IN THE SUPREME COURT OF MARYLAND

September Term 2025
SCM-PET-0138-2025

JUAN CARLOS TERRONES ROJAS,

Petitioner,

v.

F.R. GENERAL CONTRACTORS, INC., *et al.*,

Respondents.

On Petition for a *Writ of Certiorari* to the
Appellate Court of Maryland

BRIEF OF *AMICI CURIAE* METROPOLITAN WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION AND NATIONAL EMPLOYMENT LAW PROJECT IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST

The Metropolitan Washington Employment Lawyers Association ("MWELA") is a local affiliate of the National Employment Lawyers Association, a national organization of attorneys, primarily employees' counsel, who specialize in employment law. MWELA has over 350 members who represent and protect the interests of employees under state and federal law. The purpose of MWELA is to bring into close association employee advocates and attorneys to promote the efficiency of the legal system and fair and equal treatment under the law. MWELA has frequently participated as *amicus curiae* in cases of interest to its members, including the following cases involving Maryland wage and hour issues: *Peters v. Early Healthcare Giver, Inc.*, 439 Md. 646 (2014); *Marshall v. Safeway, Inc.*, 437 Md. 542 (2014); *Amaya v. DGS Constr., LLC*, 479 Md. 515 (2022); and *Martinez v. Amazon.com Serv., LLC*, Misc. No. 0017, September Term 2024 (Md. certified Nov. 18, 2024). MWELA has an interest in ensuring that Maryland's wage laws are interpreted consistently with the General Assembly's remedial purpose.

The National Employment Law Project ("NELP") is a non-profit legal organization with over 55 years of experience advocating for the employment and labor rights of low-wage and immigrant workers. NELP seeks to ensure that all employees, and especially the most vulnerable ones, receive the full protection of state and federal labor standards regardless of their job. NELP's areas of expertise include workplace rights under federal and state labor and employment laws, and NELP has litigated and participated as *amicus curiae* in numerous cases across the country addressing the rights of low-wage and immigrant workers under these laws. NELP has extensive experience

and recognized expertise in the issues raised herein, including working with organizations that advocate for wage and hour rights in Maryland and throughout the U.S. NELP has an interest in this case because the misapplication of *Amaya* would exacerbate the vulnerability of this workforce and drive down working conditions in the industry.

Amici file this brief pursuant to Rule 8-511(e)(1).

INTRODUCTION

In *Amaya v. DGS Constr.*, *LLC*, this Court concluded that Maryland workers are entitled to compensation any time their employer requires them to be on its premises, to be on duty, or to report to a prescribed workplace. 479 Md. 515, 526 (2022). *Amaya* was a victory for construction workers like Petitioner Juan Carlos Terrones Rojas, whose employers routinely require them to report to designated locations, like parking lots, to wait for and board buses that transport them to construction sites. Mr. Rojas's employer required him to spend approximately an hour and a half to two hours per day waiting at the Rosecroft Raceway parking lot in Fort Washington, Maryland; traveling on a bus provided by the construction project's general contractor; and passing through security on his way into the MGM National Harbor resort and casino construction site in Oxon Hill, Maryland. *Amaya*, 479 Md. at 534. Per this Court's decision in *Amaya*, assuming Respondent required Mr. Rojas to report to Rosecroft Raceway for purposes of being transported to the construction site, that time was compensable.

The Appellate Court of Maryland's ("ACM") recent decision in *Rojas v. F.R. Gen. Contractors* calls into question *Amaya*'s central holding that employees are entitled to compensation for the time their employers require them to be on duty. No. 1983, 2025 WL

1122085, at *1 (Md. App. Ct. Apr. 16, 2025). By requiring Mr. Rojas to prove Rosecroft Raceway was the "sole means of accessing" the construction site to prevail on his claim, the *Rojas* decision disentitles Maryland workers to the compensation they are owed under *Amaya* for the time their employer requires them to be on duty.

This Court should review *Rojas* to restore *Amaya*'s central holding and ensure this Court's rulings advance, not inhibit, the public interest as embodied by Maryland employment law.

ARGUMENT

I. Review of this case is desirable because *Rojas* undermines the central holding of *Amaya*.

In *Amaya*, this Court set forth a straightforward test for determining whether employee travel time is compensable under the Maryland Wage and Hour Law ("MWHL") and the Maryland Wage Payment and Collection Law ("MWPCL"): consistent with Code of Maryland Regulations ("COMAR") 09.12.41.10, employee travel time is compensable if the employee is "required by their employer to report during work hours to a location that is the employer's premises, to be on duty, or to report to a prescribed workplace[.]" *Amaya*, 479 Md. at 526 (citing COMAR 09.12.41.10). In remanding the consolidated cases for additional factual findings, this Court explicitly directed factfinders to determine "whether the workers were required to report to the parking area, whether the parking area was the employer's premises or a prescribed workplace, or whether the workers were required to be on duty, and hence were engaged in hours of work as set forth by COMAR 09.12.41.10." *Amaya*, 479 Md. at 526.

Despite this Court's clear articulation of the applicable test, the ACM in *Rojas* grafted onto that test an additional and unnecessary condition: if a worker "ha[s] the ability to access the [job] site in another way," their travel and wait time is not compensable. *Rojas*, 2025 WL 1122085 at *4. This condition enables employers to avoid paying employees for travel and wait time so long as they can identify some alternate means of accessing the jobsite—even if that means of access is physically arduous, otherwise unknown to employees, or, as in this case, possibly illegal. As such, it undermines *Amaya*'s central holding that employees be compensated any time their employer requires them to be on duty.

Moreover, post-*Rojas* factfinding necessarily will focus on the existence of alternate routes to worksites rather than the requirements employers impose on their employees, placing an inordinate burden on workers. Employment law generally addresses the information asymmetry between employers and employees by permitting employees to proceed with claims even if they do not have complete information. *See, e.g.*, *Anderson v. Mt. Clemens Pottery*, 328 U.S. 680, 687-88 (1946) (holding that where employer has duty to keep wage records, employee satisfies burden of proof under FLSA if he "produces sufficient evidence to show the amount and extent of [his] work as a matter of just and reasonable interference"); *see also Pforr v. Food Lion, Inc*., 851 F.2d 106, 108 (4th Cir. 1988) (explaining that *Mt. Clemens* standard "does not mandate that a plaintiff prove each hour of overtime work with unerring accuracy or certainty"). *Rojas* would require employees to rule out alternate routes to their worksites, despite lacking access to the site

maps, architectural plans, and surveys to do so. This rule turns fundamental principles of employment law on their head and cannot be the result *Amaya* intended.

II. Review of this case is in the public interest because *Rojas* creates perverse incentives that pose a risk to public safety and order.

Rojas violates long-standing principles of Maryland employment law that promote the public interest in public safety and order.

a. Maryland employment law promotes the public interest by both encouraging employees to follow the law and discouraging employers from penalizing employees who do so.

Like many other states, Maryland recognizes the tort of "abusive discharge" to provide a remedy for employees who are terminated in violation of a clear mandate of public policy. *Adler v. Am. Standard Corp.*, 291 Md. 31, 47 (1981) (recognizing tort of abusive discharge where employer's "motivation for [at-will employee's] discharge contravenes some clear mandate of public policy"). Maryland also prohibits retaliation against state employees who report threats to the public safety or violations of law. Md. Code, State Personnel and Pensions, § 5-305 (prohibiting reprisal against state employees who disclose information evidencing "a substantial and specific danger to public health or safety" or "a violation of law"). Maryland employment law thereby encourages workers to uphold the law and discourages employers from penalizing them for doing so.

b. The "sole means of access" requirement erodes the public interest by allowing employers to benefit from unlawful activity.

Imposing a "sole means of access" requirement on travel and wait time claims defies these long-standing principles of Maryland employment law by allowing employers to benefit from unlawful activity. Indeed, Respondent argued to the jury in closing that workers' parking unlawfully near the construction site would defeat Petitioner's wage and hour claim: "*Legal or not*, there are lots, and people parked there, and they accessed the site, and the evidence is not a thing happened, and nothing would have because no one cared." *See* Appellant's Brief at 21, *Rojas v. F.R. General Contractors, Inc., et al.*, No. 1983, Sept. Term, 2023, 2025 WL 1122085 (Md. App. Ct. Apr. 16, 2025) (quoting E. 628) (internal quotation marks omitted) (emphasis added). Enabling employers like Respondent to avoid liability on the basis of unlawful activity is anathema to Maryland employment law.

Respondent's position that an employer need not pay employees for following its explicit instructions about where to park when illegal parking alternatives exist also subverts the purpose of municipal parking laws, that is, to help emergency responders reach essential access points, reduce traffic on congested roads, and facilitate residents' ability to access their homes. *See, e.g.*, Annapolis, Md., Code of Ordinances, ch. 12.32.010 (2019) (describing purpose of special residential parking districts as, *inter alia*, to "promote the safety, space, good order, comfort, convenience, health and welfare of the residents of the City"); Prince George's County, Md., Code of Ordinances, sec. 26-136(b) (identifying

significant nonresident parking in residential areas as basis for designating County Parking Permit Area).

It is not difficult to imagine how employers like Respondent benefit from the "sole means of access" requirement while Marylanders bear the cost. Contractors frequently make pledges to the communities surrounding construction sites to win contract bids and cultivate community goodwill. *See Amaya*, 479 Md. at 528 (describing "good neighbor" policy between general contractor and MGM as promoting off-site parking as means of avoiding disrupting surrounding community); *MGM Contractor, MD Occupational Safety and Health Sign Safety Agreement*, Cision (Sept. 2, 2015), https://perma.cc/A347-U4YB (describing general contractor's safety agreement with Maryland's Occupational Safety and Health Department). The "sole means of access" requirement disincentivizes employers from upholding these types of pledges because employers can cut significant costs—namely, the cost of their employees' daily travel and wait time—if workers park illegally. In the meantime, Marylanders will pay the price of overcrowded streets, traffic congestion, and compromised public safety.

If left undisturbed, *Rojas* will have a profound impact on construction workers in Maryland. The state is home to more than 160,000 construction workers. *See Quarterly Census of Employment and Wages*, Maryland Department of Labor, https://perma.cc/8PNU-YAW8 (last visited June 11, 2025). Maryland even houses shuttle companies that provide transportation services specifically to construction workers. *See, e.g.*, Frederick Construction Shuttles, https://perma.cc/E3DH-ZMT9 (last visited June 11, 2025) (advertising specialty in "shuttling hundreds of construction workers daily").

This Court's ruling in *Amaya* secured Marylanders' right to compensation for the hours they spend following their employers' instructions to wait for and travel on shuttles to their work sites. If *Rojas*'s "sole means of access" requirement stands, Maryland workers may lose their right to compensation for that time. Employers alone will benefit.

CONCLUSION

For the foregoing reasons, *Amici Curiae* MWELA and NELP respectfully request that the Court grant the petition for a *writ of certiorari*. Should the Court grant the petition, MWELA and/or NELP may author an additional *amicus* brief on the merits.

CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 1885 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the requirements stated in Rule 8-112.

/s/ Suzanna Bobadilla
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CERTIFICATE OF SERVICE

I certify that on this 16th day of June, 2025, a copy of the foregoing was served on all counsel of record via the Court's MDEC system and by first-class mail, postage prepaid, to the following:

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