNY’s policy of not prosecuting marijuana offenses allowed federal prosecutors to focus on higher level offenses.²⁴³

In the EDNY, for example, the front office believed marijuana was a minor problem, causing very minimal social costs compared with crack, heroin, and cocaine. As a result, it wrote guidelines requiring frontline prosecutors like me to decline any marijuana case involving less than two thousand pounds, anything short of a truckload.²⁴⁴

However, prosecutors are not likely to hold such beliefs if those leaders seeking to implement an office-wide policy are transparent and communicate the reasons for implementing a new policy.²⁴⁵ The Association of Prosecuting Attorneys found that “[p]rosecutors intending to introduce a philosophical shift to their offices can also foster greater receptivity by openly researching and discussing new strategies well in advance of implementation.”²⁴⁶ Additionally, prosecutors are likely to embrace new policies if leaders provide “evidence of successful innovations undertaken by other offices.”²⁴⁷

One reason prosecutors may respond positively to transparency and evidence of successful precedent is because prosecutors inhabit a role that reflects professional ethics. Social scientists have shown the importance of professional ethics for effective law enforcement.²⁴⁸ The prosecutor is uniquely situated in the legal system in that “[t]he prosecutor does not represent the victim of a crime, the police or any individual. Instead, the prosecutor represents society as a whole. His goal is truth and the achievement of a just result.”²⁴⁹ As John Kroger acknowledges in his book “[i]n the Justice Department, our job is justice.”²⁵⁰ As a result,

242. ROUHANI ET AL., *supra* note 238, at 3; METZGER, SMIEGOCKI & MEEKS, *supra* note 238, at 4.

243. JOHN KROGER, CONVICTIONS: A PROSECUTOR’S BATTLES AGAINST MAFIA KILLERS, DRUG KINGPINS, AND ENRON THIEVES 106 (2008).

244. *Id.* at 105–06.

245. ROY HUBERT ET AL., THE PROSECUTOR’S POLICY GUIDE: A ROADMAP TO INNOVATION 15 (2012), <https://www.apainc.org/wp-content/uploads/2017/01/The-Prosecutors-Policy-Guide-4.26-1.pdf>.

246. *Id.*

247. *Id.*

248. See Andrew Schrank, *Professionalism and Probity in a Patrimonial State: Labor Inspectors in the Dominican Republic*, 51 LATIN AM. POLS. & SOC’Y 91, 95 (2009).

249. Carol A. Corrigan, Commentary, *On Prosecutorial Ethics*, 13 HASTINGS CONST. L.Q. 537, 537–38 (1986).

250. KROGER, *supra* note 243, at 441.

an appeal to politics will likely fail to bring a prosecutor on board with a policy shift.

Prosecutors seeking to implement an office-wide policy of prosecuting wage theft can point to those efforts Larry Krasner undertook in Philadelphia²⁵¹ and Chesa Boudin undertook in San Francisco.²⁵² In 2021, Larry Krasner's Worker Protection Unit "charged the owner of a plumbing contractor . . . for stealing pay-check funds that belonged to his employees and their union."²⁵³ The charge stemmed from an investigation that lasted more than a year.²⁵⁴ Krasner also encouraged workers to report employer workplace violations, with a promise that the "Worker Protection Unit . . . will investigate allegations and prosecute where appropriate."²⁵⁵ Chesa Boudin's Economic Crimes Against Workers Unit not only "sued DoorDash for misclassifying its workers as independent contractors instead of employees," but the unit "also sued Handy, a company that provides in-home services such as house cleaning, on the same grounds."²⁵⁶ Other successes included prosecuting "labor trafficking, immigration-related workplace retaliation, and other crimes by employers against workers."²⁵⁷

In 2022, 60% of San Francisco residents voted to recall Boudin.²⁵⁸ Opponents may argue that such election results indicate that progressive policies are ineffective. However, business interests affected the election results.²⁵⁹ For example, "a number of the recall campaign's prominent proponents [were] directly invested in companies like DoorDash."²⁶⁰ The support of the recall campaign created a significant financial disparity compared with Boudin's campaign, \$2.7 million versus \$1.05 million.²⁶¹ If anything, the election shows that Boudin's policy of prosecuting wage theft affected employers and should be used as an

251. Philadelphia Dist. Att'y's Off., *supra* note 167.

252. S.F. DIST. ATT'Y, *supra* note 170.

253. *DAO Worker Protection Unit Charges Plumbing Contractor for Misappropriating Union Fees*, MEDIUM (Jan. 25, 2021), <https://medium.com/philadelphia-justice/dao-worker-protection-unit-charges-plumbing-contractor-for-misappropriating-union-fees-21b5f521b4a3>.

254. *Id.*

255. *DA Krasner Encourages Philly Workers to Report Employer Crimes as Workplaces Reopen*, MEDIUM (Mar. 15, 2021), <https://medium.com/philadelphia-justice/da-krasner-encourages-philly-workers-to-report-employer-crimes-as-workplaces-reopen-1faeb4ea3b1f>.

256. *Chesa Boudin: San Francisco District Attorney*, BOUDIN FACTS, <https://www.boudinfacts.com/> (last visited Apr. 13, 2023).

257. Sarah Menefee, *Bitter Recall of San Francisco's D.A.: An Attack on Reform*, PEOPLE'S TRIB. (June 12, 2022), <https://peoplestribune.org/2022/06/bitter-recall-of-san-franciscos-da-an-attack-on-reform/>.

258. Musadiq Bidar, *San Francisco Votes Overwhelmingly to Recall Progressive DA Chesa Boudin*, CBS NEWS (June 8, 2022), <https://www.cbsnews.com/news/chesa-boudin-san-francisco-da-recalled/>.

259. Abe Asher, *San Francisco's Economic Elite Is Gunning for Chesa Boudin*, JACOBIN (May 5, 2022), <https://jacobin.com/2022/05/sf-da-crime-recall-chesa-boudin-wealthy>.

260. *Id.*

261. Megan Cassidy, *These Are the Ultra-Wealthy Donors Pouring Money into the Chesa Boudin Recall Battle*, S.F. CHRON. (May 4, 2022), <https://www.sfchronicle.com/sf/article/chesa-boudin-recall-17052312.php>.

example for those prosecutors hoping to implement an office-wide policy of prosecuting wage theft.

B. Creating Dedicated Units

Another directive is creating units dedicated to wage theft within prosecutors' offices. One commentator, Professor César F. Rosado Marzán, believes in the necessity of creating dedicated units.²⁶² "In my view, [wage theft prosecution might actually deter wage theft] when there is a special group of prosecutors who handle labor and employment law related cases, including wage theft, and who understand the particularities of this type of enforcement."²⁶³ Some jurisdictions created dedicated units in years past.²⁶⁴ In 2020, the Santa Clara County District Attorney's Office announced a Worker Exploitation Task Force.²⁶⁵ In 2021, the "San Diego County, District Attorney Summer Stephan . . . launched a Workplace Justice Unit dedicated to investigating wage and hour violations and labor trafficking."²⁶⁶

In New York, Queens County District Attorney Melinda Katz "created [a] Housing and Worker Protection Bureau and designated a specialized team of investigators and prosecutors to right the wrongs of those who have had their earnings stolen or have in some other way been victimized by economic crime."²⁶⁷ Creating a unit dedicated to wage theft is especially valuable to prosecutors because it (1) allows prosecutors to develop expertise in an area of the law that overlaps between labor law and criminal law, and (2) like implementing an office-wide policy, "institutionalizes the work within [a prosecutor's] office, thus promoting the likely longevity of a [District Attorney's] office involvement in such prosecutions."²⁶⁸

Units in prosecutors' offices dedicated to wage theft can succeed because other types of decided units have shown success.²⁶⁹ For example, "[i]n 1968, United States Attorney Robert M. Morgenthau established the first Consumer Fraud Unit in the country in the Southern District of New York."²⁷⁰ The Consumer Fraud Unit not only continued for years later, but it also handled significant cases and created precedent for establishing the unit in other offices such as the Eastern District of New York.²⁷¹ One of the advantages of the unit involved

262. Rosado Marzán, *supra* note 12, at 310.

263. *Id.*

264. Kuang & Kalish, *supra* note 194; GERSTEIN, *supra* note 1, at 4; INST. FOR INNOVATION IN PROSECUTION, *supra* note 94, at 2.

265. Kuang & Kalish, *supra* note 194.

266. *Id.*

267. INST. FOR INNOVATION IN PROSECUTION, *supra* note 94, at 4.

268. GERSTEIN, *supra* note 1, at 4.

269. SPECIAL COMM. ON CONSUMER AFFS., THE CREATION OF CONSUMER FRAUD UNITS IN UNITED STATES ATTORNEY'S OFFICES IN MAJOR METROPOLITAN AREAS 371 (1977); Sterling Johnson, Jr., *The Special Narcotics Prosecutor's Office*, 3 DRUG ENF'T 8, 8 (1976).

270. SPECIAL COMM. ON CONSUMER AFFS., *supra* note 269, at 371.

271. *Id.* at 371–72.

allowing Assistant United States Attorneys to develop specialized knowledge pertaining to consumer fraud.²⁷² Those federal prosecutors with specialized knowledge could then be assigned cases related to consumer fraud, rather than assigning the cases to federal prosecutors lacking the required knowledge.²⁷³ Similarly, creating a unit dedicated to wage theft can help prosecutors unfamiliar with wage theft develop knowledge pertaining to it and, over time, not only handle significant cases, but create precedent for other prosecutors' offices. Like the approach taken in Philadelphia where Larry Krasner appointed an experienced labor attorney to lead the Economic Crimes Unit,²⁷⁴ imparting prosecutors with specialized knowledge pertaining to wage theft could potentially be accelerated if someone familiar with wage theft leads the unit.

A unit dedicated to wage theft could provide the added benefit of increasing cooperation between agencies,²⁷⁵ with the wage theft unit taking the lead. In the early 1970s, New York City created the Special Narcotics Prosecutor's Office to address an increased number of narcotics felony and misdemeanor arrests.²⁷⁶ The Special Narcotics Prosecutor's Office also "increas[ed] the amount of cooperation between local and federal narcotics law enforcement agencies."²⁷⁷ The cooperation led to the indictment of almost one hundred "significant organized crime narcotics traffickers," otherwise known as "Operation Uncover."²⁷⁸

"Operation Uncover" helped set the pattern for interagency cooperation. Whenever two or more agencies are pursuing the same target or are in a position to assist one another, all resources and intelligence are now shared until the investigation is complete. . . . At the end of the investigation all the concerned agencies meet and determine which defendants are to be prosecuted federally and which in the state courts.²⁷⁹

Opponents may argue that government agencies unrelated to law enforcement are unlikely to cooperate even if a prosecutor institutes a unit dedicated to wage theft, given the inadequacies of civil remedies in addressing wage theft.²⁸⁰ However, cooperation between government agencies and worker centers, "organizations [that] seek to improve the lot of employees in marginal industries but do not aspire to negotiate with employers,"²⁸¹ suggests that collaboration between prosecutors and other agencies can happen.

272. *Id.* at 372.

273. *Id.*

274. Philadelphia Dist. Att'y's Off., *supra* note 167.

275. Johnson, Jr., *supra* note 269, at 8.

276. *Id.*

277. *Id.*

278. *Id.*

279. *Id.*

280. Damelio, *supra* note 10, at 120.

281. Eli Naduris-Weissman, *The Worker Center Movement and Traditional Labor Law: A Contextual Analysis*, 30 BERKELEY J. EMP. & LAB. L. 232, 238, 241 (2009) ("[C]enters engage in

C. Collaborating with Other Institutions

Collaborating with other institutions is a directive to better effect wage theft prosecution in the United States. Prosecutors can collaborate with (1) worker centers,²⁸² (2) law enforcement,²⁸³ and (3) legislators.²⁸⁴ Collaborating with worker centers can allow prosecutors to receive complaints from workers who are victims of wage theft.²⁸⁵ Workers concerned about retaliation can submit complaints anonymously to worker centers.²⁸⁶ In addition, worker centers can assist prosecutors with “case development while also accompanying workers throughout the case.”²⁸⁷ For example, the Manhattan District Attorney’s Office partnered with workers centers in New York City to create the Manhattan Justice for Workers Collaborative (MJWC).²⁸⁸ One of the goals of the MJWC is to “[i]ncrease reporting of criminal activities by employers of low-wage workers in all industries but particularly in New York City’s construction industry.”²⁸⁹ Collaboration may also help prosecutors recover stolen wages.²⁹⁰ In Washington, D.C., the D.C. Attorney General collaborated with “D.C. Jobs with Justice and other labor organizers . . . [to recover] \$2.75 million from an electrical contractor for stealing wages from hundreds of electrical workers.”²⁹¹

While prosecutors collaborate with workers centers who represent the victims of wage theft,²⁹² prosecutors also collaborate with groups that represent offenders.²⁹³ For example, “Minneapolis City Attorney Susan L. Segal implemented a collaborative program designed specifically to address livability and reduce property and drug crime.”²⁹⁴ The program, titled “Downtown 100” partnered Minnesota prosecutors and other state actors with social services programs aimed at providing assistance and support to homeless offenders and “other neighborhood associations, community organizations, and business stakeholders.”²⁹⁵ The collaboration proved successful in that it exceeded its goal of “reduc[ing] crime committed by the Downtown 100 offenders by over 50%.”²⁹⁶ In fact, the collaboration resulted in a 77% reduction in

advocacy by publicizing information about low-wage industries, initiating lobbying and grassroots-mobilization campaigns to change employment laws, working with government agencies to improve enforcement of employment laws, and bringing lawsuits against employers.”).

282. *Id.*; See Damelio, *supra* note 10, at 144.

283. Newman, *supra* note 219.

284. Haleigh Svoboda, *Cities Make-Theft Prosecution a Priority*, TEX. TRIB. (Oct. 31, 2011), <https://www.texastribune.org/2011/10/31/cities-work-make-wage-theft-prosecution-priority/>.

285. Damelio, *supra* note 10, at 144.

286. *Id.* at 144 n.229.

287. *Id.* at 144.

288. *Id.* at 145.

289. *Manhattan Justice for Workers Collaborative*, NYCOSH, <https://nycosh.org/initiatives/manhattan-justice-for-workers-collaborative/> (last visited Mar. 20, 2023).

290. Damelio, *supra* note 10, at 146.

291. *Id.*

292. *Id.* at 145.

293. HUBERT ET AL., *supra* note 245, at 17.

294. *Id.*

295. *Id.* at 18.

296. *Id.*

crime.²⁹⁷ Such a collaboration shows that prosecutors can successfully collaborate with groups who represent individuals involved in the criminal justice system.

Prosecutors, as state actors, must also work closely with law enforcement in order to effectively prosecute wage theft. Prosecutors can provide training to law enforcement on workers' rights issues, educating law enforcement who may not be well-versed with wage theft.²⁹⁸ Such training is especially important because law enforcement initiate few, if any, wage theft prosecutions.²⁹⁹ The Worker Protection Unit in Philadelphia helped train its in-house detective by "put[ting] together a spreadsheet that made it easy to see the amount of deductions from each worker's pay, [which allowed] the detective to contact[] all the affected workers to confirm that they had not authorized the employer to keep the money."³⁰⁰ In addition, state and federal funding can act as initiatives and change law enforcement priorities.³⁰¹ When President Ronald Reagan campaigned for a War on Drugs, "[law enforcement] resisted it and, outside of narcotics divisions, had disdain for the project. This changed only when funding rewarded shifts in departments' priorities."³⁰²

Prosecutors and legislators can collaborate with one another to make wage theft prosecution a priority.³⁰³

In Austin, the Workers Defense Project, a workplace justice group, is collaborating with state Rep. Eddie Rodriguez, D-Austin, who sponsored [Senate Bill 1024] in the House, to set up a meeting to talk with Austin's police chief and the district and county attorneys about making wage theft an enforcement priority. The author of [Senate Bill 1024], state Sen. José Rodríguez, D-El Paso, set up a task force in his home city to work on implementing the measure.³⁰⁴

As legislators may be more cognizant of the needs of their constituents³⁰⁵ compared with prosecutors, prosecutors can help workers by collaborating with legislators. To address the risk of a company paying criminal fines and going out of business,³⁰⁶ prosecutors and legislators can work together to create legislative reform that provides for other wage theft penalties such as restitution equal to the

297. *Id.*

298. GERSTEIN, *supra* note 1, at 26.

299. *Id.*

300. Steve Wishnia, *Prosecutors Are Getting Tougher on Wage Theft, Report Finds*, LABORPRESS (May 19, 2021), <https://www.laborpress.org/prosecutors-are-getting-tougher-on-wage-theft-report-finds/>.

301. Newman, *supra* note 219.

302. *Id.*

303. Svoboda, *supra* note 284.

304. *Id.*

305. See *How Legislators Make Decisions*, NAT'L COUNCIL FOR SOC. STUD., <https://www.socialstudies.org/advocacy/how-legislators-make-decisions> (last visited Mar. 20, 2023).

306. Kuang & Kalish, *supra* note 194.

amount of wages owed and community service. Such collaboration and reform between prosecutors and legislators is possible given that prosecutors lobbied state legislators in “support[] [of] 12% of bills that sought to decrease punishment” of the more than 22,000 criminal law and criminal justice related bills introduced in all state legislatures between 2015 and 2018.³⁰⁷

The legal community generally accepts the principle that prosecutors must be independent in their decision-making.³⁰⁸ Opponents may argue that collaboration prevents prosecutors from remaining independent. Prosecutors agree that independence from the entities which prosecutors may collaborate with is important.³⁰⁹ However, a balance can be struck between collaboration and independence. Prosecutors can collaborate with worker centers, law enforcement, and legislators to the extent collaboration does not impact independence in decision-making.

Prosecutor involvement in drug courts across the United States suggests that collaboration can co-exist with independent decision-making.³¹⁰ In drug court, prosecutors work with defense attorneys and actors in the judicial system to encourage alternatives to incarceration while also maintaining control over prosecutorial input, such as candidate appropriateness for drug court and compliance with drug court requirements.³¹¹ Additionally, internal oversight can provide a means to prevent prosecutorial misconduct during collaboration with other entities. For example, chief prosecutors can develop procedures and principles “through which categories of decisions can be referred to a particular supervisory prosecutor or to a board of prosecutors who are better able to decide cases uniformly. These decision-makers . . . may be in a position to develop a ‘common law’ for how the office approaches specific issues.”³¹² A similar approach can be taken towards those prosecuting wage theft and collaborating with other entities to ensure collaboration does not impair decision-making.

D. Targeting Specific Industries

Targeting specific industries is another directive to help workers and create more widespread adoption. Low-wage workers in specific industries are especially vulnerable to wage theft.³¹³ Targeting industries, such as leisure and hospitality, can drive change in those industries and deter workplace violations³¹⁴ given the inadequacy of civil remedies.³¹⁵ In fact, prosecutors and state attorneys

307. THE PROSECUTORS & POLS. PROJECT, LOBBYING IN THE STATES, 2015–2018 4, 7 (2021), <https://law.unc.edu/wp-content/uploads/2021/06/Prosecutor-Lobbying-in-the-States-2015-2018.pdf>.

308. Bruce A. Green & Fred C. Zacharias, *Prosecutorial Neutrality*, 2004 WIS. L. REV. 837, 851 (2004).

309. HUBERT ET AL., *supra* note 245, at 8.

310. NAT'L ASS'N DRUG CT. PROS., DEFINING DRUG COURTS: THE KEY COMPONENTS 3 (1997), <https://www.ojp.gov/pdffiles1/bja/205621.pdf>.

311. *Id.*

312. Green & Zacharias, *supra* note 309, at 897.

313. Lee & Smith, *supra* note 5, at 768.

314. Damelio, *supra* note 10, at 146.

315. BOBO, *supra* note 7, at 57.

general offices in some jurisdictions do target specific industries.³¹⁶ The Manhattan District Attorney targets the construction industry while “[t]he Massachusetts [Attorney General] . . . targets specific industries, including construction, hospitality, home healthcare, and employment agencies.”³¹⁷ For prosecutors, targeting specific industries is especially important given how ineffective government agency inspectors are at enforcing civil penalties.³¹⁸

Given state resources, prosecutors can become partners, if not leaders, in enforcement schemes that target specific industries. Targeting specific industries is necessary to address structural noncompliance, which can never be fully addressed through cases dealing with individual employers or workers. For example, employment law expert David Weil argues that employer workplace violations should not be addressed by focusing on individual employers.³¹⁹ Instead, enforcement must focus on “a larger strategy that attempts to change the market forces that drive [employers to commit workplace violations].”³²⁰ Weil further argues that to effect change, a top-focused strategy that targets specific industries and industry leaders is necessary because a top-focused strategy, in part, attacks a company’s reputation.³²¹ “Whether one looks at Nike’s response to accusation of its shoes being made in sweatshops, Apple’s response to supplier conditions in factories producing iPhones, or Walmart’s responses to any number of labor, environmental, or consumer campaigns, lead businesses are sensitive to reputational attacks.”³²²

V. CONCLUSION

Wage theft is a problem for workers in the United States.³²³ Wage theft prosecution is a way to address the problem. However, wage theft prosecution comes with its own challenges³²⁴ and criticisms.³²⁵ Several directives are available to prosecutors to combat these problems including (1) implementing an office-wide policy, (2) creating dedicated units, (3) collaborating with other institutions, and (4) targeting specific industries. Wage theft prosecution can effectively help workers through more widespread adoption and determent of employers from committing workplace violations moving forward.

316. Damelio, *supra* note 10, at 147.

317. *Id.*

318. *Id.* at 146.

319. DAVID WEIL, THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT 236 (2014).

320. *Id.*

321. *Id.* at 234.

322. *Id.*

323. Mack, Jr. & Cakmakci, *supra* note 2, at 275–76.

324. GERSTEIN, *supra* note 1, at 14; Rosado Marzán, *supra* note 12, at 305; Lee & Smith, *supra* note 5, at 769.

325. Levin, *supra* note 3, at 1429–30.