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# A New Approach to Migrant Labor Rights Enforcement: The Crisis of Undocumented Worker Abuse and Mexican Consular Advocacy in the United States

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# A New Approach to Migrant Labor Rights Enforcement: The Crisis of Undocumented Worker Abuse and Mexican Consular Advocacy in the United States

## Abstract

This paper examines the genesis and evolution of consular efforts to enforce the workplace rights of immigrant workers in the United States. We draw on a survey of 52 Mexican consulates in the United States, in-depth interviews with the initial cohort of 15 consular participants in the Semana de Derechos Laborales/Labor Rights Week, and several key informants who helped coordinate these efforts in the community. Our findings confirm a shift from “limited” to “active” engagement over the last decade on the part of the Mexican government (Délano 2011), placing special emphasis on the role played by non-governmental actors in producing this shift. We document how this new orientation evolved with respect to workplace rights, leading to the creation of an annual Labor Rights Week that today coordinates efforts between local consular offices, federal and state labor standards enforcement agencies, and other immigrant worker advocates. We argue that consular representatives, while endowed with unique resources and legitimacy, are constrained in their approach to defend the rights of immigrant workers. The configuration and extent of consular collaborations also depend on the maturity of local networks and on synergistic collaborations with local NGOs and labor unions to increase the efficacy and impact of their efforts in the communities they serve.

## Keywords

immigrant worker rights, labor standards enforcement, consular protection, altlabor, Mexican immigrant labor

## Disciplines

Immigration Law | Labor Relations | Migration Studies

## Comments

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A New Approach to Migrant Labor Rights Enforcement: The Crisis of Undocumented Worker  
Abuse and Mexican Consular Advocacy in the United States

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## Abstract

This paper examines the genesis and evolution of consular efforts to enforce the workplace rights of immigrant workers in the United States. We draw on a survey of 52 Mexican consulates in the United States, in-depth interviews with the initial cohort of 15 consular participants in the Semana de Derechos Laborales/Labor Rights Week, and several key informants who helped coordinate these efforts in the community. Our findings confirm a shift from “limited” to “active” engagement over the last decade on the part of the Mexican government (Délano 2011), placing special emphasis on the role played by non-governmental actors in producing this shift. We document how this new orientation evolved with respect to workplace rights, leading to the creation of an annual Labor Rights Week that today coordinates efforts between local consular offices, federal and state labor standards enforcement agencies, and other immigrant worker advocates. We argue that consular representatives, while endowed with unique resources and legitimacy, are constrained in their approach to defend the rights of immigrant workers. The configuration and extent of consular collaborations also depend on the maturity of local networks and on synergistic collaborations with local NGOs and labor unions to increase the efficacy and impact of their efforts in the communities they serve.

## **Keywords**

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## **Introduction**

This paper offers a critical assessment of one of the clearest examples of transnational labor advocacy through diplomatic institutions: the role of the Mexican consulate in supporting labor rights enforcement in the United States. The Mexican immigrant population is the largest national origin group in the United States today, comprising nearly a third of all immigrants and the majority of the undocumented (Passel and Cohn 2009). While immigrants from Mexico have a long history of labor migration to the United States, and have tended to settle in traditional immigrant destination states in the Southwest, they are increasingly moving to “new destinations” in the South and Midwest (Batalova 2008). Mexican migrants have become structurally embedded into the economic structure of the U.S. labor market (Cornelius 1998) and created transnational social networks that continue to facilitate a culture of migration in many sending communities (Adler Hellman 2008; Smith 2006; Stephen 2007). Many Mexican migrants are recently arrived, have low levels of human capital, and are limited English proficient. Mexican migrants are often concentrated in “bad jobs” (Kalleberg 2011), characterized by low pay, few benefits, high levels of workplace violation, and little government oversight (Bernhardt et al. 2008).

Undocumented workers pose a challenge to labor standards enforcement agencies and those who advocate on their behalf. They are on the one hand precluded from legal employment and subject to deportability, but on the other hand, they enjoy a range of workplace rights in arenas ranging from wage and hour, discrimination, and workplace safety. The respective federal and state regulatory agencies charged with enforcing these provisions, however, struggle to reach these vulnerable populations due to language and cultural barriers and a long history of mistrust

from the community. Regulatory agencies also have insufficient resources and rely on reactive complaint systems, thus making workplace abuse very difficult to sanction (Weil 2008).

The current national context of political impasse on immigration reform also poses challenges for enforcing the rights of undocumented Mexican workers. In an effort to provide some alleviation for undocumented workers, one actor that has become an important liaison is the Mexican consular network, which has demonstrated a notable shift from what Délano (2011) refers to as a history of limited to active engagement in the last two decades. Not unlike their proactive binational approach to health promotion, which includes basic screenings performed at the waiting rooms of several consular offices, the Mexican consulate now has an extensive partnerships with regulatory agencies, labor unions, and workers' rights groups in an effort to protect the labor interests of its nationals living in the United States and some would argue also the vast remittances they send back to Mexico to support 6.3 percent of Mexican households (Bada 2014; Canales 2008). While these collaborations are clearly not a panacea to solve labor rights violation to immigrant workers, and the current stalemate in immigration reform limits any consular effectiveness due to the limited protections undocumented workers have, increased access to labor education resources has been hailed as beneficial by U.S. agencies that struggle to access immigrant communities and by community advocates who have demanded more accountability on the part of the Mexican government (Gleeson 2012). In fact, these consular partnerships with labor and health-oriented community stakeholders have recently been emulated by several other Latin American consulates, reflecting a diffusion of immigrant civic engagement aimed at improving services and protecting labor migrant rights. These efforts have the potential to create transnational regional networks of labor standards enforcement that bring together U.S. bureaucracies, consular offices, and immigrant civil society (Délano 2013).

This new form of immigrant worker advocacy emerged in 2008 through the creation of the annual Labor Rights Week (LRW), which is a collaborative effort between the U.S. Department of Labor (DOL) and Mexico's Ministry of Foreign Affairs. The LRW is executed through dozens of individual regional agreements between local regulatory agencies and Mexican consulate offices at the state level. Made possible in large part by a 2004 federal memorandum of understanding between the Mexican Secretary of Foreign Affairs and the U.S. Secretary of Labor, as well as several subsequent accords with other agencies, the annual LRW represents the institutionalization of a binational partnership that may be characterized as what Amengual and Fine (2013) refer to as a "model of transnationally coproduced regulatory enforcement of labor standards." Federally managed, the event, and the year-round advocacy it showcases, is nonetheless locally controlled. It is also couched within the Mexican consulate's existing model of legal protection, which covers a range of other legal areas that can dominate a consulate's resources and priorities.

In the following sections, we first explore the genesis and evolution of the bilateral cooperation to enforce labor standards across different cities in the United States. Next we examine the main opportunities and constraints that bilateral cooperation agreements on labor enforcement such as the LRW face for successful implementation at the local level. We argue that consular representatives, while endowed with unique resources and legitimacy, are constrained in their approach to defining and defending the rights of immigrant workers and depend on the maturity of local networks and on synergistic collaborations with local NGOs and labor unions to increase the efficacy and impact of their efforts in the communities they serve. The intent of the LRW is to proactively implement the protections for vulnerable workers in the Latino immigrant community in order to sanction unscrupulous employers. However, as we

highlight, the LRW's primary mechanism is to channel claims to federal and state enforcement agencies, thus replicating in large part a reactive compliance strategy.

The Mexican consulate is certainly an imperfect institution for labor advocacy and has had a complicated track record of managing its Mexican emigrant labor in the past, going back to the embattled Bracero Program (Balderrama 1982). The consulate is nonetheless a unique institution for advocacy, one that possesses the legitimacy and resources of a government bureaucracy as well as the linguistic and cultural access of a community organization. This increased consular involvement, however, has been neither organic nor uniform across the country. This analysis examines the importance of U.S.-based civil society for developing and implementing this binational agreement. We highlight the ways in which labor unions and other worker centers have pressured the Mexican government to advocate for the rights of its citizens in the United States and to hold U.S. labor standards enforcement agencies accountable, specifically through their representation in the Institute for Mexicans Abroad (Instituto de los Mexicanos en el Exterior, IME). We also show how in doing so, labor unions have used this commitment to pressure Mexico to adopt a more labor-friendly approach in Mexico as well.

## **Literature Review**

### *Global Governance and Migrant Workers*

Over the last 30 years, a “gloves-off economy” has emerged, where employers are increasingly “breaking, bending, or evading long-established laws and standards designed to protect workers” (Bernhardt et al. 2008, 1-2). Some of the most egregious violations, such as wage theft, have reached “epidemic proportions” (Bobo 2008, 8). Simultaneously, the immigrant workforce has

increased substantially; today 16 percent of workers are foreign born (Bureau of Labor Statistics 2013). The largest national-origin group, Mexican immigrant workers, also comprises the largest population of undocumented workers, who are particularly vulnerable to abuse and have become structurally embedded in several key industries such as agriculture, hospitality, and construction (Cornelius 1998; Passel and Cohn 2009).

In the United States, citizenship rights are restricted to those who can claim citizenship by birth or who declare loyalty to the nation-state via naturalization after years of holding legal status as permanent residents. Permanent residence status has been very difficult to obtain since the legal amnesty offered to nearly 3 million undocumented immigrants in 1986. The emergence of global capitalism and a security state has produced precarity and an enforcement apparatus that disciplines and maintains a vulnerable undocumented workforce (De Genova 2005). From this bleak perspective, it would be relatively easy to conclude that there are few avenues for Mexican migrants without access to full political rights to participate in civic engagement in either sending or receiving communities. However, for many Mexican migrants living in the United States, lack of formal citizenship has not prevented the creation of civic organizations that use multiple migrant identities to build social networks and improve the quality of life in more than one geographical space, combining local, rural, urban, translocal, national, regional, and transnational geopolitical memberships (Apostolidis 2010).

Much of the research on labor standards enforcement, particularly as it applies to low-wage and immigrant workers, has focused on holding domestic regulatory institutions accountable via reactive claims-driven enforcement strategies, thus leaving little room for proactive or cooperative enforcement strategies able to produce systemic change. Advocates have deplored the inefficacies of the U.S. labor standards enforcement system, and the General

Accounting Office has even issued scathing reports on the backlog facing the DOL's Wage and Hour Division and the ways these inefficiencies perpetuate violations such as wage theft (GAO 2009). The laws in the United States are unambiguous in extending certain key rights to all workers regardless of immigration status. For example, federal statutes such as the Fair Labor Standards Act, Title VII of the Civil Rights Act, and the Occupational Safety and Health Act all dictate that employers must respect the rights of even their undocumented workers when it comes to protections such as minimum wage, anti-discrimination, and workplace safety. However, there remains a significant gap between the intent of laws on the books and their actual implementation in practice.

Beyond the domestic enforcement institutions, supra-national and enforcement bureaucracies have become increasingly important, especially for the protection of migrant workers. One way this approach has become visible is through the mobilization of international labor standards through organizations such as the International Labour Organization, the United Nations, and the relatively new Global Forum on Migration and Development (Compa 2004; Human Rights Watch 2005). The International Labour Organization has criticized the enforcement capacities in many countries where inspection agencies are often under-staffed, under-equipped, undertrained, and underpaid (International Labour Organization 2006). The United States is no exception and is far off the International Labour Organization's benchmark of one inspector per 10,000 workers in developed economies, with one inspector per 75,000 workers prior to a modest infusion of resources under the Obama administration (Weil 2008). Additionally, binational and regional accords such as European Union Labor Standards and the North American Free Trade Agreement also provide formal channels to bring forth grievances

(Watts 2003), though critics have frequently labeled these mechanisms irrelevant and ineffective (Delp et al. 2004).

### *Transnational Labor Advocacy, Immigrants, and U.S. Unions*

Beyond global governance institutions, much of the transnational lens has focused on how unions and NGOs in the “global north” collaborate with labor advocates in the “global south” (Anner and Evans 2004; Brookes 2013) to create what Keck and Sikkink (1998) have labeled “transnational advocacy networks.” These transnational advocacy networks largely depend on the strength and configuration of global production networks, national institutional frameworks, and social networks to exercise successful pressure and achieve systemic change or particular demands. In the case of multi-national corporations that have production sites in both the United States and abroad, unions have become particularly interested in leveling the playing field via global labor campaigns (Bank-Muñoz 2008; Bensusán and Tilly 2010).

The demographic shift of the U.S. labor force has not been lost on labor unions but only gained formal recognition little more than a decade ago by the AFL-CIO (2001). Previously, immigrant workers were often seen as a source of competition and strikebreaker at best. A focus on direct investment in the rights of immigrant workers came directly on the heels of a long organizing campaign led by what would become the National Day Labor Organizing Network. The Change to Win Coalition, which would later split away from the AFL-CIO, also highlighted this need and argued that the organization was spending too much time on politicking and raising money for the Democratic Party, rather than organizing workers on the ground (Burgoon et al. 2010; Hamlin 2008; Milkman 2006).

However, unions face a series of challenges to organizing the immigrant workforce. A traditionally white leadership, especially in the building trades, and a rank-and-file membership sometimes resistant to change have not facilitated a smooth transition on the ground. Major resentments surrounding job competition and basic accommodations such as bilingual business meetings in some cases became a flashpoint of division (Gleeson 2012). Like labor standards enforcement agencies, unions have also faced linguistic and cultural barriers to reaching immigrant workers (Apostolidis 2010).

The central role of U.S. labor unions in consular advocacy has emerged out of these broader transnational labor advocacy campaigns, with the parallel goal of strengthening relationships with Mexican labor unions during high-profile campaigns against multinational corporations like WalMart. U.S. labor unions have also fought against fraudulent practices in international labor recruitment firms that hire H2-B and H2-A visa workers, whose contracts are frequently secured through the active participation and supposed oversight of federal and state governments in Mexico (International Labor Recruitment Working Group 2013). By holding the Mexican government accountable for the rights of its nationals living abroad, we find that unions also seek leverage to hold the Mexican government accountable for the rights of Mexican workers back home.

### ***Beyond Unions: Perspectives on Transnational Civil Society***

Immigrant-led organizations are often overlooked in the literature on transnational advocacy. Few studies have approached these groups as an important variable to explain migrant civic engagement and incorporation in sending and receiving countries (Pries 2008). Instead, most

work on transnational spaces has focused on specific practices using survey research, state behavior towards diasporas, and changes in culture and norms within transnational families. However, the binational activities of migrant civil society to defend the rights of immigrant workers in receiving societies have not received the same level of attention. In the 1990s, scholarship on migrant organizations was scarce, with the main focus on studying individual actors and responses to the nation-state, frequently using Hirschman's (1970) choice framework of loyalty, voice, or exit. This position centered on migrants' loyalties to nation-states and supports what social anthropologists Glick Schiller and Çağlar (2011) characterize as a linear understanding of the migration process in which transnational connectivity is seen as a flaw in migrant incorporation. This reading fails to include the multiple forms of incorporation in non-state-centered relationships in new communities and ignores the function and density of migrant organizations' transnational connections and concerns.

Using a broader framework to reinterpret Hirschman's model and apply it to human mobility, more recent analyses demonstrate that migrants and their organizations are capable of exercising multiple forms of voice and loyalty after exit, and these voices can be extended to cross-border civic engagement networks. Local contexts of reception shape whether and how groups branch out from traditional ethnic comfort zones (Bada et al. 2010; Fox 2007; Fox and Bada 2008; Pierre-Louis 2006). In the face of weak U.S. governmental responses to incorporate newcomers as members of neighborhoods and cities and guarantee minimal rights protection, receptivity to migrant workers relies on civil society resources, including volunteers, experienced and connected leaders, and the ability of civically engaged communities to identify and solve community problems. Communities in which migrants have a strong base of civic engagement

already are more likely to mobilize and rally support towards policies that support immigrant incorporation, such as worker rights (Deufel 2006).

## **Methods**

This paper draws on a formal survey of all Mexican consular offices in the United States, including legal affairs staff from the 15 consular offices that comprised the initial cohort of LRW participants. We have also interviewed 45 key informants to date from local labor unions, worker centers, immigrant rights organizations, and legal aid groups to assess the functioning levels of these collaborations. We ask respondents to outline the extent of the outreach and resources provided to workers as well as the nature of the collaborations that the consulate engages in with other labor standards enforcement agencies and community organizations. In-depth interviews with embassy staff and target legal affairs staff at each consular office complement these surveys. Additionally, we have consulted archival documents, coalition and campaign correspondence, outreach materials, and public announcements from these efforts. Finally, we complement these data with ethnographic field notes from local LRW events in Chicago and San Jose observed in the fall of 2012.

Survey responses of all Mexican consular offices were collected in Spanish using an online survey tool (Survey Expression) and subsequently analyzed to create a national database of civil society organizations that were actively collaborating in the implementation of the LRW. A few of the interviews were conducted face to face, mostly in those cases where it was geographically feasible for the authors to meet in person with civil society or consular staff representatives. The majority of interviews with 45 key informants representing civil society

organizations collaborating with Mexican consulates were conducted by phone by the authors and three bilingual research assistants in the fall of 2013 and the spring of 2014. Each interviewee received the same semi-structured questionnaire and was asked to select his/her preferred language for the interview. Each interview was tape-recorded following the appropriate institutional review board protocol and fully transcribed afterwards for analysis.

## **Findings**

In the following section, we examine the nature of binational relationships between civil society organizations and the Mexican government and discuss the specific mechanisms that have facilitated this engagement. Our findings highlight the importance of what we refer to as the “cross-pollination” of various agencies and actors in the process of coproduced labor rights enforcement for Mexican immigrants.

### ***The Emergence of a (More) Proactive Consular Network***

In the late 1980s, the Mexican state changed its policy on incorporating emigrants. Mexican foreign policy towards emigrants moved from a “state introversion” to a “state extension” model of greater engagement with the immigrant community abroad when former President Carlos Salinas de Gortari realized that sympathies towards the opposition had grown among migrants living in the United States (García y Griego 1988; Sherman 1999). Since then, the Mexican government has implemented new programs and policies to incorporate the Mexican diaspora. Few studies have addressed the structure of changes in Mexican policy towards its emigrants, but

these tend to overlook the important role that a binationally engaged migrant civil society has played in opening new dialogue channels with authorities at different levels of government.

In the past decade, the Mexican consular network has transitioned from a “limited” to an “active” engagement (Délano 2011) partly as a result of the pressure exercised by non-governmental actors’ demands towards active engagement. Binational civil society organizations have successfully negotiated with the Mexican government to implement matching fund programs at the federal level and in turn invested these collective remittances in infrastructure projects in rural Mexico. In 2002, the Three for One (Tres por Uno) program was institutionalized at the federal level as a result of coordinated efforts of Mexican Hometown associations from the states of Zacatecas, Michoacán, Jalisco, Puebla, Guanajuato, and Guerrero established in Dallas, New York City, Los Angeles, and Chicago (Iskander 2010). These remittance management programs have encouraged migrants to keep their loyalties to their motherland by supporting Mexican household economies and rural social infrastructure with high levels of remittances.

The Mexican consular network has been an important actor in this active engagement campaign as well as a key ally in the effort to advance the rights of immigrant workers in U.S. territory. Consular representatives possess resources, legitimacy, and access often not granted to labor organizations in the United States. However, these relationships are not organic and have in fact followed years of organizing on the ground. They provide an institutionalized mechanism for domestic labor standards enforcement agencies to reach the often reluctant immigrant workforce but also a platform for labor unions and advocates to engage the Mexican government on labor rights more broadly. As such, this new active engagement approach has ultimately led the Mexican consular network in the United States to function mostly as an additional tool to the

outreach efforts of the labor standards enforcement agencies towards the most vulnerable worker populations, rather than an independent tool of sending state advocacy.

Made possible in large part by a 2004 federal memorandum of understanding between the Mexican Secretary of Foreign Affairs and the U.S. Secretary of Labor, as well as several subsequent accords with state and local agencies, the annual LRW represents the institutionalization of this transnationally coproduced labor enforcement cooperation. What began as a pilot program with 15 consulates has now spread to an annual event that includes all U.S. offices of the Mexican consular network, as well as the participation of several other countries, with varying bureaucratic capacity and diplomatic histories. For consular offices with a track record of labor advocacy, this week-long event is a formal recognition of these long-standing efforts. For those not previously involved, the LRW presents an opportunity for these offices to step into this role.

### ***Migrant Civil Society and the IME***

In the last decade, hundreds of Mexican immigrant organizations including indigenous groups, hometown associations, sports clubs, and faith-based organizations, among others, have demanded that the Mexican government provide improved access and better services for the Mexican community living abroad. After a decade of constant pressure, the Mexican consular network in the United States has become an important mediator between Mexican migrant civil society and the official Mexican diasporic bureaucracies, including the Ministries of Foreign Affairs, Health, the Interior, and Education.

Transnational migrant organizations, in particular—including the Advisory Board of the IME—have played an important role in placing migrant labor rights on the bilateral foreign policy agenda of the Mexican government. Each of these civil society advocates creates its own advocacy channels for Mexican migrant workers; however, they all do so in locally determined ways with a distinct constellation of civic partners. For example, in the California Central Valley, the Mexican consulate is a primary actor given the dearth of legal aid services. The director of a San Francisco Bay Area organization that has reached out to the Fresno region explains, “For me to have the consulate outreach has been really helpful to us ... which is fantastic because they already have the connections to Mexican citizens in the United States and being able to identify workers who can get help from our clinic.” He identified language capacity as a major resource as well as the consulate’s bureaucratic capacity to assist the legal teams.

Beyond the Mexican consulate, the various “casas” that represent subnational state governments throughout Mexico also play an important advocacy role in large cities including Chicago, New York, Los Angeles, and Dallas. While they do not possess the same diplomatic standing as the consulates and their work is frequently viewed as paradiplomacy or citizen diplomacy (Aldecoa and Keating 1999; Velázquez Flores and Ortega Ramírez 2010), the states of Michoacán, Jalisco, and Oaxaca have recently signed agreements with the United Food and Commercial Workers to pursue Mexican migrant workers’ access to relevant U.S. labor laws in Mexico, prior to their migration to the United States. These collaborations underscore the ability of subnational governments to directly engage with their diasporas in the United States.

Migrant civil society achieved a major victory in shaping Mexican public policy instruments with the creation of the IME in 2003. IME is a transnational organization created and funded by the Mexican government as a means of maintaining contact with and serving Mexican

migrants in the United States and Canada. The 56 Mexican consulates in the United States and Canada conduct elections or appoint around 120 community representatives for three-year terms to serve as members of IME's advisory council to voice concerns and advocate for the needs of migrants before the

Mexican government and to strengthen economic and political ties with migrant civil society organizations (Bayes and González 2011). The creation of the IME increased opportunities for Mexican immigrant leaders to communicate and exchange their experiences across different regions across the United States. In fact, this new network of leaders was an important vehicle of communication in the organization of the massive demonstrations of spring 2006, when millions of foreign-born Latinos and their supporters peacefully rallied in hundreds of cities to protest against the Sensenbrenner bill, a highly anti-immigrant legislation attempting to criminalize undocumented immigrants.

The advisory council includes Mexican migrants representing a broad sector of the migrant civil society including hometown associations, independent worker centers, labor unions, health care organizations, political parties, and Latino civil and immigrant rights organizations, among others. Prior to the establishment of the first advisory council cohort, IME officials were unsure if a mandate from Mexico City that asked all consulates to elect or appoint a group of one to seven migrant leaders would be successful. To guarantee a minimum representation of prominent immigrant rights groups, the IME appointed eight members from national organizations, including several Latino union leaders. Thus, the first cohort included, among other national Latino leaders, Eliseo Medina (Service Employees International Union, SEIU) and Arturo Rodríguez (United Farm Workers) as appointed members to the first advisory council. These appointed individual positions have since disappeared. Instead, several national

Mexican and Latino organizations including labor unions such as the United Food and Commercial Workers of America (UFCW) now have a permanent seat in IME's advisory council. One union vice-president explained the pressure they received from community allies to get involved, particularly in light of draconian immigration enforcement programs. "We are very active with different community organizations and worker centers. These activists really pushed hard and said our international union has to pay attention to this issue. Our international union has to pay attention to this relationship with the Mexican consulate and we have to find every avenue to try to bring protection to our members from ICE enforcement."

Since its inception in 2003, IME's advisory council has worked in several commissions to draft proposals and submit recommendations to the Mexican government to implement new initiatives to defend the civil, social, and political rights of Mexican migrants. Among the most long-lasting programs stemming from the work of these commissions is the Binational Health Week, which was established in 20 counties across the United States after a successful pilot in 5 counties in California in 2001. Today, the Mexican Ministry of Health funds this initiative and provides basic health screening services to Mexican nationals in collaboration with local non-profit health organizations. This model of binationally financed health services inspired several members of the advisory council working in the Legal and Political Commissions to draft a proposal to advocate for the national implementation of a labor and human rights week after successful pilots were implemented in Los Angeles and Chicago in 2008.

### *Labor Unions Leverage Influence with the Mexican Consulate*

It is no accident that several members of the Political and Legal Commission of the IME were members of labor unions including UFCW, SEIU, and Unite-HERE and were sensitive to the needs of low-wage immigrant workers who frequently faced violations in the workplace including wage theft, indenture, overtime, and minimum wage violations. These were also those workers who had traditionally not been the target of union organizing and who often faced the threat of deportation. However, organizing workers into a traditional labor union, many union leaders argued, was only one mechanism for improving the rights of workers. Especially for low-wage Latino immigrant workers who work in industries such as restaurants, domestic care work, and residential construction, where unionization is practically non-existent, the role of labor unions had to be more dynamic to be useful to this community. New partnerships for increasing access to formal membership in labor unions between independent worker centers and the AFL-CIO continue to unfold, as the structures of labor organizing evolve (Greenhouse 2013).

During a face-to-face interview, a female UFCW leader reiterated her interest in changing her union dynamics to reach out to vulnerable, non-unionized immigrant workers. She explained that Mexican union leaders in her union have a unique connection with workers facing abuses. This connection gets magnified in the design of Spanish-language LRW posters, which showcase the logos of the Mexican government, thus reiterating their support. She views these poster campaigns as an instant success, thanks to the high demand from community partners. In contrast, when the DOL sends informational brochures to factories, very few workers look at them, even if they are in Spanish, due to a lack of prior contact and trust in these communities.

The positive perception of this Mexican-American UFCW leader reflects the isolation between Mexican union representatives and their U.S. counterparts. The relationship between the

Mexican consulate and union leaders on both sides of the border has been historically fraught. Over the last decade, the Mexican government orchestrated multiple attacks intended to destroy several large unions opposed to its neoliberal reforms, including the National Union of Mine and Metal Workers of the Mexican Republic (Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúrgicos y Similares de la República Mexicana, SNTMMSSRM), the Mexican Electrical Workers Union (Sindicato Mexicano de Electricistas), and the National Education Workers' Union (Sindicato Nacional de Trabajadores de la Educación) (La Botz 2013). With the exception of the SNTMMSSRM and the Authentic Labor Front (Frente Auténtico del Trabajo), a small independent union, most Mexican unions are quite isolated from international labor solidarity efforts and have not maintained connections with U.S. labor unions (Hathaway 2000; Herrera Lima 2014). Therefore, Mexico's consular efforts to defend the labor rights of Mexican citizens living abroad begs the question of why the state's interest in worker rights begins only once workers migrate.

The first national LRW was launched in 2009 and was billed by the United Food and Commercial Workers as an attempt by the union, the IME, and other community based organizations to (1) educate workers in order to prevent the erosion of labor rights and (2) develop a coordinated approach to train immigrant workers. The objectives of the LRW varied in scope and feasibility. For example, several goals were very localized and had previously been put into practice in at least some offices, including strengthening the relationship between the union and consulate staff, the creation of community training programs, the deployment of a coordinated media campaign, and an ongoing calendar of events that involved national, regional, and state partners.

The presence of labor unions on the IME represents a new actor for the Mexican government to contend with, as well as a new strategy on the part of labor unions to hold governments accountable. In addition to launching the landmark LRW, the program brought new focus to the issue of worker rights in places where there were few resources for workers to make claims on their rights and also engaged civil society in creating and legitimating new lines of communication between these actors.

Other stated goals, however, called for deeper institutional change, such as advocating for a firewall between immigration enforcement and labor enforcement investigations, as stated in the original UFCW proposal. It declares, “We have seen a record number of workers being detained at work as a result of I-9 audits, raids, and social security ‘no-match’ letters; labor abuses are not being addressed properly, leaving open the door for unscrupulous employers to use immigration status to threaten deportation if workers report discrimination, wage and hour or health and safety violations; workers feel more vulnerable than ever, in the wake of increased ICE enforcement, the union and the Mexican government need to be a strong voice insuring that protections and remedies are expanded” (UFCW 2009).

However, the Mexican government takes on a muted advocacy role that is formally non-interventionist and relies only on enforcing existing policies. A clear example of this antiseptic diplomatic approach is revealed in the fact that the Ministries of Labor and Foreign Affairs do not provide any special funds for labor advocacy or LRW programming in the United States. In Canada, the role of consulates with regards to Mexican immigrant workers is further mixed, as the Mexican Ministry of Labor is a broker in the guest worker program with Canada (Basok 1999). In this context, recent lawsuits provide compelling evidence that the Mexican government interfered with labor advocacy and is far from being seen as a natural ally for worker rights.

Nonetheless, the consulate has been an important actor, albeit a stealth and moderate one, during several worker organizing drives and efforts to advance immigrant rights in some locales. For example, during one labor campaign to unionize a large grocery chain in Chicago supported by the UFCW, consular staff made the office available for a late-night unionization drive meeting after learning that the vast majority of workers in the bargaining unit were Mexican. In New York City, while consular staff explained that they are absolutely barred from joining any picket line or demonstration against an abusive employer, consular staff still helped to connect workers with civil society advocates who would support such public acts of worker solidarity. In Atlanta, where state law has made life quite severe for undocumented immigrants, the consular staff also expressed significant solidarity with undocumented workers and organizations fighting on their behalf. Thus, the original LRW paradigm was built out of these long-standing local collaborations and represents the culmination of years of coordination between the Mexican consulate and labor union leaders.

Further, a cordial and cooperative relationship between immigrant worker advocates and representatives of the Mexican government in the United States is not mutually exclusive with a more confrontational stance in other arenas. In fact, by getting the Mexican government on record to support the rights of its nationals working abroad in the United States, unions were also able to strategically advance their global campaign. For example, one UFCW leader was clear that despite—and precisely because of—working with the Mexican government on the ground in the United States, the union was able to in turn use the same logic to hold the Mexican government accountable in other contexts such as with guest workers in Canada (where this leader described the Mexican consulate as “the major aggressor” for workers) and even in

Mexico's territory, where UFCW has launched widespread labor organizing campaigns against multinational retailers such as WalMart.

### *LRW Models*

The evolution and formalization of the LRW provides an important lens through which to assess the dynamics of local coalitions and how these everyday collaborations have been scaled up to a template for a national partnership. These local models, however, vary substantially, ranging from simple resource and referral mechanisms to the use of consular legal resources within the Department of Legal Affairs to process individual claims directly.

In some cases, consular staff rely not simply on the national memorandum between U.S. federal agencies and the Mexican Ministry of Foreign Affairs but rather on individual memoranda of understanding at either the local, state, or federal level. Such is the case in Atlanta, Tucson, Omaha, Raleigh, Phoenix, San Francisco, and San Jose where newly created accords with either the DOL Wage and Hour Division, Occupational Safety and Health Agency, or the Equal Employment Opportunity Commission facilitate consular advocacy and in some cases also state labor standards enforcement agencies. In these cities, the Mexican consulate engages with U.S. government actors to provide outreach and education to agency staff and workshops or charlas to workers who visit the consulate.

Representing a more engaged model, other cities have focused also on direct services. Such is the case of the Mexican Consulate in Chicago, which has developed a formal relationship through its "Labor Window" (Ventanilla Laboral), as has the Justice and Equality in the Workplace Project in Houston, and the EMPLEO/Employment Education and Outreach program

in Los Angeles. Each of these offices brings together consular staff with federal and sometimes state and local labor standards enforcement agencies, as well as representatives of civil society, who work together to process claims, refer workers to the relevant regulatory authority, and ideally provide meaningful follow-up via the consulate who will interface with U.S. agents to ascertain the status of the case and inform claimants accordingly. Consular officials, due to their diplomatic authority, possess a unique capacity to provide this follow-up (*seguimiento*), especially in those offices possessing the bureaucratic capacity to provide at least one consul exclusively assigned to labor affairs.

In these cases, when a worker comes to the consulate to request assistance with a violation claim, a staff member from the Department of Legal Affairs may interview the claimant, either over the phone through a free hotline (as is the case in Houston, Miami, Orlando, New York City, Los Angeles, and Chicago), with the help of either consular staff (Houston and Chicago) or local volunteers (Los Angeles), or in more complicated cases, with the help of professional legal staff contracted by the consulate itself. Following this initial intake stage, the consulate may then try to utilize its position of diplomatic authority to resolve the problem internally through a call to the offending employer. Alternatively, it may refer a worker out to the appropriate federal or state agency. In this triage stage, consular staff decides if the best approach is to send the worker to a grassroots organization that might put direct pressure on the employer through demonstrations. This approach is frequently implemented in New York City and Chicago due to the vast network of grass roots with the capacity to mobilize people on the ground to pursue wage theft, especially in cases where more than one worker is affected. In jurisdictions such as Los Angeles and Chicago where strong state laws outpace the protections provided by federal law, state agencies are likely to also play a direct role, despite federal

agreements that may be in place. However, in other cases, like Houston and Atlanta, where agency capacity is minimal and state policies are either minimal or overtly hostile, federal agencies may play the singular enforcement role in this collaboration.

However, the actual implementation and impact of this program has received mixed reviews from community advocates, many who feel that the consulate is simply another ineffective bureaucracy at best, with a long history of racist and classist practices at worst. The program director of a worker advocacy group in San Diego felt that the consulate's strengths were limited to assisting with bureaucratic documentation. He was otherwise reticent about consulate's ability to engage in lasting change for immigrant workers. "Over the years, we started to realize that [the LRW activities] were, in short, a bit superficial. There wasn't much planning, and no idea about how to followup with the workers who needed it."

However, most community advocates we spoke with concur on the value of having a close relationship with consulates as an important asset to facilitate their daily work, either as (1) an important clearinghouse to educate workers regarding available rights and resources, (2) a valuable outreach resource via worker referrals, or (3) a diplomatic channel to get more immediate access to U.S. enforcement agencies. This diplomatic channel is significant for immigrant workers precisely because the Consular Legal Affairs Department handles deportations and monitors whether U.S. immigration officials abide by regulations stated by international treaties. As a result of their unique diplomatic entitlements, Mexican consulates have immediate access to all necessary information from enforcement agencies, including immigration and labor enforcement. Having immediate access to this information accelerates the relief that labor advocacy organizations can offer to workers detained by immigration authorities in raids at workplaces.

### ***Agency Turnover and the Future of the LRW***

The arrival of a dynamic head of the DOL, the largest labor standards enforcement agency in the United States and the key partner of the LRW, was also crucial for sustaining the relationship between the Mexican consulate and U.S. agencies. With her Podemos Ayudar/We Can Help program, Secretary Hilda Solís reiterated a clear message that the DOL was committed to protecting the rights of all workers, regardless of immigration status. Alongside this symbolic commitment came an important infusion of resources to local offices, as well as reinvestment in specific initiatives such as the Occupational Safety and Health Administration's (OSHA's) Hispanic Outreach initiative. During the LRW, various DOL agencies offered daily workshops in Spanish on basic labor rights including practical information about how to fill out a complaint with the Wage and Hour Division or with OSHA. If a worker is ready to come forward with a formal complaint against an employer, the appropriate federal agency begins the initial intake process at the consulate offices. Once the complaint gets processed, the worker can follow up directly with the DOL, but if they encounter any roadblocks, consulate staff offer help in monitoring the status of any complaint. However, the process from the perspective of the DOL can vary as well.

In some cases, labor inspectors are reluctant to relay information on specific cases to consulate staff, preferring to speak directly with a worker, arguing confidentiality issues. Yet oftentimes workers, especially those where advocacy efforts do not have a long history and the local context is hostile, may mistrust the DOL or simply prefer to communicate through consular staff, despite their own reticence against this bureaucracy with its own storied public image. However, in these cases, lack of trust and communication severely hampers enforcement efforts,

particularly given the limited availability of trained bilingual staff at the DOL. During our observations of the LRW workshops in Chicago in 2012, the Wage and Hour Division representative quickly shared how happy she was that there were now 6 bilingual inspectors in Spanish among the 20 inspectors assigned to the city. Similarly, the OSHA representative said that almost 17 percent of the inspectors serving the three offices covering the Chicago metropolitan area are now bilingual.

However, these opportunities for engagement do not alone lead to institutionalized and effective consular involvement. In fact, Hilda Solís was unable to institutionalize DOL's involvement with the LRW to a level in which the partnership would operate independently beyond her tenure. After her departure, the program remained tied to top staff members in the Office of Public Engagement, the unit that was mainly in charge of implementing the first pilot initiative in 2007, who also transitioned out of the agency. This led to a turnover period that required new institution building to shepherd the program forward, arguably losing some of the previous ground that had been gained.

The future success of this partnership may largely depend on the abilities of the Mexican Embassy to attract the interest of key DOL staff members who are available and interested in being involved in the continued implementation of this initiative. However, these coordinated bilateral efforts will also have to weather transitions in embassy administrations, as was the case of the 2013 shift to a new regime in Mexico led by the Party of the Institutional Revolution. The result was the cancellation of several key LRW events that Fall in Washington, D.C., and a long but steady period of rebuilding programmatic linkages.

## *Conclusions*

This paper has highlighted the emergence of a novel and in some ways surprisingly pro-active role of transnational advocacy on the part of the Mexican government. Through a complex web of relationships with U.S. labor standards enforcement agencies and immigrant labor advocates, the Mexican consular network has launched an annual LRW whose aim is to promote the rights of its 11.5 million citizens living in the United States, nearly half of whom are estimated to be unauthorized and who inhabit a precarious and vulnerable labor market position. If this initiative can be properly institutionalized through all levels of transnational governance (federal, state, and local) as well as in varied non-governmental advocacy programs, this partnership has the potential to become a successful model of a transnationally coproduced response mechanism for the regulatory enforcement of labor standards beyond the United States.

Our interviews with key consular and civic stakeholders demonstrate that this new stance of “active engagement” on the issue of Mexican immigrant worker rights was not inevitable. The pressure exercised by unions and the immigrant civil society represented by the IME was in fact a key factor in encouraging the Mexican government to take a more pro-active public stance to defend labor rights. Working with the Mexican Consulate has in turn opened the door for labor unions and other immigrant worker advocates to pressure other Latin American governments to provide similar support. However, the Mexican consulate remains the most relevant actor, due to the sheer size of the immigrant community, the expanse of the Mexican consular network, and the pre-existing relationships between the Mexican and United States governments. Each of these characteristics allows the Mexican government, which one labor leader referred to as the “elder brother” of Latin American consulates, to become a template that can facilitate other binational diplomatic and civil society relationships.

In 2012, the *Semana de Derechos Laborales/LRW* included participation from Brazil, Chile, Colombia, Costa Rica, El Salvador, Honduras, Peru, Nicaragua, Dominican Republic, Guatemala, and the Philippines. However, the small size and staff of these consulates prevented them from organizing independent outreach efforts with their citizens. For instance, in Atlanta and Phoenix, the Mexican consulate was the main facilitator for the participation of other Latin American consulates, opening their doors to the services offered by the LRW to any Latin American national who had learned about LRW events from brochures at their own consulates. Capitalizing on captive audiences who visit these consular offices, and who may not typically seek help elsewhere, these efforts are similarly able to provide education materials and short presentations on the most useful labor rights information in Spanish, tailored to the specific needs of the Mexican and/or Latin American worker population at various consular jurisdictions.

Yet like the fate of many social movement goals that become institutionalized, civil society's central coordinating role was eventually phased out as consular representatives and DOL staff took the lead in coordinating the services offered to the public. Two examples of this dynamic are poignant. First, according to one major union leader involved in the initial process, although the initial willingness to work broadly with unions continued, a commitment to strategically coordinating alongside them faded. By the third year of the LRW, and as the event grew to incorporate additional consular offices, several of these original union leaders were no longer included in planning discussions. Similarly, while binational accords such as the memorandum between the DOL and the Mexican consulate have formalized the ability of the consulate to inquire into the status of a worker's claim directly with U.S. agencies, this formal accord has simultaneously excluded several civil society organizations from playing a similar accountability role, due to frequently cited "confidentiality concerns." Attempts to coordinate

strange bedfellows whose goals are not frequently aligned is difficult to manage, unless there are explicit, constant, and honest dialogues on the resource constraints faced by all parties involved (government and non-governmental actors). Without these ingredients, it is likely that tensions and mistrust among different actors will erode the potential of transnationally coproduced enforcement strategies for producing systemic changes for migrant labor rights.

Taken together, these findings add an important chapter to our understanding of transnationalism and transnational advocacy. In addition to engaging transnational advocacy networks to use the influence of foreign governments and elites in the global north to hold domestic governments in the global south accountable, the example of the Mexican consulate in the United States represents how civil society has used the framework of consular protection to hold not only U.S. regulatory agencies accountable but ultimately the Mexican government as well. Moving forward, future research for this project will focus on analyzing the full cohort of 15 consular offices that launched the now universal LRW, and eventually we will expand to include the perspective of all consular offices. Furthermore, we hope to incorporate the perspective of other key unions, including those who opted to not participate directly, and other civic and regulatory actors that play an important role in local jurisdictions.

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## Notes

1. Though the 2002 Supreme Court case *Hoffman Plastics v. National Labor Relations Board* precluded key remedies such as backpay and reinstatement, fundamental rights against workplace abuse remain intact. Further, one may argue that labor standards enforcement agencies have an institutional incentive to enforce these rights for even undocumented workers in order to maintain their own regulatory legitimacy and to resist the pressure to engage in resource-draining immigration enforcement efforts (Chen 2012; Gleeson forthcoming).
2. See, for example, Human Rights Watch's (2001) critique of North American Free Trade Agreement: <http://www.hrw.org/news/2001/04/15/nafta-labor-accord-ineffective>. One of the most important obstacles is the non-binding nature of the North American Agreement on Labor Cooperation. For example, in 2012, The Mexican National Administrative Office (NAO) issued an opinion in response to petitions filed by U.S. and Mexican workers' rights advocates for violations of the North American Agreement on Labor Cooperation (NAALC). In its decision, the NAO agreed that apparent violations had occurred denying workers protection under the NAALC. This decision will lead to formal discussion between Mexico's Department of Labor and the U.S. labor secretary, but there are few guarantees that sanctions will ever be applied.
3. For notable exceptions focusing on the cases of Oaxaca, Guanajuato, and Zacatecas, see Fox and Rivera-Salgado (2004), Smith and Bakker (2008), and Stephen (2007).
4. Atlanta, Chicago, Dallas, Fresno, Houston, Los Angeles, New York, Omaha, Phoenix, Sacramento, Salt Lake City, San Diego, San Francisco, San Jose, and Washington, D.C.

5. For a historical analysis of Mexican state strategies to change foreign policy towards the incorporation of Mexican migrants, see among others Déllano (2011), Fitzgerald (2009), and Sherman (1999).
6. Interview, legal service provider, San Francisco, California, October 2, 2013.
7. For an extensive analysis of the 2006 immigrant marches, see Pallares and Flores González (2010) and Voss and Bloemraad (2011).
8. Interview, Mexican consulate, Sacramento, California, March 12, 2013.
9. Interview, United Food and Commercial Workers of America, Chicago, Illinois, December 11, 2012.
10. Interview, United Food and Commercial Workers of America, Chicago, Illinois, April 25, 2013.
11. Interview, United Food and Commercial Workers of America, Chicago, Illinois, April 25, 2013.
12. Part of the success of the Binational Health Week has to do with the institutionalized support provided by the Mexican Ministry of Health to fund the health prevention programs offered at the consulates by subcontracted third-party agents.
13. Interview, workers' rights group, San Diego, California, November 22, 2013.
14. These include, for example, the 2004 memorandum of understanding between the U.S. Department of Labor Wage and Hour Division, and recent accords with the Equal Employment Opportunity Commission and National Labor Relations Board.

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