



*Testimony of*

*Lorelei Salas  
Make the Road New York*

*before the*

*New York State Department of Labor's 2014 Wage Board*

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*Adam Clayton Powell, Jr. State Office Building  
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Good morning members of the board. My name is Lorelei Salas and I am the Legal Director at Make the Road New York (MRNY). Thank you for the opportunity to testify today.

MRNY is a multi-service organization that builds the power of Latino and working class communities to achieve dignity and justice through litigation, legal and survival services, coupled with policy innovation, transformative education, and community organizing. We operate storefront community centers in the high density immigrant neighborhoods of Bushwick, Brooklyn; Jackson Heights, Queens; Port Richmond, Staten Island; and Brentwood, Long Island. For over fifteen years, MRNY has counseled low wage immigrant workers on issues surrounding wage theft, representing workers in federal and state court and before the New York State Department of Labor and other enforcement agencies. Many of the individuals MRNY represents are low-wage restaurant workers who are commonly paid below the minimum wage and who are poorly tipped. Our clients work long hours, without being paid time and a half for hours over forty in a week, or worse yet, they are simply not paid for the work they perform.

Take Ali, who worked as a delivery worker for a well-known restaurant chain in Manhattan. He was paid \$5 an hour and he worked about 66 hours a week without overtime pay. Ali made about \$30 in tips a day, some days less, some days more. But he could not count on these tips. His employer required him to pool the tips he received with all other employees at the restaurant, including the cooks and cashiers. In addition to doing delivery work, his employer required him to clean the restaurant, stock and set up for the day. He spent more than half his day doing this non-tipped work, but was never paid the full minimum wage for these hours.

Ali was never told by his employer how his wages would be calculated and he did not know that his employer had the responsibility to supplement his tips when these were not enough to bring him up to the minimum wage.

But this is not an isolated case- as you have already heard and will continue to hear around the state, immigrant workers and women are disproportionately affected by wage theft and poverty wages. As service employees, they depend on tips to make ends meet and to support

their families. But these tips are often taken from them by their bosses to defray the cost of other non-service employees' salaries. Tips were never meant to replace wages. They are meant to be a reward for good service and not something that workers need to rely on to make ends meet. But because employers in New York are allowed to pay tipped workers only a meager sub-minimum wage – just \$5.00 per hour for food service workers – tipped workers are forced to rely in large part on tips to afford the basics.

This Board should recommend the elimination of the tip credit for the following reasons:

1. Guaranteeing the full minimum wage for tipped employees will result in more stability for a workforce that is made up of 70% women, and in New York City, it will provide immigrant New Yorkers with the ability to better meet their families' most basic needs. Currently, tipped workers depend on an unreliable source of income that varies per season, per region, per day, and per customer. This vulnerability also exposes them to a higher incidence of sexual harassment and discrimination.
2. Excluding tipped workers from the full minimum wage protection does not make business sense. Restaurants and hotels depend on these employees' good service to keep customers coming back, and as such they should be compensated accordingly. Restaurants can afford to pay the full minimum wage to all of their workers, just like all other industries in New York do. Seven states in the country already require employers to pay tipped workers the full minimum wage – and in these states, tipped workers benefit from lower poverty rates and higher wages, and restaurants have adjusted without reducing employment.
3. Tip rules currently in place are difficult to understand by both employers and employees and are even more difficult to enforce. Since tips fluctuate from day to day, employers are in the position of having to account for each employee's earned tips on a daily basis to ascertain whether or not they have earned sufficient tips to justify a reduced minimum wage. It is an accounting nightmare that more often than not ends up being ignored by unscrupulous employers, and shortchanges employees on a regular basis. Those employers who already pay the full minimum wage and/or take great pains to guarantee

all their employees earn enough tips to justify a tip credit are at a disadvantage because their competition is able to get by without complying with the rules.

Through this wage board process, Governor Cuomo can deliver fair pay for workers like Ali, by issuing a “wage order” that ends New York’s sub-minimum wage for tipped workers. This wage order can simply require employers to directly pay tipped workers the full minimum wage, as they are already required to do for non-tipped workers. We urge this board to recommend the elimination of the tip credit and to deliver justice to low-wage workers in the hospitality industry.

Thank you again for the opportunity to testify today.