

Introduction

Constructing Portable Rights for Migrant Workers

As international migration continues to rise, sending states¹ have increasingly created policies and programs to engage their diasporas, in some cases even offering a plethora of services and acting as the legal champions of their erstwhile residents. In fact, countries are actively using their engagement with diasporas as a tool for nation building (Délano Alonso and Mylonas 2019). Citing sovereignty constraints, many nation-states engage in immigration governance directly and unilaterally rather than adopting a coalitional approach. There are, however, some exceptions. In December 2018, more than 150 United Nations member states approved the Global Compact for Migration, the first internationally negotiated statement of objectives for migration governance. This compact attempts to balance migrant rights and the principle of national sovereignty (Newland, McAuliff, and Bauloz 2020). Chief among its objectives is safe, orderly, and regular migration. Member states also pledged to facilitate the fair and ethical recruitment of migrant workers and to ensure safe and decent working conditions according to the basic principles of the International Labour Organization (ILO). While neither the Global Compact's nor the ILO's principles are legally binding in practice, the growing collection of multilateral "soft laws" around the governance of migrant workers (Serna de la Garza 2019) nonetheless sends a clear message: migration policy must involve both sending and receiving states (i.e., origin and destination countries) cooperating bilaterally and multilaterally to address the needs of diaspora populations.

Excellent comparative work has been done on the institutions and governance of global diasporas across various countries (Collyer 2013; Gamlen 2014). In this volume, we focus on the Mexican government as perhaps the clearest example of a country with a growing interest in the rights of its diaspora, the second largest in the world. Mexico has increasingly directed resources to its more than eleven

million nationals living in Canada and the United States, notably by extending expatriate voting to facilitate the de jure political rights of Mexicans living abroad (Délano 2011; Délano Alonso 2018). Yet as Délano Alonso (2018) also documents, Mexico's diaspora policies have extended to other arenas of social rights as well, including health, education, financial literacy, and finally labor rights—this book's focus. Mexico is not alone in this shift (Lafleur 2012; Pedroza et al. 2016), as many other countries have also moved to further engage their diaspora via expanding voting and social protection rights.² Indeed, Mexico's relatively active consular structure has been replicated throughout Latin America (Délano Alonso 2018).

While Mexican emigrants have enjoyed renewed political power in their country of origin, they face a litany of challenges in their destination contexts. Voting and full citizenship rights are vital to the well-being of Mexican emigrants, though an array of other rights and forms of social protection are equally important. There are promising signs, as the sending state has moved away from simply enabling a pool of exportable emigrant labor to also working to uphold the rights of these workers. However, we still know little about *how* sending states are being held accountable for the everyday lives of their diaspora. Here we argue that migrant civil society on both sides of the border has been a vital force driving the Mexican state's relatively prolabor policy shifts.

While past research has chronicled various aspects of migrant life such as voting, workplace experiences, and remittance behavior (Duquette-Rury 2019; Gleeson 2012, 2016; Leal, Lee, and McCann 2012; Medina Vidal 2018; Apostolidis 2010), this focus tends to obscure the important role that civil society and other meso-level institutions play in helping migrants access rights and resources in their local communities. Supranational governing bodies have called on origin and sending states to ensure that migrant workers can access basic social security and services, though national enforcement instruments lack the ability to actually implement the rights encoded within the domestic laws of the receiving state. Instead, meso-level institutions (such as unions, legal aid groups, social service organizations, and other migrant advocates) must hold the governments of immigrant destinations accountable. *Scaling Migrant Rights* is an account of these on-the-ground transnational efforts to defend the rights of migrant workers.

The Mexican diaspora in the United States is diverse in all respects, but in this book we focus on those precarious migrants laboring in low-wage agricultural, restaurant, construction, and cleaning jobs, as well as those occupying a whole host of service-sector positions in the gig economy. Of these workers, of whom close to five million are Mexican immigrants, many are undocumented (Passel and Cohn 2019). With few exceptions, undocumented workers in the United States are afforded the same basic labor protections as their documented counterparts, but overburdened and underresourced agencies at the federal, state, and local levels often fail to uphold the laws on the books. Immigrant workers' struggle for rights is compounded by language and cultural barriers, along with a

well-founded distrust of both Mexican and US governments. These challenges can frustrate the efforts of labor regulation, a largely claims-driven system that relies almost entirely on vulnerable workers' willingness or ability to come forward and submit a complaint to the appropriate labor regulator for wage theft or any other violation. The COVID-19 pandemic has only exacerbated these challenges, rendering this enforcement system aspirational at best.

Across the United States, local civil society groups have led outreach efforts to disseminate worker education materials and ensure that basic workplace protections are enforced for migrant workers. These protections cover not only lawful permanent residents and naturalized citizens but also the nearly 5 percent of the US civilian workforce that are estimated to be undocumented; the many migrants in liminal statuses such as DACA (Deferred Action for Childhood Arrivals) and TPS (Temporary Protected Status) (Passel and Cohn 2018); and the tens of thousands of temporary agricultural guest workers in the country (Beltran 2018).

Immigrant workers—especially those in low-wage and unregulated workplaces—are particularly vulnerable to wage theft, occupational safety and health hazards, racial discrimination, and sexual harassment (Bernhardt, Spiller, and Polson 2013; Bernhardt, Spiller, and Theodore 2013). Consequently, local worker advocates have pressed for more proactive enforcement models and have leveraged community organizations to strengthen existing enforcement efforts (Fine and Gordon 2010). Co-enforcement frameworks have proliferated, as neither regulators nor advocates alone can ensure employer compliance. These cooperative models seek to bring government enforcers, workers, and businesses to the table with the understanding that—despite the limitations of such cooperative efforts—an exclusively individualist claims-driven approach has proven unworkable. A range of meso-level civic groups have also taken part in these efforts, including traditional labor unions, worker centers, legal aid groups, and other immigrant advocates, each with its own relationship to immigrant workers, US regulators, and the Mexican state. To be sure, sending states benefit enormously from the economic engine of migrant labor and have been called upon by advocates to play a stronger role in the enforcement of labor standards. Transnational advocates, too, have worked across borders. Many argue that sending states have a responsibility to protect the rights of their emigrating citizens as forcefully as they would the rights of those citizens who stay behind. For example, early twentieth-century transnational labor activists such as the Flores Magón brothers and Vicente Lombardo Toledano attempted to build international working-class solidarity and a cooperative relationship with organized labor unions across the United States (Álvarez 1995). In contrast, some staunch activists, most famously the Zapatista revolutionary movements of the mid-1990s, have argued against devoting resources to the needs of emigrants, viewing them as essentially defectors from national struggles. However, today the overwhelming consensus of activists is that immigrant rights should be championed across borders (Héctor 2017; Fox 2001). To realize

a functional system of portable worker rights, however, requires both a grander vision of universal justice and a sharp focus on improving the bureaucratic minutiae of local labor enforcement. This tension is at the heart of increased efforts to improve Mexico's accountability to its emigrant workers through large-scale social movement organizing and everyday claims processing. This book explores these parallel efforts to reform migrant labor rights enforcement.

THEORETICAL FRAMEWORK

Migrant Labor Rights Enforcement and the Role of Tripartism

On March 25, 1911, the Triangle Shirtwaist Factory burned to the ground in New York City, killing 154 garment workers and precipitating the growth of the modern system of workplace regulation in the United States. One would think that more than a century after the implementation of such regulations, workplace fatalities would be a thing of the past. However, while significant progress has been made, work is now more deadly than war. According to Guy Ryder, the general director of the ILO, workplace fatalities account for approximately 2.3 million deaths per year (ILO 2014). These workplace risks persist despite the enactment of countless new worker protections because the labor standards enforcement regime is broken. Enforcement agencies are underfunded, understaffed, and often the target of political machinations. In the United States, it would take sixty-six years for investigators of the Occupational Safety and Health Administration (OSHA) to inspect each workplace under its jurisdiction just once, assuming 2012 staffing levels (Piore and Schrank 2018).

Foreign-born workers, especially the undocumented (Hall and Greenman 2014), are particularly vulnerable to workplace hazards and other violations (Loh and Richardson 2004), in large part because of their concentration in key offending industries (Bernhardt, Spiller, and Theodore 2013).³ Existing immigration scholarship has tended to focus on the rights afforded to legal migrants through international instruments and through relevant federal, state, and local statutes and enforcement agencies. Less attention, though, has been paid to the mechanisms in place that actually help workers realize these rights. Through the lens of Mexican immigrant workers, this book takes a closer look at the relationship between governing bodies and migrant civil society organizations in the fight to access migrant labor rights.

In this examination of government and civil society interactions, we unpack the role of the state, across various scales and statutes, and consider the enforcement capacity of domestic agencies, which together form a "jurisdictional patchwork" (Varsanyi et al. 2012). Within this context, we center the sending state, as it operates on both sides of the border to ensure the rights of its emigrants and to oversee the returns on its export labor. Both sending and receiving states have become targets of accountability efforts led by civil society groups. Our analysis

takes seriously the impact of these civil society groups in working with—and targeting—state agencies tasked with ensuring migrant worker rights. Some of these groups work domestically with migrant workers, while others operate transnationally to demand a more portable rights regime, often through a human rights frame that poses particular challenges and opportunities for forging coalitions and staging successful campaigns (Keck and Sikkink 1998). Using the case of Mexico and the United States, we assess the feasibility of advocating for the portability of worker rights across borders and the key role that the sending state and transnational civil society can play in such struggles.

We begin by considering the rights afforded to migrant workers in the United States. In general, most federal, state, and local labor laws grant all workers basic protections—like the right to a minimum wage, overtime pay, and a safe and healthy workplace. US courts have affirmed that even undocumented workers have standing as employees and are eligible to bring claims against their employers. Antiretaliation measures prevent employers from threatening, intimidating, or in any other way taking actions against any workers attempting to mobilize their rights under the law (Gleeson 2016). Yet despite these protections, a steady “race to the bottom” in terms of labor rights has disproportionately affected immigrant workers and foiled the realization of these statutory aims. Post-Fordist labor enforcement models are poorly equipped to deal with the realities of fissured labor markets in which the large assembly plant is no longer the norm. In the current gloves-off economy of fragmented and flexible work arrangements, workers fall outside the legal definitions of covered employees, and subcontracting helps employers evade their responsibilities to these workers (Bernhardt et al. 2008; Weil 2014).

Underfunded agencies often work in jurisdictional silos and thus are reliant on legal specialists rather than a generalist staff who can work across issue areas and coordinate with sister agencies to tailor their outreach to specific vulnerable populations like immigrants. In the United States, “street-level bureaucrats” (Lipsky 1980) typically follow an “economies of scale” model where inspectors focus on a small subset of violations that afflict a wide swath of workers (Piore and Schrank 2018). This model relies heavily on individual claims, which has benefits and drawbacks. On the one hand, a claims-based system provides an equal opportunity structure for all those seeking redress and limits the biases harbored by inspectors, who may devalue the claims of certain laborers (e.g., temporary or migrant workers). On the other hand, this “fire alarm” approach to claims making has heavy time, opportunity, and financial costs for workers, who must navigate a highly technical claims process and rely on expensive, and often unattainable, legal counsel (Gleeson 2016). Worker advocates play an important role in bridging these jurisdictional gaps and holding regulatory agencies accountable.

The tripartite protection model seeks to address some of these challenges by relying on coordination between state regulatory agencies and worker organizations

to jointly enforce labor standards (Amengual and Fine 2017).⁴ These alliances often operate in conjunction with migrant and worker civil society, which have better access to sectors that are difficult for government inspectors to penetrate (Fine and Gordon 2010).⁵ In this book, we highlight an additional partner in the model: the sending state, which often operates via a global network of consular offices whose charge is to advocate on behalf of its emigrants across a range of issues, including health care, education, family law, immigration protections, and indeed labor rights. We draw specifically on the example of Mexico and its consular network across the United States, which, despite its many shortcomings, is arguably the most widespread and influential of any Latin American country. In the next section, we consider the legal framework for governing migrant worker rights.

The International Framework for Migrant Worker Rights

Over the past two decades, US immigration policy (particularly toward its southern border and Latin American migrants) has seen the rise of two opposing forces. On the one hand, the United States has ramped up immigrant surveillance and deportation efforts, often in conjunction with state and local authorities. There have also been attempts, even during Democratic administrations (which have claimed to be less xenophobic and to champion immigrant rights), to curtail the rights of immigrants in the workplace and beyond (Macías-Rojas 2018). On the other hand, a growing number of localities have declared themselves “sanctuary” or “welcoming” cities, pushed back on enforcement efforts, and extended additional rights even to undocumented workers (such as protections against wage theft, the right to organize farmworkers, and COVID-19 pandemic relief). Meanwhile, civil society watchdogs have advocated on behalf of those low-wage migrant workers most vulnerable to exploitation and have pressed state actors to guarantee their rights. Similarly, global governance bodies have leveraged instruments to extend migrant rights. For example, the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)—while nonbinding and currently pending ratification by 130 countries—has influenced regional processes such as the labor side accords of the North American Free Trade Agreement (NAFTA), leading to the development and dissemination of best practices concerning migrant labor rights in trade negotiations.

Within this framework, sending states play a unique role in migrant worker advocacy. In 2003, the Inter-American Court of Human Rights, in response to a request by Mexico, issued a landmark advisory opinion on the juridical condition and rights of undocumented migrants. The court ruled, *inter alia*, that the legal status of migrant workers can never constitute a justification for depriving them of enjoying and exercising their human rights, including those related to work. The court also ruled that upon procuring employment, migrants acquire rights by virtue of being workers and that these rights should be recognized and guaranteed

independently of their legal status (Cholewinski 2008). While an advisory opinion is mostly hortatory, the request issued by the Mexican government signaled a clear shift in its interest and investment in the well-being of its diaspora.

While some argue that international laws are merely symbolic instruments, especially in the United States, they do help determine minimum principles and parameters for regulating global problems that transcend national borders. These ideals alone, however, cannot enact social change without accompanying resources or enforcement mechanisms. For example, the World Health Organization lacks both the financial and political heft to singularly manage an actual epidemic, let alone a full-blown pandemic (Global Preparedness Monitoring Board 2019). Similarly, international labor law offers limited protections to migrants working in the United States (authorized and unauthorized) but does not prescribe national enforcement paradigms for labor regulation. There are still further examples of arguably symbolic instruments. The ILO's Migrant Workers (Supplementary Provisions) Convention 143 (1975) sets basic minimum protections, and building upon that and ILO Migration and Employment Convention 47 (1949), the CMW includes protections for both documented and undocumented migrants. More recently, in the declaration of the High-Level Dialogue on Migration and Development of 2013, member states collectively vowed to protect the rights of migrants irrespective of their legal status (Berg 2016). However, all these declarations are nonbinding and lack effective oversight mechanisms. True to form, the United States has not ratified the CMW, and in 2017 it ended its participation in the UN Global Compact for Migration, citing sovereignty concerns.

That said, these international instruments provide a form of "soft law" that can be a useful tool for advocates as they work to hold host and sending states accountable for the labor conditions of migrant workers (Compa 2017). While civil society organizations have over the past two decades succeeded in raising their profile, many countries have not ratified them, largely because of stalled economic growth, increased xenophobia, and a growing disdain for global governance structures. In truth, many national laws (in theory) already cover the rights stipulated in these international agreements. Yet many other laws directly undermine these rights (Ruhs 2013). Even before the spate of punitive US immigrant legislation passed in the mid-1990s, immigration law scholar Arthur Helton (1991) warned that the CMW would entail significant changes to US labor, immigration, and civil rights laws, thus raising serious doubts about the likelihood of its ratification.

This book offers a glimpse into how a now two-decades-old set of evolving labor rights agreements between Mexico and the United States has been implemented on the ground in both countries. We argue that this cooperation should not be seen as an organic flowering of goodwill; rather, it has been the result of (ongoing and often adversarial) civil society advocacy. Our research complements extant analyses across diverse destination contexts, including Laurie Berg's (2016) case study on the vulnerability of temporary migrant workers in Australia; Leah Vosko's (2019) extensive work on the challenges of collective bargaining in the

Mexico-Canada temporary migrant work program; Ines Wagner's (2018) study of the challenges facing migrant workers in the European Union; and Luis Enrique González Araiza's (2018) analysis of Mexico's mostly failed attempts to prevent labor trafficking. Through a multisited set of interviews and archival analysis, we affirm the ultimately local nature of all enforcement efforts, documenting the varying ways that binational agreements are implemented across the United States and the many roles played by the Mexican state at home and abroad.

Holding the Sending State Accountable on Migrant Worker Rights

Mexico shares almost two thousand miles of a porous border with the United States, a geopolitical reality that keeps Mexico often beholden to US interests when it comes to border control. Thus, although Mexico has attempted to craft a more humane border control policy, this goal has proven elusive, and during bilateral trade negotiations much of the discussion usually focuses on Mexico's willingness to institute containment and deterrence mechanisms to discourage the northward exodus of Central Americans. Mexican politicians have long used the CMW (which Mexico has ratified but the United States has not) to push for better treatment of Mexican workers in the United States. They have done so, however, without granting similar rights to migrant workers living in or transiting through Mexico. Transnational advocates also argue that the Mexican government enjoys the economic benefit of labor exports while failing to guarantee its citizens at home the right to "dignified and socially useful employment" (as stated in Article 123 of Mexico's constitution).⁶ In other words, Mexico has in effect deprived its citizens of the right to find decent work, and thus to remain, in Mexico. While the CMW has fueled Mexico's attempt to promote migrant rights in the United States (Díaz Prieto and Kuhner 2009), Mexico's reputation has been marred by its own poor record of human rights and labor abuses against Central Americans and other migrants in transit.⁷

In this book, we describe the Mexican government's shift from a *limited* to an *active* engagement with its diaspora (Délano 2009) as it navigates the tricky terrain of being both a sending and a transit state with its own uneven labor rights track record. We home in on the different instantiations of the US-Mexico accords on labor cooperation, which vary across US cities and have led to locally defined, transnationally coproduced enforcement practices. We demonstrate that cross-sectorial alliances are responsible for building a migrant rights movement and institutionalizing migrant protections. We focus especially on efforts to develop and implement the binational accord between Mexico's Secretaría de Relaciones Exteriores / Ministry of Foreign Affairs (SRE) and the US Department of Labor (DOL) in 2008, interrogating the diverse perspectives of bureaucrats and advocates who have participated in these initiatives over the last fifteen years. We argue that these tripartite models of co-enforcement are promising but not panaceas, working better in some communities than in others.

This volume expands on our earlier work (Bada and Gleeson 2019), which presented a general overview on the best practices and pitfalls of enforcing employment, health, and educational immigrant rights across borders in Canada, Mexico, and the United States. Rather than adopting the dominant framework in immigration studies that centers immigrant integration to the host country, our focus here is on Mexico, the sending state, and its engagement with migrant civil society. Pioneering scholars of this approach have (in our view) rightly abandoned methodological nationalism (i.e., concentrating on immigrant communities within the sole context of their host countries) to document the sending-state policies driving migrants to invest back home and to explain the ways in which that state manages the economic and political demands of its nationals living abroad (Byrnes 2003; Duquette-Rury 2019; Iskander 2010; Félix 2019; Bada 2014). We build on Alexandra Délano Alonso's foundational work on the evolution of the Mexican government's policies from a limited to an active engagement with its thirty million nationals living in the United States, as well as her more recent work on how Mexico's newest model of consular advocacy has facilitated the incorporation of Mexican immigrants into US institutions (Délano 2011; Délano Alonso 2018). Moreover, we highlight a range of advocacy strategies that often (but not always) involve civil society and the Mexican government working together. These range from the consular network facilitating the minutiae of everyday worker claims making (chapter 3) to migrant civil society's demand for broader accountability across a variety of social issues (chapter 4) to high-profile, grassroots litigation across borders (chapter 5).

While our previous work discussed the dynamics of local labor agencies tasked with enforcing immigrant worker rights (Gleeson 2014, 2016), here we privilege the perspectives of domestic and transnational nonprofits in brokering binational enforcement initiatives. We also highlight the importance of consular initiatives on labor advocacy and the extent to which advocates have engaged with the consular network. To do so, we document the genesis and evolution of the annual Labor Rights Week, a nationwide consular partnership between the US DOL and Mexico's SRE that began in 2007 as a pilot with a few consular offices and has now been institutionalized across all Mexican consulates in the United States. The legal backbone of this federal initiative comprises more than sixty bilateral memoranda of understanding that have been periodically signed between various local US labor standards enforcement agencies and Mexico's government over the last fifteen years. We also draw on examples of iconic transnational struggles, such as the decades-long campaigns to strengthen labor rights for temporary H-2 immigrant workers via the symbolic power of a nonbinding trade policy framework under the North American Agreement on Labor Cooperation (NAALC) (Brooks and Fox 2002b; Hertel 2006; Kay 2011; Kay and Evans 2018). Finally, in examining bottom-up processes, we reveal how top-down attempts to build solidarity have also reproduced cross-border power imbalances.

Beyond outlining the aspirational proclamations of governments, this book reveals the key role that advocacy organizations play in pressuring government bureaucracies to defend migrant rights in theory and in practice. Adopting a multiscalar approach, we detail the varied strategies pursued by transnational civil society organizations across a range of social arenas. We talk to an array of actors, including Mexican diplomats, US labor agency officials, and a host of civil society groups such as legal service providers, worker advocates, and other migrant-serving nonprofits. In doing so, we identify the particular challenges facing migrants who inhabit a transnational existence: away from their homeland, and often liminally tied to their host society, they have precarious rights on both sides of the border. Our study follows in the bottom-up analytical tradition of other works focused on Europe and Latin America (García Agustín and Jørgensen 2016; Margheritis 2016) by not only considering the impact of elite actors but also viewing migrants as political actors in their own right. We look at advocacy on both sides of the border but see transnational alliances as opportunities for solidarity that can either be fruitful (though never tension-free) or entrench divisions.

MEXICAN MIGRANTS IN THE UNITED STATES

Demographic Profile

The Mexican consular network in the United States, as described in greater detail in chapter 2, has fifty-two offices. The uneven distribution of offices across the country reflects a story about Mexican immigrant demography in the United States. Mexico's diplomatic presence in the United States has widely varying capacity and priorities: some states or even certain metropolitan regions are home to multiple consular offices, while other offices cover several states where the immigrant density is lower (figure 1).

In terms of demographics, all told, in 2019 there were approximately 10.9 million Mexican-born individuals living in the United States, a 7 percent decline over the decade prior (Israel and Batalova 2020). Mexicans constitute the largest national-origin plurality of immigrants in the United States, at about a quarter of the foreign born in 2018 (Budiman et al. 2020). Nationally, Mexican-origin individuals are by far the largest national-origin subgroup of Latinos in the United States (Noe-Bustamante and Flores 2019), making up nearly two-thirds of the total. The immigrant populations with the largest proportion of Mexican nationals are concentrated in the Southwest, and especially in the states and cities along the border (figure 2). These are the areas with the densest concentration of consular offices. However, Mexicans are a very small (though growing) part of the Latino population in the South and along the Eastern Seaboard (figure 3).

The local contexts of immigration policy differ widely, and each region has a unique industrial profile in which Mexican immigrant workers are embedded. Labor regulations also vary most significantly from state to state. Some cities have created their own protections and policies, and co-enforcement models with



FIGURE 1. Mexican consulates in the United States. Source: Authors' compilation, based on the consulate's directory published by Mexico's Secretaría de Relaciones Exteriores / Ministry of Foreign Affairs (SRE n.d.-b). This map includes all offices that existed at some point during our period of fieldwork. The consulate in Anchorage no longer operates.

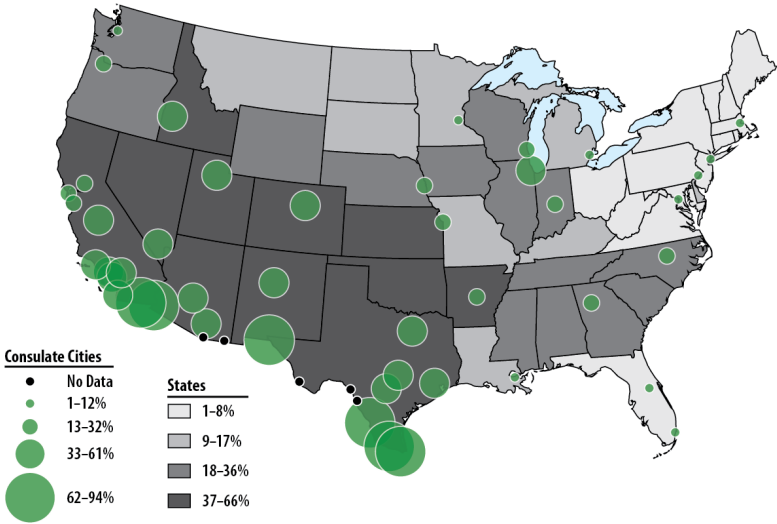


FIGURE 2. Percentage of foreign-born population that is Mexican born. Source: All maps in this series are compiled using estimates from the five-year sample of the American Community Survey 2014–2018 (US Census Bureau 2019). We include in the foreign-born sample anyone who is born outside of the United States (which we define to include all US possessions) (IPUMS USA n.d.-a).

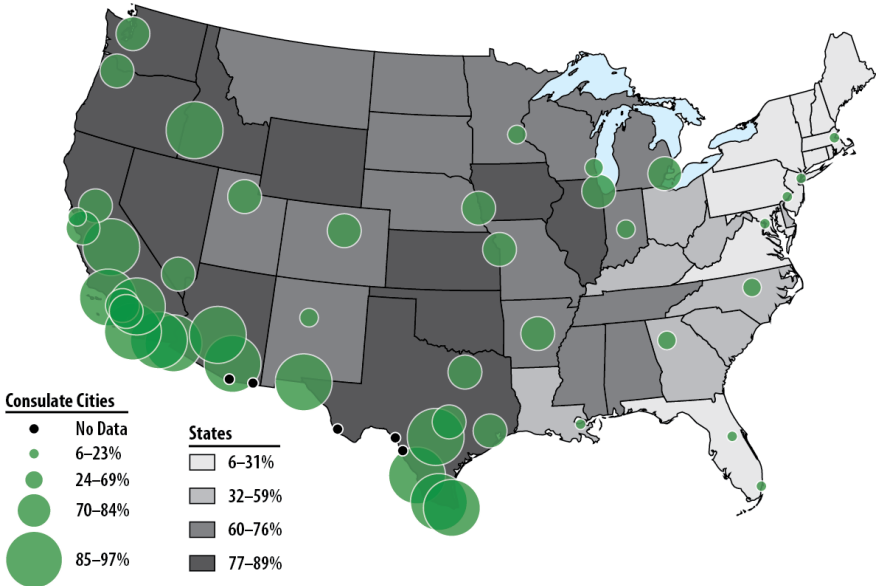


FIGURE 3. Percentage of Latino population identifying as Mexican. Source: The American Community Survey queries all individuals regarding their “Hispanic status” using the question “Is Person X of Hispanic, Latino, or Spanish origin?” Here we classify as “Latino” all those who affirm YES, including the categories “Mexican, Mexican Am., Chicano,” “Puerto Rican,” “Cuban,” or “another Hispanic, Latino, or Spanish origin” (IPUMS USA n.d.-c). We classify as Mexican those who select the “Mexican, Mexican Am., Chicano” subcategory of Hispanic and those who were born in Mexico.

civil society are more likely to emerge in urban areas (Fine and Gordon 2010; de Graauw 2016; Gleeson 2016). Meanwhile rural and suburban communities—which are increasingly migrant destinations—are typically far removed from consular resources, lack public transportation options, and face a dearth of both labor regulation and civil society resources (de Graauw, Gleeson, and Bloemraad 2013; de Graauw and Gleeson 2020). The unauthorized immigrant workforce is particularly disadvantaged by these obstacles.

The 10.5 million unauthorized immigrants in the United States constitute about a quarter of the US immigrant population. Forty-seven percent of these unauthorized immigrants are from Mexico, and 43 percent of all Mexican immigrants are unauthorized (Gonzalez-Barrera and Krogstad 2019; Passel and Cohn 2019). Notably, the US’s unauthorized population has changed substantially in the last decade, with a 28 percent decrease in undocumented Mexicans since 2010 (CMS 2021). Again, the characteristics of Mexican migrants differ across place. Proportionally, the noncitizen population of Mexicans is currently highest in “new destinations” where Mexican immigrants have relatively recently arrived (figure 4). These places are also more likely to have more restrictive immigration policies that

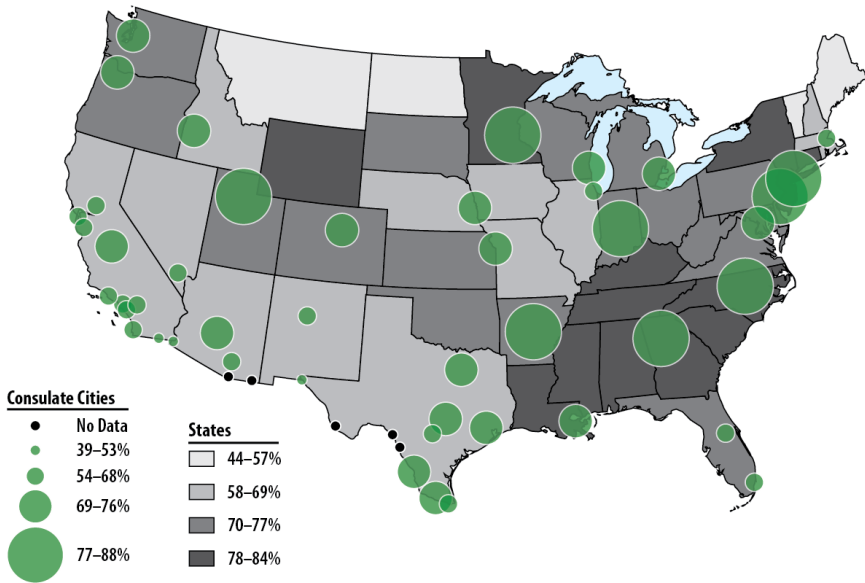


FIGURE 4. Percentage of Mexican immigrant population that is noncitizen. Source: The American Community Survey queries citizenship status of all foreign-born persons. We classify noncitizens as those who identified as such, namely, those who were not born in the United States, were not born abroad of American parents, or were not naturalized citizens (IPUMS USA n.d.-b).

make migrant worker organizing even more challenging (Wong 2012; Pham and Van 2014).

Mexican Labor Precarity

Though the oldest and most established of Latino immigrant groups, Mexican migrants are also among the most precarious. Many Mexican migrants are recently arrived, have low levels of human capital, and have limited English proficiency. In general, low-wage migrant workers experience precarious employment and struggle to gain access to basic labor protections. A number of factors have made this precarity all but a foregone conclusion: a race to the bottom for cheap labor, a steep drop-off in unionization, and increasingly defunded labor agencies, which often lack the political will to enforce the laws on the books (Bernhardt et al. 2008; Gutelius and Theodore 2019). Many industries such as hospitality, caregiving, warehouse work, agriculture, and construction sectors across the United States and other developed economies are dependent on low-wage, precarious migrant labor (Ruhs 2013).

For the majority of Mexican low-wage immigrant workers, access to decently paid and adequately protected work is elusive. While Mexican immigrants have

a 70 percent labor force participation rate, 33 percent earn salaries that are lower than half of the national median, and 58 percent lack access to basic social protections like health care and a pension. In comparison, only 36 percent of US native workers are in similarly precarious employment situations (Canales Cerón and Rojas Wiesner 2018). Low-wage Mexican workers toil in dangerous industries with scant regulation, and Mexican migrant workers are the most affected by fatal occupational injuries among foreign-born workers. Between 2011 and 2018, 4,453 foreign-born workers died in the workplace, 65 percent of whom were Mexican (BLS-DOL 2019).

Fifty percent of the Mexican immigrant labor force have low-wage jobs, mostly working as day laborers in construction or in personal services such as domestic work, food preparation, cleaning services, and other service occupations. Apart from the low wages, these jobs are characterized by unpredictable scheduling and low rates of unionization. Immigrant workers fill 38 percent of the US structural employment deficit (Canales Cerón and Rojas Wiesner 2018), reflecting both a degradation of the jobs listed above and the increasing recruitment of exploitable immigrant labor (Milkman 2020).

In this labor environment, wage theft is one of the most common forms of workplace abuse.⁸ As such, it has become one of the most tangible targets of co-enforcement efforts, spurring partnerships between the sending state and domestic labor regulation agencies, including cities that have developed their own regulatory frameworks.⁹ The most vulnerable workers are the most targeted: foreign-born workers are 1.5 times more likely than their US-born counterparts to suffer a minimum-wage violation. According to the labor intake database published by Mexico's SRE, between 2010 and 2018, 4,539 Mexican victims of wage theft requested help to recover their US-earned wages inside Mexican consular offices across the United States. These efforts are the subject of our analyses. In addition to workplace abuse, highly criminalized immigration employment systems continue to foil labor regulation efforts the world over (Berg 2016; González Araiza 2018; Kip 2017; Vosko 2019; Wagner 2018). This is especially true for the 4.6 percent of the foreign-born workforce in the United States who are unauthorized. In a statistic that demonstrates the permanent nature of undocumented work, Mexican unauthorized workers now average fifteen years of continuous residence in the United States (Passel and Cohn 2019), and they are usually confined to precarious labor markets and occupations with weak—and sometimes nonexistent—enforcement mechanisms.

While the number of Mexican immigrants living in the United States without authorization has declined, three-quarters of immigrants deported by the Department of Homeland Security every year are Mexican nationals. In a national environment that insists on criminalizing Mexican low-wage workers (Goodman 2020; Macías-Rojas 2016), it is imperative to assess the mechanisms that advocates

and bureaucracies have implemented to facilitate (or hinder) claims making in labor rights enforcement.

It is within this context that Mexico has begun to rethink how it addresses the rights of its highly precarious emigrants living and working in the United States, as well as those who ultimately return and attempt to reintegrate into Mexican society.

RESEARCH STRATEGY

The analysis presented in this book draws on surveys and interviews with relevant stakeholders from both civil society and government bureaucracies who have been instrumental in establishing transnational practices of labor co-enforcement for Mexican migrant workers. These include staff from various labor enforcement agencies, Mexican diplomats, labor union and worker center organizers, legal aid organizations, and immigrant grassroots associations. We focus on the local and transnational challenges across multiple levels of governance and the importance of migrant civil society in holding government actors accountable.

In the fall of 2012, we conducted a survey of fifty-two Mexican consular offices to assess their cooperation with US labor standard enforcement agencies and to gather information on Labor Rights Week, the most important co-enforcement program established by bilateral agreements between the United States and Mexico. We asked survey respondents to outline the extent of the outreach and resources provided to workers as well as the nature of consular collaborations with other labor standards enforcement agencies and community organizations. We then conducted twenty-five in-depth interviews with embassy and legal affairs staff at consular offices who had pioneered Labor Rights Week. On the basis of the survey results and the consular interviews, we created an organizational database of local civil society actors who had collaborated with the Mexican consular offices to implement the Labor Rights Week or who were part of broader advocacy referral networks.

The second stage of data collection took place between 2013 and 2015, when we interviewed Mexican diplomats, government agency staff, and nonprofit organization leaders across fifteen consular jurisdictions. We spoke with representatives of organizations in regions that spanned the political gamut (see figure 5): Atlanta, Austin, Chicago, Fresno, Houston, Los Angeles, Miami, Nashville, New York, Omaha, Orlando, Phoenix, Raleigh, Sacramento, Salt Lake City, San Diego, San Francisco/Oakland, San Jose, Tucson, and Washington, D.C.¹⁰ Additionally, during 2016–17, we interviewed staff from transnational labor advocacy nonprofits operating in Juchitahuaca, San Luis Potosí, Piedras Negras, and Mexico City. Altogether, we draw on 206 interviews with labor standards government bureaucracies, diplomats, worker centers, labor unions, and other migrant-serving nonprofits operating across the United States and Mexico.



FIGURE 5. 2016 presidential election: Democratic percentage of vote for cities included in project. Source: Presidential election voting data are drawn from *Politico* (2016). Data identifying sanctuary cities—which we define as jurisdictions that have enacted policies to curb local officials’ involvement in the enforcement of federal immigration law—are drawn from *Ballopedia* (n.d.).

We also relied on participant observation at selected events and field sites in order to examine the co-enforcement challenges encountered by the sending state. For instance, we attended *charlas* (talks) held in consular offices and across the broader community, as well as resource fairs where various community partners distributed informational material. To complement our data collection efforts, we organized two action research panels with labor activists to discuss migrant rights enforcement across borders at the annual Law and Society Association conferences in Mexico City and Washington, D.C., in the spring of 2017 and 2019. In October of 2017, we participated in a Trinational Labor Gathering discussing labor responses to the renegotiation of NAFTA in Chicago.

Finally, we requested statistical and budget information on consular outreach programs from Mexico’s Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales / National Institute of Transparency, Information Access, and Private Data Protection and reviewed key institutional documents going back to the original 2002 ministerial negotiations between the DOL and the SRE; more than sixty memoranda of understanding established between the DOL and various consulates; one hundred local media announcements about Labor Rights Week; correspondence between stakeholders while

implementing Labor Rights Week; and local press releases from government agencies that developed collaborative relationships with immigrant worker advocates.

ROAD MAP FOR THE BOOK

Our story of transnational labor co-enforcement practices in the United States unfolds across six chapters. Chapter 2 offers a road map for understanding the Mexican consular network as an advocacy institution. We describe the genesis and evolution of consular efforts to enforce the workplace rights of immigrant workers in the United States and introduce Labor Rights Week, a significant program that coordinates efforts among local consular offices, federal and state labor standards enforcement agencies, and other immigrant worker advocates. We trace how the consular network expanded its territorial notions of citizenship and became the premier support system for the most vulnerable of migrant workers. We examine the current role of the Mexican consular network in co-enforcement efforts with the US DOL (and sister agencies), detailing how these efforts have been institutionalized through a web of consular bureaucracies. We argue that consular representatives depend on this international cooperation because, while they are endowed with unique resources and legitimacy, their efforts to defend the rights of immigrant workers are constrained by the US enforcement bureaucratic apparatus and by budgetary issues.

Chapter 3 analyzes the local implementation of binational agreements between the US DOL and Mexico's SRE in cooperation with local civil society organizations, in particular labor unions and legal services providers. We find that consular partnerships are highly variable, depending on the given jurisdiction and the characteristics of the local immigrant community. We consider the motivations and goals for participating in co-enforcement efforts with the consulates, finding that collaboration with the Mexican government, among other benefits, can fortify claims making, the engine of labor regulation in the United States. We also find that while the Mexican consulates can wield substantial influence, help civil society organizations access the formal halls of power, and act as a linguistic and cultural resource for migrant communities, they are cautious and reluctant advocates. Moreover, their constantly shifting staff further hampers advocacy efforts. We therefore conclude that tripartite enforcement is more challenging than the recurring memoranda of understanding suggest and that scaling up and sustaining these partnerships is difficult at best.

Chapter 4 examines the diverse relationships that emerge beyond the well-defined realms of labor co-enforcement by exploring the wide array of immigrant rights organizations that are seeking to expand the scope of sending-state accountability. We find that immigrant rights organizations have slowly gained more negotiating power with diplomatic bureaucracies over migrant labor rights. We situate migrant labor rights within the broader context of Mexico's historical

state-society relations, noting how this history has shaped the wide-ranging demands that migrant groups have placed on the sending state, including, but also expanding far beyond, the issue of labor co-enforcement. Finally, we chronicle the many frustrations advocates have expressed about consular institutions and examine how advocates balance the collaborative potential of the consular network with the necessity of holding consulates and the sending state accountable.

In chapter 5, we shift our analytical approach to track the emergence of a “portable rights” frame to defend migrant workers. We map the conditions and challenges shaping organizations’ ability to mobilize NAFTA’s labor side accord protecting migrant worker rights, including funding limitations, mission foci, and the extent of civil society infrastructure. Focusing on the cross-border actions of twenty-two migrant rights advocacy institutions, we examine how organizations decide whom to defend (such as H-2 workers and undocumented Central Americans in transit), which policies to target (domestic, bilateral, or international), and which models of service provision to deploy on the ground. Considering Mexico as both a sender and a host of vulnerable migrant workers, we survey the field of transnational advocacy that defends migrants across both of Mexico’s borders.

Our concluding chapter assesses the impact of efforts to increase sending-state accountability for migrant worker rights. While the sovereignty of the state remains unchallenged in immigration policy making, the state has certainly become less autonomous as unfettered globalization accelerates and multiple actors push for universalizing labor rights. Because of the enormous challenges that labor advocacy organizations face in defending the most precarious migrant workers, their impact has often been downplayed by social movement scholars. Indeed, we offer a sobering account of the nonbinding agreements that have proven to be minimally effective in ameliorating conditions on the ground. However, over the years, the influence of advocacy organizations has been undeniable. Despite the challenges of erecting a robust co-enforcement regime, the tripartite state-society labor relations we document here provide some optimism regarding advocates’ strategies and give us hope for the future of transnational labor alliances and coalitions in North America.