

# Institutionalizing a Binational Enforcement Strategy for Migrant Worker Rights

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*An emerging literature has focused on the role of state-of-origin actors in managing the migrant diaspora and implementing their rights. This article instead examines the perspective of destination-state actors who are engaged in national and local partnerships with consular institutions to enforce the rights of migrant workers. In doing so we ask what drives these binational collaborations, what sort of resource investments are necessary to ensure meaningful exchange, and what are the distinct challenges that emerge across place. By bridging the literature on diaspora policies with the literature on tripartite models of co-enforcement of labour standards, we argue that a bilateral perspective is necessary for understanding the dynamics of migrant rights enforcement. Our data draws from official documents and memoranda of understanding, as well as interviews with twenty different federal agency officials in the United States. These findings cast light on how agencies in destination states navigate binational collaborations, and the challenges that emerge through these partnerships. These stem in large part from the limits of claims-driven enforcement regimes, the challenge of coordinating across distinct agency missions and priorities, and the power inequities inherent in mismatched agency staff and resource levels. We also find that bureaucratic actors exercise a great deal of discretion in their work, resulting in wide variation across jurisdictions. We conclude that while bilateral co-enforcement agreements are not a panacea to solve the structural dysfunction of labour rights enforcement for migrant workers, they are also not a useless mechanism that should be easily dismissed.*

## 1 INTRODUCTION

The United States has undergone a significant shift in its demographic makeup in recent decades. In 1960, the foreign-born population represented about one in twenty residents, mostly from countries in Europe who had settled in the Northeast and Midwest. By 2010, the foreign-born population reached 13% of the total population with forty million, the vast majority (53%) coming from Latin America, mostly from Mexico, El Salvador, Cuba, Dominican Republic, and

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Guatemala.<sup>1</sup> One third of all immigrants in the US hail from Mexico, and Mexican immigrants constitute the largest population of unauthorized workers, who are now widely dispersed throughout the United States.

This demographic shift is occurring alongside the intensifying challenge of precarious work in the new economy, and a long list of abuses facing low-wage workers (many of them immigrants), such as wage and hour issues, health and safety concerns, and discriminatory practices that are prohibited under federal (and sometimes state) law. In the United States, immigrant workers are generally entitled to equal protections from workplace abuse. However, for those agencies entrusted with ensuring that employers comply with federal laws – such as the Fair Labor Standards Act, the Occupational Safety and Health Act, the Civil Rights Act, the National Labor Relations Act, and various Workers Compensation state laws – it can be a significant challenge to reach out to these workers. These agencies have insufficient staff and resources, and have to work hard – often in conjunction with community partners – to gain the trust of these most vulnerable workers. While many of these agencies enforce statutory protections for all workers regardless of immigration status, the broader context of immigration enforcement means that immigrant workers often see government agencies as a threat. This is increasingly the case in the current political environment where xenophobia, increased efforts to detain and deport immigrants, and a generalized anti-immigration rhetoric have dominated the public consciousness in the US

In this context, one of the community partners that has provided an increasingly important liaison with the Latino immigrant community is the Mexican government. Following a long period of ambivalence and sometimes working against the interests of its conationals living and working abroad, Mexico has shifted from a limited form of engagement to one that is more actively connected to its diaspora.<sup>2</sup> This has manifested in several arenas, including health, education, membership, and labour rights.<sup>3</sup> The emergence of these ‘transnationally coproduced regulatory enforcement’ models has been significant not only for grassroots immigrant worker advocates, but also for government partners in destination countries.<sup>4</sup>

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<sup>1</sup> Elizabeth M. Grieco et al., *The Size, Place of Birth, and Geographic Distribution of the Foreign-Born Population in the United States: 1960 to 2010*, 96 Population Division Working Paper, 1–37 (2012).

<sup>2</sup> Délano, Alexandra. 2011. *Mexico and Its Diaspora: Policies of Emigration since 1848*. Cambridge: Cambridge University Press.

<sup>3</sup> Alexandra Alonso Délano, *From Here and There: Diaspora Policies, Integration, and Social Rights Beyond Borders* (New York, NY: Oxford University Press 2018); Xóchitl Bada & Shannon Gleeson eds, *Accountability Across Borders Migrant Rights in North America* (Austin: University of Texas Press 2019).

<sup>4</sup> Matthew Amengual & Janice Fine, *Co-Enforcing Labor Standards: The Unique Contributions of State and Worker Organizations in Argentina and the United States*, 11(2) Reg. & Governance 129–42 (1 Jan. 2016).

Prior research has examined the factors that shape the involvement of the state of origin in ensuring the implementation of migrant rights.<sup>5</sup> However, in this article, we turn our attention to the perspective of their destination state counterparts in order to better understand the factors that drive them to coordinate with countries of origin. By bridging the literature on diaspora policies with the literature on tripartite models of co-enforcement of labour standards, we argue that a bilateral perspective is necessary for understanding the dynamics of migrant rights enforcement.<sup>6</sup> To do so, we focus on the labour rights arena and the ways in which US federal labour standards enforcement agencies collaborate with Mexican consular institutions. We examine both the limits of claims-driven enforcement regimes and the resource investments that result in meaningful bilateral co-enforcement partnerships. Understanding that oftentimes these collaborations derive more significance from their symbolic power than from their functional implementation, we also examine what challenges emerge in the process. To do so, we draw on the practices of a sample of cities that Singer (2015) categorizes as *Emerging* (Raleigh, Atlanta, Phoenix/Tucson), *Post WWII* (Miami, San Diego, and Houston), and *Continuous* (Chicago/Midwest, New York, San Francisco) immigrant gateways.<sup>7</sup>

In the remainder of the paper, we first review the extant research on the emergence of diaspora policies and tripartite models of co-enforcement. Next, we discuss the way that US agencies structure these consular partnerships, and in which bureaucratic players become instrumental to negotiating and implementing these agreements. We consider the coordination challenges and investments that arise across agencies, and end by comparing how even one agency's approach (the US Department of Labor) can differ across place and jurisdiction. In particular, we identify three challenges: the limits of claims-driven enforcement regimes, the

<sup>5</sup> See e.g. Xóchitl Bada & Shannon Gleeson, *A New Approach to Migrant Labor Rights Enforcement: The Crisis of Undocumented Worker Abuse and Mexican Consular Advocacy in the United States*, 40(1) Lab. Stud. J. 32–53 (2015); Dolores M. Byrnes, *Driving the State: Families and Public Policy in Central Mexico* (Cornell University Press 2003); Alexandra Délano, *Mexico and Its Diaspora: Policies of Emigration since 1848* (Cambridge: Cambridge University Press 2011); David Fitzgerald, *A Nation of Emigrants: How Mexico Manages Its Migration* (Berkeley: University of California Press 2008); Anna Romina Guevarra, *Marketing Dreams, Manufacturing Heroes: The Transnational Labor Brokering of Filipino Workers* (Rutgers University Press 2009); Natasha Iskander, *Creative State: Forty Years of Migration and Development Policy in Morocco and Mexico* (Cornell University Press 2010); Robyn Magalit Rodriguez, *Migrants for Export: How the Philippine State Brokers Labor to the World* (Minneapolis: University of Minnesota Press 2010).

<sup>6</sup> Ian Ayres & John Braithwaite, *Partial-Industry Regulation: A Monopsony Standard for Consumer Protection*, 80 Cal. L. Rev. 13 (1992); Amengual & Fine, *supra* n. 4; Manoj Dias-Abey, *Sandcastles of Hope? Civil Society Organizations and the Working Conditions of Migrant Farmworkers in North America* (Thesis 2016), <https://qspace.library.queensu.ca/handle/1974/14585>; Janice Fine, *Enforcing Labor Standards in Partnership with Civil Society: Can Co-Enforcement Succeed Where the State Alone Has Failed?*, Politics & Society (19 Apr. 2017).

<sup>7</sup> Audrey Singer, *Metropolitan Immigrant Gateways Revisited, 2014* (Washington, DC: Brookings Institution 2015).

challenge of coordinating across distinct agency missions and priorities, and the power inequities inherent in mismatched agency staff and resource levels. We also find that bureaucratic actors exercise a great deal of discretion in their work, resulting in wide variation across jurisdictions. We conclude that while bilateral co-enforcement agreements are not a panacea to solve the structural dysfunction of labour rights enforcement for migrant workers, they are also not a useless mechanism that should be easily dismissed. These findings offer a view into the workings of relationships between origin and destination countries, and the ways they may collaborate to enforce the labour rights of migrant workers. This is of interest in particular to legal scholars and policy-makers as it moves the discussion away from rights on the books (laws, policies, memoranda of understanding) to the challenge of working bilaterally to implement immigrant worker rights.

## 2 LITERATURE REVIEW

### 2.1 THE LIMITS OF IMMIGRANT RIGHTS AND THE NEED FOR STRATEGIC BROKERAGE

Immigrants in the US and elsewhere enjoy a number of rights, ranging from public education, access to basic health resources, and as is the focus of this analysis, key labour protections. However, the mere existence of these rights and protections does not ensure that migrants and other marginalized populations are able to access them. This is true for a number of reasons, including the fact that migrants are not always aware of their rights or the bureaucracies that enforce them. In addition they may distrust even well-meaning institutions (especially in areas or regions dominated by anti-immigrant sentiment), and their legal status may foment a stigmatizing identity that disincentivizes them from seeking out rights and protections.<sup>8</sup>

The result is that institutional brokers are indispensable resources for migrants seeking to realize their rights. These resources typically include migrant social networks (such as friends and family),<sup>9</sup> but also civil society organizations that conduct outreach to migrant communities to educate and orient them.<sup>10</sup> These

<sup>8</sup> Shannon Gleeson, *Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims-Making*, 35(3) L. & Soc. Inquiry 561–602 (2010); Leisy J Abrego, *Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims Making for First and 1.5 Generation Immigrants*, 45(2) L. & Society Rev. 337–70 (2011).

<sup>9</sup> Alejandro Portes & Erik Vickstrom, *Diversity, Social Capital, and Cohesion*, 37(1) Ann. Rev. Soc. 461–79 (July 2011).

<sup>10</sup> Shannon Gleeson, *Conflicting Commitments: The Politics of Enforcing Immigrant Worker Rights in San Jose and Houston* (Ithaca, NY: Cornell University Press 2012); Xóchitl Bada, *Mexican Hometown Associations in Chicagoacán: From Local to Transnational Civic Engagement* (New Brunswick, NJ: Rutgers University Press 2014); Els de Graauw, *Making Immigrant Rights Real: Nonprofits and the Politics of Integration in San Francisco* (Ithaca, NY: Cornell University Press 2016).

groups become important intermediaries that work with and hold accountable the institutions in the destination country. Migrant civil society groups organize ubiquitous immigrant rights campaigns ranging from public health outreach,<sup>11</sup> community development efforts,<sup>12</sup> and the implementation of new federal immigration policies.<sup>13</sup> They also offer ancillary support to labour enforcement agencies that may otherwise struggle to reach immigrant workers.

However, migrant civil society groups are also engaging with efforts to hold the leaders of countries of origin accountable to the rights of their emigrant communities. The result has been an increased role of the country of origin in managing their diaspora, which has also led to coordination with destination state institutions. Though they are often the direct result of migrant civil society advocacy, partnerships between US enforcement agencies and diasporic institutions can also be attractive to each set of government agencies. While government agencies rely on them, they also struggle to coordinate with more varied, sometimes antagonistic, and resource-poor community groups. As a result, the Mexican consulate serves as a key, even if imperfect, liaison for US labour standards enforcement agencies. On the one hand, consular offices have the legitimacy and resources of a government bureaucracy. They also provide the linguistic and cultural access (relatively speaking) that US agencies typically lack. Yet, as diplomatic entities, their advocacy efforts are far more muted than those of community groups that may work with these agencies, and that typically play a more aggressive role in holding them accountable.<sup>14</sup>

In the sections below, we review the history of Mexico's diasporic policies around the rights of their emigrant workers, and then argue for their central role in influencing approaches to co-enforcement in the US

## 2.2 THE EMERGENCE OF MEXICO'S DIASPORA POLICIES AND THE LABOR RIGHTS WEEK

For most of the twentieth century the Mexican state followed a 'policy of introversion', or limited inclusion, when dealing with the incorporation of the Mexican diaspora in the United States.<sup>15</sup> From the mid-1970s, state-diaspora

<sup>11</sup> Irene Bloemraad & Veronica Terriquez, *Cultures of Engagement: The Organizational Foundations of Advancing Health in Immigrant and Low-Income Communities of Color*, 165 Soc. Sci. & Med. 214–22, (1 Sept. 2016): <https://doi.org/10.1016/j.socscimed.2016.02.003>.

<sup>12</sup> Nik Theodore & Nina Martin, *Migrant Civil Society: New Voices in the Struggle Over Community Development*, 29(3) J. Urb. Aff. 269–87 (2007).

<sup>13</sup> Els de Graauw & Shannon Gleeson, *Philanthropic Investments in Immigrant Rights During Turbulent Times, Politics of Color: Commentary & Reflections on Race, Ethnicity, and Politics* (blog) (14 Feb. 2018), <http://politicsofcolor.com/philanthropic-investments-in-immigrant-rights-during-turbulent-times/>.

<sup>14</sup> Gleeson, *supra* n. 10.

<sup>15</sup> Rachel Sherman, *From State Introversion to State Extension in Mexico: Modes of Emigrant Incorporation, 1900–1997*, 28(6) Theory and Soc'y 835–78 (1999).

relations were characterized by an initially hostile Mexican government attitude that gradually changed its policy on incorporating emigrants.<sup>16</sup> Under president Carlos Salinas de Gortari (1988–1994), the Mexican government adopted a model of ‘state extension’ aimed at engaging with the immigrant community abroad. This shift was fuelled in no small part by a growing opposition among – and political relevance of – migrants living in the United States, but also in Europe and Asia.

By and large, the shift towards a state model of diaspora engagement expanded quickly throughout Latin America. In 1996, only seven countries in Latin America had dual nationality legislations; in 2000, there were fourteen. Today nearly all Latin American countries allow dual nationality, and many have mechanisms for expatriate voting. The Mexican government had a number of factors incentivizing these engagements, including fostering enduring ties with citizens abroad, keeping political loyalties alive,<sup>17</sup> and maximizing the flow of migrant remittances – a massive source of income for the economies of the countries of origin.<sup>18</sup>

By the turn of the century, the Mexican government began to focus especially on workplace issues and started creating extensive partnerships with regulatory agencies, labour unions, workers’ rights groups, and hometown associations (HTAs).<sup>19</sup> These efforts were consolidated in 2004 when the Mexican Ministry of Foreign Affairs (SRE) signed the first memorandum of understanding (MOU) with the US Department of Labor (DOL) to improve access to labour standards enforcement for Mexican migrant workers in the United States. This federal framework guides the engagement of the dozens of US agencies and the fifty-two consular offices across the US. However, in practice, its implementation varies considerably from place to place. Four years after the first MOU between the US DOL and Mexico’s SRE, the DOL created the Consular Partnership Program (CPP), a co-produced regulatory enforcement framework focused primarily on educational outreach to immigrant workers. Then, in 2008, the first Labor Rights Week (LRW), a pilot program involving fifteen consulates, was launched. That program has now spread across the consular network in the United States and Canada and includes partnerships with a dozen other, mostly Latin American, countries. Today, the hallmark of the US–Mexico partnership around worker rights is the annual binational LRW, which is coupled with varying levels of year-round engagements

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<sup>16</sup> Manuel García y Griego, *The Bracero Policy Experiment: US-Mexican Responses to Mexican Labor Migration, 1942–1955* (1988).

<sup>17</sup> Felipe Arocena & Kirk Bowman, *Lessons from Latin America: Innovations in Politics, Culture, and Development* (Toronto: University of Toronto Press 2014).

<sup>18</sup> Fitzgerald, *A Nation of Emigrants: How Mexico Manages Its Migration*; David FitzGerald & David Cook-Martin, *Culling the Masses: The Democratic Origins of Racist Immigration Policy in the Americas* (Cambridge, MA: Harvard University Press 2014).

<sup>19</sup> Alexandra Délano, *The Diffusion of Diaspora Engagement Policies: A Latin American Agenda*, 41 *Pol. Geography* 90–100 (1 July 2014); Délano, *supra* n. 3.

between federal and state labour agencies, the Mexican consulate, and an array of civil society leaders.

### 2.3 ENFORCING THE GAP AND APPROACHES TO CO-ENFORCEMENT OF IMMIGRANT WORKER RIGHTS

Just as the Mexican state began expanding its migrant advocacy, US labour agencies too began seeking innovative outreach methods. However, bureaucracies of all stripes are complex entities that create unique organizational cultures that involve principals and agents that do not always agree, are subject to whims of political forces, and rely on the discretion of street-level bureaucrats.<sup>20</sup> Labour protection is an enforcement arena where these dynamics are particularly exacerbated, given the historically decentralized and highly politicized nature of worker protection in the United States.<sup>21</sup>

Authors elsewhere have documented the myriad of challenges that US agencies face in enforcing labour standards, especially for immigrant workers. Generally, these include a declining set of resources for enforcement efforts, a waning political will to create worker-centred policies (and actually implement them), and a changing economic environment that makes traditional enforcement approaches ineffective.<sup>22</sup> The ‘fissured workplace’ has eroded the legal category of ‘employee’, creating a series of new frameworks that make use of sub-contracting, part-time positions, ‘just-in-time scheduling’, and other technology-enabled schemes that help create a flexible workforce.<sup>23</sup> Immigrant workers are particularly concentrated in sectors in the new economy that are undergoing these rapid shifts. These workers also bring their own set of challenges, including undocumented and temporary legal status for some, which can complicate the ability to access certain key protections and remedies. In addition to fearing deportation and job loss (or even blacklisting),<sup>24</sup> immigrant workers may also be unfamiliar with labour

<sup>20</sup> Peter M. Blau, *The Dynamics of Bureaucracy* (Chicago: University of Chicago Press 1969); Michael Lipsky, *Street Level Bureaucrats* (New York: Russell Sage Foundation 1980); Kenneth J Meier & Laurence J O’Toole Jr, *Political Control Versus Bureaucratic Values: Reframing the Debate*, 66(2) *Pub. Administration Rev.* 177–92 (2006).

<sup>21</sup> Nelson Lichtenstein, *State of the Union: A Century of American Labor* (Princeton: Princeton University Press 2002).

<sup>22</sup> Annette Bernhardt et al., *The Gloves-off Economy: Workplace Standards at the Bottom of America’s Labor Market* (Ithaca: ILR Press 2008).

<sup>23</sup> David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* (Cambridge, MA: Harvard University Press 2014).

<sup>24</sup> Leah F. Vosko, *Legal but Deportable: Institutionalized Deportability and the Limits of Collective Bargaining Among Participants in Canada’s Seasonal Agricultural Workers Program*, 71(4) *ILR Rev.* 882–907 (1 Aug. 2018).



bureaucracies, lack the language and other skills to navigate them, or simply decide to keep silent, even in the wake of shocking abuses.

An extensive literature examines the various co-enforcement models that have evolved to help enforcement agencies bridge this gap, including the role of worker centres and other aspects of migrant civil society.<sup>25</sup> However, other actors are increasingly joining these partnerships, including diasporic bureaucracies. These ‘tripartite’ approaches to enforcement are aimed at improving compliance mechanisms by attempting to co-negotiate new rights and enforcement procedures for workers. Largely under pressure from civil society, Mexico has led this effort among the consular corps in the United States, and is often seen as the ‘elder brother’ among Latin American countries through its pioneering collaboration with US agencies. The DOL’s consular partnership program proposes a lofty goal of participatory democracy aimed at empowering public interest groups, with the potential to hold accountable employers who typically operate with impunity.<sup>26</sup>

Much of the existing research has examined the perspectives of countries of origin and the community organizations (many of them transnational) that attempt to hold their enforcement agencies accountable. In our discussion below, we instead focus on the perspective of agencies in destination countries that have entered into partnerships with both these consular institutions and community partners. Our goal is to try to understand the factors that motivate and sustain these partnerships, and to consider seriously how this might vary across local contexts of reception.

## 2.4 METHODOLOGY

This article focuses on the labour standards enforcement regime in the United States, one of the largest immigrant destination countries in the world. The United States provides a useful case study for understanding bilateral partnerships to enforce migrant rights, given the magnitude of immigrants in the labour force, the wide variation in labour and immigrant policies across this country, and the key role that civil society plays in brokering labour protections. These lessons provide insight for policy-makers and bureaucrats in other major migrant destinations, as well as for those seeking to better understand how diaspora institutions

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<sup>25</sup> Amengual & Fine, *supra* n. 4; Janice Fine & Jennifer Gordon, *Strengthening Labor Standards Enforcement Through Partnerships with Workers’ Organizations*, 38(4) *Pol. & Soc’y* 552–85 (Nov. 2010); Janice Fine and Gregory Lyon, *Segmentation and the Role of Labor Standards Enforcement in Immigration Reform*, 5(2) *Journal on Migration and Human Security* (23 May 2017); Deborah Weissman et al., *The Politics of Immigrant Rights: Between Political Geography and Transnational Interventions*, 1 *Mich. State L. Rev.* 117 (1 Jan. 2018).

<sup>26</sup> Ayres & Braithwaite, *supra* n. 6; Amengual & Fine, *supra* n. 4; Dias-Abey, *supra* n. 6.



(like consulates) and other supranational institutions can play a role in protecting the rights of migrant workers.

The work presented here is part of a broader project that includes a survey of all fifty-two Mexican consular offices in the United States in 2012, and interviews with nineteen representatives of US labour standards enforcement agencies (DOL, EEOC, and NLRB) and twenty-five representatives of the Mexican Secretary of Foreign Affairs between 2012 and 2015, including the dozen cities that pioneered the now annual LRW/*Semana de Derechos Laborales*. During the same time period, we also interviewed 160 of the civil society groups (including labour unions, worker centres, legal aid groups, and immigrant rights organizations) that interface with US labour standards enforcement agencies and consulates across the country in an effort to help realize the rights of their immigrant worker members and clients.

From this larger project, this article focuses specifically on those interviews with US agency representatives. In doing so, we highlight the importance of other actors beyond state bureaucracies, such as transnational civil society<sup>27</sup> and grass-roots labour advocates,<sup>28</sup> though they are not the central focus of our inquiry here. Our interviews primarily targeted the agency staff member who is the most knowledgeable about community outreach and working with the consulate. These interviews lasted on average an hour, and were often followed up by various exchanges requesting additional documentation and details. All interviews were conducted over the phone (as personnel are located across the country), many required official permission from agency leadership, and most were not granted permission to record. We instead relied on a two-person note-taking system.

We also review the various official documents and MOUs that have formalized these relationships. We compare the approaches of the major labour standards enforcement agencies in the country: the US DOL Wage and Hour Division (WHD), the Occupational Safety and Health Administration (OSHA, also under the DOL), the Equal Employment Opportunity Commission (EEOC), and the National Labor Relations Board (NLRB). We also note the important role of the DOL Bureau of International Labor Affairs (ILAB), which has been critical to diplomatic negotiations. Because many US states have state protections that are more favourable for workers than federal provisions, we also secondarily highlight the role of state labour agencies. Almost all of these interviews took place during the administration of President Barack Obama. Compared to previous and subsequent administrations, we maintain that this

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<sup>27</sup> Dias-Abey, *supra* n. 6.

<sup>28</sup> Michael Oswalt & César Rosado Marzán, *Organizing the State: The 'New Labor Law' Seen from the Bottom-Up*, SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, 27 Nov. 2017), <https://papers.ssrn.com/abstract=3078193>.

era provides a best-case scenario and hence a conservative estimate of the challenges to advancing immigrant worker rights.

In the second half of the paper, we concentrate our analysis on the WHD in order to better understand how even one agency's practices may vary across place. We highlight the complex structure of the WHD, which plays a primary role in the consular partnership with Mexico. We draw on examples in three different types of immigrant gateways, as defined by Singer (2015).<sup>29</sup> These vary in terms of local immigrant *size*, *concentration*, and rate of (new immigrant) *growth*. We focus on cities in these broad categories: three major continuous cities (Chicago, New York and San Francisco), three post-WWII cities (Houston, Miami, and San Diego), and three minor or major-emerging cities (Atlanta, Raleigh, Phoenix/Tucson).

### 3 FINDINGS

#### 3.1 KEY PLAYERS IN COORDINATING THE FEDERAL PARTNERSHIP

Consular partnerships around immigrant worker rights have involved dozens of bureaucratic entities at the federal, subfederal and supranational level. Each include a particular set of actors and interests, organizational missions and jurisdictions, and significant expenditure of resources to make these partnerships happen. Agencies have had to compete for a declining share of funding, and often closely guard the confidentiality of their clients in order to advance their enforcement mission, all of which make complicated collaboration.<sup>30</sup> The result is a long list of challenges not only to outside partnerships with state agencies, community partners and consulates, but also between regional offices and different directorates within.

The original agreement between the Mexican Secretary of Foreign Affairs and the US Labor Secretary was signed in 2004 under President Bush and with support from the DOL Office of Public Engagement. The EEOC soon followed with a similar national agreement, as did the NLRB.<sup>31</sup> Despite these national agreements, some local offices were coordinating long before their national agencies signed onto the bilateral MOU. For example, the EEOC was building relationships with the Mexican consulates in Chicago, Houston, Los Angeles and New York, years before the national office formally came on board.<sup>32</sup> These veteran collaborations helped guide the national template, which became particularly consequential for

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<sup>29</sup> Singer, *supra* n. 7.

<sup>30</sup> Bernhardt et al., *supra* n. 22.

<sup>31</sup> Interview, National Labor Relations Board (7 Jan. 2015).

<sup>32</sup> Gleeson, *supra* n. 10.

smaller and more politicized agencies such as the NLRB, which has tended to rely on national direction to coordinate its fourteen local agreements (representing twenty-six regional and additional satellite offices).<sup>33</sup> These national agreements have also prompted attention from supranational institutions, such as the Organization of American States, which held a dialogue via the Inter-American Conference of Ministers of Labor on the topic of *Labor Rights in the Americas* in 2013.<sup>34</sup> The 2004 bilateral agreement gained significant traction among the Latin American consular corps across the United States, leading to a diffusion of diaspora engagement policies as the ILAB extended the CPP through bilateral agreements with a dozen other Latin American countries and the Philippines.<sup>35</sup>

This bilateral partnership has required high-level diplomatic coordination, which has then had to be translated into the day-to-day minutiae of respective enforcement bureaucracies. For example, the Office of the Secretary, which oversees all inter-agency DOL tasks, has played the primary role of coordination. Other lateral offices have also played important roles, such as ILAB, which is the only entity with the formal authority to coordinate international agreements. Within the DOL Employment and Training Administration, the Office of Foreign Labor Compliance/Certification has overseen outreach to employers. Other key DOL players – such as the Office of the Solicitor, the Office of Public Affairs, and the Inspector General – have all also had a hand in negotiating the interests of their particular consistent in this multi-lateral partnership.

In addition to this federal framework for coordination, local offices have added an extra layer of complexity. At the local level, the newly created Community Outreach and Resource Planning Specialist (CORPS) staff of local Wage and Hour Division offices are entrusted with ‘leveraging [the agency’s] limited resources to maximize impact and create lasting compliance changes in communities’.<sup>36</sup> These staff have become the primary point of contact for consular and other community partnerships, though often without specific resources attached to their directives.

Beyond the Wage and Hour Division, the Occupational Safety and Health Administration (OSHA, also housed within the DOL) also relies on a complex structure for outreach, including cooperation from the Office of the Assistant

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<sup>33</sup> Interview, National Labor Relations Board (7 Jan. 2015).

<sup>34</sup> United States Department of Labor, *Labor Rights Dialogue in the Americas*, US Department of Labor Blog, 26 Nov. 2013, <https://blog.dol.gov/2013/11/26/labour-rights-dialogue-in-the-americas>.

<sup>35</sup> Belize, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Honduras, Peru, Nicaragua, Dominican Republic, and Guatemala have all collaborated with the DOL to participate in the annual Labor Rights Week, as well as year-round consular partnership programs. For more on the politics of diaspora engagement diffusion policies, see Délano, *supra* n. 19.

<sup>36</sup> Wage and Hour Division, *WHD Community Outreach Staff Contact Information* (July 2018), <https://www.dol.gov/whd/corpsFlyer.pdf>.

Secretary, the Directorate of Training and Education, the Directorate of Construction, and the Office of International Affairs. On the ground, Compliance Assistance Specialists have become important resources within each of the ten regions, as have the Diverse Workforce/Limited English Proficiency Coordinators (such as in New York where this staff member was key to coordinating language interpretation services for Latino immigrants who speak indigenous languages).<sup>37</sup>

Compared to the DOL, consular partnerships with other agencies have involved a far narrower set of actors. At the EEOC, the fifty-three field offices have mainly relied on outreach staff under the Office of Field Programs. At the NLRB, the Office of the General Counsel (a presidential appointee) plays an important role, along with Operations Management Staff. The Department of Justice Office of Special Counsel for Immigration-Related Unfair Employment Practices (whose charge it is to address claims of national-origin discrimination, among other charges) has also been an occasional federal partner, but with a much narrower jurisdiction.

Across most agencies, some amount of coordination has also happened with state agency counterparts, including state wage and hour agencies (such as the California Labor Commissioner), some of the now twenty-eight state-run OSHA plans, and on rarer occasion (as in Chicago) with the state agency responsible for regulating the provision of Workers Compensation benefits. EEOC's sister Fair Employment Practices Agencies (FEPAs) sometimes also play a role, though often have fewer resources, and can struggle 'just to keep doors open', as one agency staff member conceded.<sup>38</sup>

A final government actor – whose often obstructionist presence is an overarching barrier to all these efforts to advance the protection of migrant workers – is the US Department of Homeland Security's Immigration and Customs Enforcement (ICE) agency. The DOL (and other agencies) have historically signed an MOU with the ICE intended to prevent immigration enforcement efforts from obstructing labour agency investigations.<sup>39</sup> Yet, these MOUs with ICE have typically been weak tools for pro-actively protecting workers from both large-scale worksite raids and the more ubiquitous administrative audits perfected under the Obama administration.<sup>40</sup> So far, it seems as though President Trump's current

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<sup>37</sup> United States Department of Labor, *Spanish-Language Compliance Assistance Resources | Diverse Workforce/Limited English Proficiency Coordinators | Occupational Safety and Health Administration* (July 2018), [https://www.osha.gov/desp/compliance\\_assistance/diverse\\_workforce\\_lep\\_coordinators.html](https://www.osha.gov/desp/compliance_assistance/diverse_workforce_lep_coordinators.html).

<sup>38</sup> Interview, Equal Employment Opportunity Commission (1 Dec. 2015).

<sup>39</sup> United States Department of Labor, *Revised Memorandum of Understanding Between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites* (7 Dec. 2011), <https://www.dol.gov/asp/media/reports/DHS-DOL-MOU.pdf>.

<sup>40</sup> Kati L. Griffith & Shannon Gleeson, *Immigration Enforcement and the Employment Sphere: Unpacking Trump-Era 'Immigration' Law*, 48 *Southwestern L. Rev.* (forthcoming).

Secretary of Labor, Alex Acosta, has kept in place many of the Obama-era promises to maintain a firewall with immigration enforcement efforts, however limited in practice.<sup>41</sup>

Beyond government agencies, civil society organizations have served as both a source of assistance and accountability for state actors in the US, Mexico, and beyond.<sup>42</sup> These include traditional labour unions (such as the United Food and Commercial Workers), national advocacy organizations and networks (such as Farmworker Justice and the National Day Labor Organizing Network and its affiliates), HTAs (such as *Casa Michoacán* in Chicago), transnational labour advocates (such as *Centro de los Derechos del Migrante* based in Baltimore, Mexico City, and Oaxaca), and other community based organizations (such as HOLA, a grass-roots Latino organizations based in northeast Ohio).<sup>43</sup> Unlike the bilateral partnerships between US and Mexican agencies, these community partnerships remain for the most part informal and unfunded. The few exceptions include the EMPLEO (Los Angeles) and LABORAL (New York City) partnerships, which rely on community-based organizations to run their consular hotlines. This lack of support presents a significant barrier to sustainable tripartite co-enforcement that involves both state actors and community advocates.

### 3.2 THE STRUCTURE AND SUBSTANCE OF MOUS

The agreements structuring consular partnerships with US labour standards enforcement agencies are important documents that help to standardize these bilateral efforts and motivate local actors on the ground. On the one hand, they seem to be a public relations stunt. On the other, they serve as a formal directive for otherwise reticent or overstretched agencies. The MOUs are typically signed in a formal high-profile signing ceremony attended by directors from the US agencies and the Mexican ambassador in Washington, D.C. In local jurisdictions across the country, Letters of Arrangement (LOA) are then signed by the local agency lead (e.g. district director or regional administrator for the local DOL WHD Office) and the respective General Consul. In addition to those partnerships with the Mexican

<sup>41</sup> Paul Mirengoff, *Alex Acosta Refuses to Disturb Obama/Perez Pro-Illegal Immigrant Policies*, Power Line (19 Feb. 2018), <https://www.powerlineblog.com/archives/2018/02/alex-acosta-raises-inaction-to-art-form-at-dol.php>.

<sup>42</sup> Bada & Gleeson, *A New Approach to Migrant Labor Rights Enforcement: The Crisis of Undocumented Worker Abuse and Mexican Consular Advocacy in the United States*; Xóchitl Bada, Els de Graauw & Shannon Gleeson, *Union Organizing, Advocacy, and Services at the Nexus of Immigrant and Labor Rights*, in *No One Size Fits All: Worker Organization, Policy, and Movement for a New Economic Age* (Janice Fine et al. eds, Ithaca, NY: LERA Research Volume Series (distributed by ILR/Cornell University Press), 2018).

<sup>43</sup> Interviews, *Equal Employment Opportunity Commission* (12 Jan. 2015) and *Occupational Safety and Health Agency* (14 Jan. 2015).

government, the DOL has pursued similar partnerships with Belize, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mauritius, Nicaragua, Paraguay, Peru, the Philippines, and even Spain.<sup>44</sup>

The actual LOA that each *local* office signs follows a uniform template in order to maintain consistency and avoid having to renegotiate terms set at the federal level. For example, the agreement for the DOL reads as follows:

These “Agreements Establishing an Understanding (AEU)” start with the overall objective, which is to establish “a collaborative relationship to provide Mexican nationals in X with information, guidance and access to education and training resources to help them exercise their workplace rights – particularly with regard to reducing violations of the minimum wage, overtime, record keeping, child labour, safe housing and transportation provisions of the laws and regulations administered and enforced by WHD, regardless of their immigration status. The parties will work together to educate Mexican nationals about their rights as workers in the United States and the responsibilities of employers under the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act, and the H-2A and H-2B programs under the Immigration and Nationality Act.”<sup>45</sup>

Agreements then outline goals for Training and Education, Outreach and Education, and the ‘Promotion of a National Dialogue’. The OSHA, EEOC, and NLRB agreements look similar in structure to that of WHD, save reference to their specific mandated agency legislative directive.<sup>46</sup> These documents are then published in both English and Spanish and publicized, some more effectively than others.

While appearing to be a mere bureaucratic artefact, the goal of the MOU, according to one DOL leader, is to ‘get people to take notice’, of these partnerships. The MOUs are then used to implement the partnership, and to hold agency leaders accountable to this public commitment.<sup>47</sup> One EEOC administrator explained how MOUs also ‘send the message that this is a priority ... to all those who don’t want to get on board’. The agreement also serves as a public

<sup>44</sup> Interviews, Department of Labor (25 Jan. 2013 and 14 Oct. 2014).

<sup>45</sup> Wage and Hour Division, *US Labor Department, Consulate General of Mexico Sign Agreement Feb. 19 to Protect Rights of Migrant Mexican Nationals: Workers in Texas, New Mexico, to Benefit*, DOL WHD: Dallas News Release (18 Feb. 2014), <https://www.dol.gov/whd/media/press/whdpressVB3.asp?pressdoc=Southwest/20140218.xml>.

<sup>46</sup> Occupational Safety & Health Administration, *Arrangement Establishing an Alliance Between the US Department of Labor’s Occupational Safety and Health Administration Phoenix Area Office and the Consulate General of Mexico in Phoenix, Arizona, the Consulate General of Mexico in Nogales, Arizona, the Consulate of Mexico in Tucson, Arizona, the Consulate of Mexico in Yuma, Arizona, the Consulate of Mexico in Douglas, Arizona* (1 June 2010), [https://www.osha.gov/dcspp/alliances/regional/reg9/consulate\\_mex\\_az\\_english.html](https://www.osha.gov/dcspp/alliances/regional/reg9/consulate_mex_az_english.html).

<sup>47</sup> Interview, Department of Labor (14 Oct. 2014).

relations tool for Mexico,<sup>48</sup> though formal support from the Mexican SRE is also critically important as consular staff frequently rotate in and out of local offices.

While the specific content of an MOU differs from place to place, the annual LRW has become a national point of bilateral collaboration.<sup>49</sup> LRW activities range from tabling inside consular offices, to training out in the community, depending on the capacity of the local office and the specific outreach topic they choose in any given year. Federal agencies are the most common guests at the LRW, but some consulates also engage state and local counterparts. Despite the annual weeklong fanfare, US agencies often struggle to prioritize year-round engagement, with some exception.<sup>50</sup> For both the DOL (including Wage and Hour and OSHA) and more recently the EEOC, the LRW has become a regular facet of Latino outreach. In some offices, the partnership has also allowed for regular information-sharing and cross-filing between agencies to provide case management for workers' complex claims, with some help from the consulate. For example, OSHA has held various annual summits focusing on the health and safety of Latino workers, while the EEOC and its sister Fair Employment Practice Agencies (FEPAs) have collaborated with the DOL, embassy, and consulate to discuss outreach to the Latino immigrant workforce.

However, the specific nature and limits of consular partnerships certainly vary across agency. Notably, NLRB representatives characterized their agency's participation with the consulate as 'ancillary to the mission, but directly complementary'. In part, this has to do with ramifications of the 2002 *Hoffman Plastics v. NLRB* Supreme Court decision, which limits the remedies the agency is able to provide to undocumented workers. 'What reason do [workers] have to come to us?', one NLRB staff explained.<sup>51</sup> The NLRB sees the project of reaching out to immigrant workers as far more challenging than for the DOL, due to the highly politicized nature of union activity, the lack of meaningful remedies for undocumented workers, and the more pressing nature of other workplace concerns, such as wage theft and health/safety. As a result of these constraints, the NLRB (a relatively smaller federal agency with far more limited scope) has only entered into binational partnerships with three countries (Mexico, Ecuador, and the Philippines) across its fourteen regional offices.

In sum, the key differences between these four major agencies have largely to do with the structure of enforcement on the ground, the role that worker

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<sup>48</sup> Interview, Equal Employment Opportunity Commission (12 Jan. 2015).

<sup>49</sup> United States Department of Labor, *Labor Rights Week 2017* (2017), <https://www.dol.gov/general/labourrightsweek>.

<sup>50</sup> Interview, Department of Labor (14 Oct. 2014).

<sup>51</sup> Interview, NLRB (7 Jan. 2015).



claims-making (worker initiated legal mobilization, as compared to proactive agency investigations) plays in compliance efforts, and the legal and political context that shapes each agency. DOL bilateral ministerial discussions are at the foundation of both the Wage and Hour and OSHA partnerships. The EEOC is composed of ‘more ground-up kind of people’, and the agency’s national leadership serve mostly to provide more cohesion, in order to consolidate local practices, and make agreements uniform. Finally, the directives of top NLRB leadership does matter, but ultimately the legal restrictions keep the agency from working with migrant communities in the same way as their sister agencies do.

### 3.3 CHALLENGES TO CONSULAR PARTNERSHIPS

#### 3.3[a] *Mission and Jurisdictional Differences*

Engaging foreign governments raises a number of challenges for cash-strapped US agencies.<sup>52</sup> However, there are also clear benefits as consular partners can help US agencies who otherwise lack the trust and resources to reach immigrant communities effectively.<sup>53</sup> Collaborating with community organizations that advocate on behalf of vulnerable migrant workers also serves this end. However, the formal bureaucratic functioning of the consulate, its non-interventionist diplomacy, and its familiar hierarchical structure sometimes make them an easier partner for US labour standards enforcement agencies.<sup>54</sup> Migrant-led organizations and other grassroots civil society groups may have a closer (and perhaps more legitimate) relationship to the community, but are also often the fiercest critics of both US and Mexican agencies. Though many community organizations have at times fought successfully for a seat at the table of labour standards enforcement, they are often excluded. The same is true for some consular partners; not all local US agencies meaningfully engage those national agreements that are in place. But among those who do, each must navigate their respective agency missions as they do so.

Further, each US agency has a distinct approach to – and metric for measuring the success of – its consular partnership. DOL representatives, for example, described OSHA as ‘more results-driven’ and bound to measurable goals of

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<sup>52</sup> Shannon Gleeson & Xóchitl Bada, *Mexico’s Consular Partnerships to Enforce Labor Standards for Immigrant Workers: Variation in Implementation Models Across US Cities*, paper presented at the Conference on Federalism and US Work Regulation, Rutgers School of Management and Labor Relations (New Brunswick, 8–9 Nov. 2018).

<sup>53</sup> Shannon Gleeson, *Means to An End: An Assessment of the Status-Blind Approach to Protecting Undocumented Worker Rights*, 57(3) *Sociological Perspectives* 301–20 (2014).

<sup>54</sup> Gleeson, *supra* n. 10.

improvement, compared to the WHD. As a result, OSHA regional administrators may fall in line with national directives, or instead choose to push back against them.<sup>55</sup> In large cities such as Los Angeles and New York, agency leaders must also balance their bilateral relationships with various country consular offices, or even multiple Mexican consular offices in a single region (as in Northern and Southern California).<sup>56</sup>

The strategic enforcement priorities of a single agency may also vary across region and industry. For example, within OSHA, outreach priorities in places with a large maritime industry are complex and bound by federal oversight. However, in other places like the Pacific Northwest, where a large number of subcontracted undocumented workers are employed on federal land, additional inter-agency coordination is necessary.<sup>57</sup> In the more than half of the country with a state health/safety plan in place, the federal OSHA must also coordinate with state OSHA plans as they navigate consular relationships, and even these efforts can vary within a region, as is the case in Region 10 where three of the four states (Washington, Oregon, Idaho, and Alaska) have their own plan.<sup>58</sup> Agency priorities may also shift, based on the composition of their local workforce. The NLRB, for example, described needing to build a distinct outreach strategy for the Hmong immigrant population in Minneapolis, the Filipino workforce in Los Angeles, and the Polish in Chicago, each of which have different needs from the Mexican immigrant population.<sup>59</sup>

In sum, the focus of each pair of agencies is likely to vary not only according to the statute that directs each enforcement arena, but also based on the workforce and industries that are typical of these local communities.

### 3.3[b] *Coordinating and Communicating through the Bureaucracy*

Labour standards enforcement involves a complicated web of bureaucratic activity. By design, agencies have strong lines of delineation between each other, and ‘coordination is not the default’, as explained one high-level DOL member of staff.<sup>60</sup> This is in part due to statutory differences, but also as a way to protect claimant confidentiality and limited resources dedicated to enforcement. This means that sometimes agencies may even be more likely to get information from

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<sup>55</sup> Interview, Department of Labor (25 Jan. 2013).

<sup>56</sup> Interview, Department of Labor (21 Nov. 2014).

<sup>57</sup> Brinda Sarathy, *Pineros: Latino Labour and the Changing Face of Forestry in the Pacific Northwest* (Vancouver: UBC Press 2012).

<sup>58</sup> Interview, OSHA (8 Dec. 2014).

<sup>59</sup> Interview, NLRB (7 Jan. 2015).

<sup>60</sup> Interview, Department of Labor (25 Jan. 2014).

consular personnel than from their US partners, as explained one EEOC leader who often relied on updates from ‘friends at the embassy’, rather than her sister US agency leaders.<sup>61</sup> It is therefore hard enough to coordinate within large bureaucracies (such as the forty-nine WHD Division and thirty OSHA offices), and becomes even more challenging when additional agencies such as the EEOC and the NLRB (with vastly different bureaucratic structures and institutional cultures) are included in consular partnerships.

Local context can also shape the prospects for effective coordination. Labour offices in some cities have had more established relationships with their consular partners than others. For example, Houston’s Justice Equality in the Workplace (JEW) and Los Angeles’s Employment Education and Outreach (EMPLEO) initiatives both pre-dated any national agreements. As a result, officials here have been able to negotiate longer-lasting (three, versus two-year) agreements.<sup>62</sup> The particular geography and organizational structure in each city may also demand a different type of partnership. For example, DOL offices in San Antonio and El Paso preferred to sign by area (rather than regional) office to avoid conflicts with other offices in the region.<sup>63</sup>

Despite these differences, US agencies faced several challenges in common. Consular staff tended to be highly specialized and bound to different protocols, making it difficult to get firm commitments for collaboration with their US counterparts.<sup>64</sup> Directives handed down from the Mexican Embassy in Washington, DC can also sometimes conflict with the priorities of a local consular office, which could be focused on another area of migrant rights entirely. In turn, US agencies also struggled to convey to their consular counterparts, who may have limited training in US labour and employment law, what aspect of the ‘ornate labyrinth of (U.S.) labour protection’ they represented. Less high-profile agencies and issue areas, such as the NLRB and collective bargaining, often got ‘lost in the shuffle’, thus making strong pro-active local leadership a critical component of successful participation.<sup>65</sup>

### 3.3[c] *Sustainability: Staff and Resources*

Though labour standards enforcement agencies are generally administrative bureaucracies, they are also impacted by the whims of the political leaders in a specific era and place. For example, when Hilda Solis came into the DOL, one of

<sup>61</sup> Interview, EEOC (1 Jan. 2015).

<sup>62</sup> Interview, Department of Labor (21 Nov. 2014).

<sup>63</sup> Interview, OSHA (8 Dec. 2014).

<sup>64</sup> Interview, EEOC (12 Jan. 2015).

<sup>65</sup> Interview, Department of Labor (14 Oct. 2014).

her initiatives was to create a template for the consular partnership,<sup>66</sup> an innovation whose legacy has persisted through various staff changes at the Mexican consulate. Everyday career staff can also be crucial for seamless transitions during political turnover. For example, one respondent characterized the process of signing/re-signing consular agreements in the Southwest/Western regions of the DOL as 'clockwork', compared to other places where the consular collaboration was a much lower priority for agency leaders.<sup>67</sup> Local US agency offices might also focus on priorities set by civil society partners and the local consulate during planning meetings.<sup>68</sup> For example, in 2017, local offices in Chicago agreed to focus that year's outreach on issues related to sexual harassment, workers' compensation, and collective bargaining rights.

Therefore, formal agency agreements aside, leadership also matters and can set the tone for outreach and enforcement. This is critical especially in the case of immigrant workers, where agencies have to work harder to drive home the message that workers have rights regardless of their immigration status. Sometimes this is a partisan issue, though simple commitment to an agency's central mission can also create openings. For example, even under Elaine Chao (a Bush appointee), the DOL maintained some level support for protecting immigrant workers, and this seems to continue nominally under the Trump administration.<sup>69</sup> However, strong agency leaders matter even more, as was especially the case under DOL Secretary of Labor Hilda Solis, who came from a labour advocacy and immigrant rights background and emanated a message of immigrant rights, while investing in programs to advance them.<sup>70</sup>

Nonetheless, agency leadership and political priorities in origin and destination governments can change over time, resulting in strained relations between agency leaders.<sup>71</sup> For example, this was the case when the Mexican government supported a civil society petition against the DOL under the labour side-agreements of the North American Free Trade Agreement.<sup>72</sup> In addition, the quotidian realities of labour standards enforcement play out in the ongoing cash-strapped programming and day to day investigations of agencies working in local communities.<sup>73</sup>

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<sup>66</sup> Interview, Department of Labor (25 Jan. 2013).

<sup>67</sup> Interview, Department of Labor (21 Nov. 2014).

<sup>68</sup> Interview, Department of Labor (21 Nov. 2014).

<sup>69</sup> Interview, Department of Labor (14 Oct. 2014).

<sup>70</sup> Hilda L. Solis, *MarketWatch: Statement by Secretary of Labor Hilda L. Solis on 85th Birthday of Cesar E. Chavez, UFW: United Farm Workers* (blog), 29 Mar. 2012, <http://www.marketwatch.com/story/statement-by-secretary-of-labour-hilda-l-solis-on-85th-birthday-of-cesar-e-chavez-2012-03-29>.

<sup>71</sup> Interview, NLRB (7 Jan. 2015).

<sup>72</sup> Interview, Department of Labor (25 Jan. 2013).

<sup>73</sup> Interview, Department of Labor (21 Nov. 2014).

### 3.4 HOW PLACE MATTERS FOR TRIPARTITE CO-ENFORCEMENT

In this final findings section, we focus on the varied ways in which local labour agencies struggled to enact consular partnerships on the ground. To do so, we focus on DOL Wage and Hour Division offices across several types of immigrant gateways, highlighting both persistent challenges and best practices.

To begin, it is no surprise that some of the most engaged consular partnerships were located in the most established and continuous immigrant destinations. For example, the Western Region DOL's EMPLEO program is one of the most developed examples of tripartite co-enforcement in the country. Here each district office has a CORPS representative assigned, which helps coordinate local outreach efforts that feed into an intake and referral hotline that informs claimants of their rights under both federal *and* (typically more generous) state protections. The line is staffed in Spanish by a group of volunteers housed by the Catholic Diocese of San Bernardino, and works in conjunction with several Central American consulates, other state agencies, and regional nonprofits. Established in 2004, the program recovered more than three million USD in back wages in the first year of operation, which resulted in additional investments from the national office. The Western region has also extended the collaboration to other countries and the WHD in San Francisco has even signed an LOA with the consulate of Philippines.<sup>74</sup>

Similarly, the New York City WHD has a longstanding partnership with the Mexican consulate, despite being located in one of the most diverse cities in the country and one of the largest and most populous consular jurisdictions.<sup>75</sup> The agreement between the WHD and the NYC Mexican consulate has operated continuously since 2006 and remained robust despite reductions in staff (including a third of their entire staff in the six months prior to this interview). However, because of buy-in from both agency leaders, the WHD office in NYC offers biweekly morning visits to the consulates to educate workers in Spanish on different issues. The centrepiece of this collaboration is the *Alianza Laboral* program, a Spanish language hotline that provides an intake and referral service for workers. It is staffed by the Catholic Immigration Office of the Diocese of Brooklyn with support from the Mexican consulate, WHD, OSHA, and the NY State Labor Department (whose protections are more robust than the federal Fair Labor Standards Act). By 2010, the program claimed to have recovered more than half a million USD owed to immigrant workers due to various work violations, and the New York City District Attorney has also come to be known for

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<sup>74</sup> Interview, WHD San Francisco (13 Jan. 2015).

<sup>75</sup> Interview, WHD New York office (6 Jan. 2015).

taking a particularly tough stance on prosecuting wage theft cases in conjunction with consular partners.<sup>76</sup>

Houston, located in an area characterized by relatively mixed policies for both worker and immigrant rights, is also the most diverse city in the country and home to one of the oldest consular partnerships. Here, the Justice and Equality in the Workplace partnership emerged from local agreements with the Mexican consulate pioneered by the EEOC in 2000. Beyond the annual LRW events, the partnership hosts a Spanish language referral hotline that has been supported by the Mexican consulate and civil society groups such as the AFL-CIO labour council and the *Fe y Justicia* worker center. Though it has waned, the collaboration with the Mexican consulate has served as a model to sign similar formal agreements with Honduras and Ecuador, as well as informal ones with Colombia, El Salvador, Guatemala, Peru, Nicaragua, and Panama. In contrast, in cities such as Raleigh, Atlanta, and Phoenix/Tucson that are hotbeds of anti-immigrant legislation, WHD agents recounted significant challenges to immigrant outreach and consequently leaned more heavily on the national MOUs for creating collaborative enforcement efforts aimed at addressing wage theft and other abuses.

Finally, what happens in urban cores does not always extend across the region. For example, the consular partnership with the WHD in Miami (which covers thirteen counties) struggles to meet the sprawling region's needs. The WHD does have close – though informal – collaborations with the Restaurant Opportunity Center (ROC) and the Coalition of Immokalee Workers (CIW). However, because of conflicting jurisdictions with the local Mexican consulate, the Miami office often has to refer workers to offices in Jacksonville and Tampa, hours away.<sup>77</sup> Similarly, border cities such as San Diego, and the more isolated Calexico, seem a world away from Los Angeles' well-seasoned EMPLEO consular program. The same can be said for the outlying suburban and rural cities that ring Chicago. With fewer advocacy groups to hold them accountable, the successes of Chicago's pioneering *Ventanilla Laboral* partnership do not extend far beyond Cook County.

In sum, while national agreements are critical tools for structuring consular partnerships, place matters for the particular ways in which they are deployed.

#### 4 CONCLUSION

This article has examined the challenges and opportunities of partnerships between origin and destination countries to advance the rights of immigrant workers.

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<sup>76</sup> Chris Opfer, *Prosecutors Treating 'Wage Theft' as a Crime in These States*, Lab. & Emp. Bloomberg L. (26 June 2018), <https://www.bna.com/prosecutors-treating-wage-n73014476875/>.

<sup>77</sup> Interview, WHD CORPS, Miami (17 Feb. 2015).

Focusing especially on the perspective of US agencies that partner with the Mexican consulate – such as the DOL Wage and Hour Division, the OSHA, the EEOC, and the NLRB – we find that despite the many incentives to come together, their ability to do so is not without substantial challenges. US agencies must process a never-ending flow of worker claims, while engaging in a delicate dance of diplomatic decorum. Similarly, Mexican and other consular staff engaging in these partnerships operate under a non-interventionist framework that severely limits the available mechanisms to support claims-making for their constituents. How agencies engage in this dance depends on a number of factors, including the physical scope of the agency, the type of staff engagement permitted, and changing political winds. This means that the practical ability for offices on the ground to participate in meaningful ways with co-enforcement efforts varies widely, ranging from occasional community presentations, to a fully staffed hotline, or biannual working meetings with multiple stakeholders. This lack of uniformity is exacerbated further by a general lack of centralized resources dedicated to these partnership activities.

To be sure, the CPP and its bilateral co-enforcement agreements are neither a panacea to solve the structural dysfunction of labour rights enforcement for migrant workers, nor a useless mechanism that should be easily dismissed. The value of these and other co-enforcement mechanisms rests on the prospects for signing partnerships with other countries beyond Mexico (who often lack the emigrant population, office personnel, and outreach resources to do so). Civil society actors are also critical to these bilateral agreements. Even though they are often harshly critical of both the US and Mexican governments, and especially of the byzantine pace of conventional labour standards enforcement, many recognize that bilateral agreements have the potential to build better relationships between enforcement agencies and migrant workers, in particular. They do so, however, with eyes wide open and a recognition that budget and staffing constraints significantly limits consulates ability to engage in regular and reliable outreach on the ground.

While the ability of consular partnerships to protect the labour rights of migrant remains severely limited, this framework has opened a window of opportunity to help workers better navigate the complex web of enforcement procedures. A tripartite enforcement structure that allows countries of origin and civil society actors a seat at the table, albeit with limited powers, also has the potential to improve the accountability of both US labour agencies and diasporic bureaucracies. Looking forward, as we enter a new era of both *worker rights* and *immigration* enforcement, it will be telling to see how agency efforts survive through an administration that is hostile to both. As the US becomes increasingly fractured



in its response to these federal changes, future research will need to examine how these consular partnerships emerge and persist across time and place.

*Table 1 List of Agencies Interviewed*

<i>Select Federal Agencies (National Offices)</i>	<i>Department of Labor Local Offices by Gateway Type (Singer 2015)</i>
US Department of Labor – Office of Public Engagement – Bureau of International Labor Affairs – Wage and Hour Division – Occupational Safety and Health	<u>Continuous</u> – Chicago/Midwest (major) – New York (major) – San Francisco (major) – Western Region
Equal Employment Opportunity Commission National Labor Relations Board	<u>Post-WWII</u> – Houston – Miami – San Diego
	<u>Emerging</u> – Atlanta (major) – Raleigh (minor) – Phoenix/Tucson (major/minor)