

# THE TRANSFORMATION OF WORK: Challenges and Strategies



## Roles for Workers and Unions in Regulating Labor Recruitment in Mexico



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Recruitment in Mexico***

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January 2015**

## *Roles for Workers and Unions in Regulating Labor Recruitment in Mexico*

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### INTRODUCTION

One of the most exploitative phases of transnational labor migration—recruitment for work abroad—takes place before a migrant has even left her home country. During the recruitment process, it is routine for recruiters and their agents to make false promises about the jobs on offer, charge would-be migrants fees that exceed their annual income, and offer loans at usurious rates, demanding property deeds as collateral.<sup>2</sup> These practices, and others even more disturbing, reflect the fact that recruitment is a functionally unregulated field. Origin countries are deeply conflicted about any enforcement that might limit their citizens' access to employment abroad,<sup>3</sup> and destination nations too often regard what happens to migrants on other shores as none of their concern. Recruitment is also a heavily subcontracted industry, which allows the principle actors to avoid what liability exists by pointing to entities further down the chain.

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<sup>1</sup> The author gratefully acknowledges the Solidarity Center's support for this paper. An Open Society Fellowship provided the primary funding for my larger project on recruitment in supply chains; much of that work undergirds this report. Alex Cárdenas provided essential research assistance. My greatest appreciation goes to the advocates, organizers, and guest workers who have shared their time and insight with me over the course of this project. Individuals interviewed for this paper are listed in Appendix A.

<sup>2</sup> The problems of labor recruitment have been well documented. See Alejandra Constanza Ancheita Pagaza and Gisele Lisa Bonnici, *Quo Vadis? Recruitment and Contracting of Migrant Workers and Their Access to Social Security: The Dynamics of Temporary Migrant Labor Systems in North and Central America*, INEDIM (Feb. 2013), at 40, available at

<http://estudiosdemigracion.org/inedim2013/documentosypub/publicaciones/reclutamientoconportada.pdf>; *Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change*, CENTRO DE LOS DERECHOS DEL MIGRANTE, INC., available at <http://www.cdmigrante.org/wp-content/uploads/2013/01/Recruitment-Revealed-Fundamental-Flaws-in-the-H-2-Temporary-Worker-Program-and-Recommendations-for-Change.pdf> [hereinafter Centro de los Derechos del Migrante, *Recruitment Revealed*]; *Visas, Inc: Corporate Control and Policy Incoherence in the U.S. Temporary Labor System*, GLOBAL WORKERS JUST. ALLIANCE, at 40-45, available at [http://www.globalworkers.org/sites/default/files/visas\\_inc/index.html#/44/](http://www.globalworkers.org/sites/default/files/visas_inc/index.html#/44/); *The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse*, THE INT'L LAB. RECRUITMENT WORKING GROUP, available at <http://fairlaborrecruitment.files.wordpress.com/2013/01/the-american-dream-up-for-sale-a-blueprint-for-ending-international-labor-recruitment-abuse1.pdf> [hereinafter ILRWG, *The American Dream Up for Sale*]; *Leveling the Playing Field: Reforming the H-2B Program to Protect Guestworkers and U.S. Workers*, NAT'L GUESTWORKER ALLIANCE, available at <http://www.guestworkeralliance.org/wp-content/uploads/2012/06/Leveling-the-Playing-Field-final.pdf>; Mary Bauer & Meredith Stewart, *Close to Slavery: Guestworker Programs in the United States*, S. POVERTY L. CENTER (2013), available at <http://www.splcenter.org/sites/default/files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf>.

<sup>3</sup> Origin country governments fear that demanding better conditions of recruitment or work abroad will cause employers to look elsewhere for their labor supply. They also cite their lack of legal jurisdiction over the actions of employers in destination nations, the absence of transnational coordination of enforcement, and the highly subcontracted nature of the recruitment industry as additional obstacles. See NICOLE CONSTABLE, *MAID TO ORDER IN HONG KONG: STORIES OF MIGRANT WORKERS* 40 (2d ed. 2007); Judy Fudge, *Global Care Chains, Employment Agencies and the Conundrum of Jurisdiction: Decent Work for Domestic Workers in Canada*, 23 CAN. J. OF WOMEN IN L. 234, 244-246 (2011).

Frequently, then, the only real law recruitment firms face is that of supply and demand. In a context where the number of would-be migrant workers far exceeds the availability of employment, opportunities for abuse abound.

Fortunately, this is a moment of active experimentation around the world with new standards and strategies to curb recruitment violations. It is exciting to see so much thought and energy, both public and private, going into what was once an invisible problem. I argue here and elsewhere, however, that this developing field would benefit from additional attention to three features: a primary (or at least equal) focus on the ultimate employer rather than the recruiter as the target of enforcement, the creation of meaningful economic incentives for employer and recruiter compliance, and more active roles for workers in the fight against recruitment abuses.

In a paper to be published by the International Labor Organization in 2015, I address the first two issues. I contend that a key goal of efforts to regulate recruitment should be to reshape the incentives of the entities at the top of the product or service supply chain, so that in turn they become the forces driving compliance by the recruiters below. Likewise, recruiters at the top of labor supply chains must be made liable for the false promises and unauthorized charges of their sub-agents and brokers.<sup>4</sup>

In this paper, I address the final issue of migrant worker agency and participation, examining roles for guest workers themselves as organizers, monitors, and policy-setters in supply chain initiatives and other efforts to address recruitment violations. I begin with an argument for the importance of such initiatives. I then set out and analyze case studies of three very different efforts to engage migrants in this way, all with a base in Mexico and all involving workers who travel to the United States on so-called “H-2 visas,” to do seasonal work in agriculture or food processing. The efforts include:

- ❖ **The Coalition of Temporary Workers of Sinaloa, supported by ProDESC:**<sup>5</sup> A new Mexican temporary migrant workers’ coalition, supported by a Mexican human rights organization.
- ❖ **CIERTO, a project of the Equitable Food Initiative and the United Farm Workers:** A new pilot migrant farm worker recruitment and training entity based in Mexico that is a project of a U.S.-based multi-stakeholder initiative and a U.S. union.
- ❖ **The Monterrey Office of the Farm Labor Organizing Committee, AFL-CIO:**<sup>6</sup> The Mexican headquarters of a U.S. union, charged with organizing and

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<sup>4</sup> Jennifer Gordon, *Regulating Global Labor Recruitment in a Supply Chain Context*, ILO Discussion Paper (forthcoming 2015) [hereinafter Gordon, *Regulating Global Labor Recruitment*].

<sup>5</sup> ProDESC receives funding from the Solidarity Center.

<sup>6</sup> FLOC receives funding from the Solidarity Center for its work in Mexico.

administering the union's decade-long collective bargaining agreement governing H-2A workers contracted by the North Carolina Growers Association.<sup>7</sup>

The paper concludes with an analysis of recurring challenges and lessons for the future.

## **PART 1: Overview of the Current State of Recruitment Regulation and Advocacy for Reform in Mexico and the United States**

For many decades, Mexico regulated labor recruitment solely through Article 28 of its Federal Labor Law.<sup>8</sup> Article 28 mandated that all employers of Mexican guest workers sign a written contract with those workers setting out key identifying information for both parties, specifying the nature of the job, and establishing wages and working conditions. Through such contracts, employers were also required to commit to covering the cost of the worker's return trip and specifying the arrangements for housing and medical care. This law was rarely if ever enforced.<sup>9</sup>

A 2012 reform of the Mexican Federal Labor Law, and corresponding regulations promulgated in 2014, have made some significant positive changes to the law governing recruitment. The reforms added Article 28-B, which requires recruitment agencies to register with the Secretaria de Trabajo y Prevision Social (Secretary of Labor and Social Welfare, STPS for its initials in Spanish). They also mandate that recruitment agencies certify the promises made in the Article 28 contract between the employer and the worker, and bans false or misleading statements by recruitment agents about the jobs on offer. Both the law and the regulations make clear that recruiters may not charge migrants for their services, whether directly or through arrangements with employers to make deductions from workers' pay. Finally, agencies may not discriminate against, or blacklist, workers for any reason, including advocating for their own or others' rights, or seeking to form or join a union.<sup>10</sup> These laws are quite strong, but their enforcement remains lax.<sup>11</sup>

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<sup>7</sup> I discuss different aspects of two of these initiatives—FLOC and EFI-CIERTO—in Gordon, *Regulating Global Labor Recruitment*, *supra* note 4. The emphasis in that paper is on supply chain strategies, i.e. how the union got the entity at the top of the supply chain to the table and what terms and mechanisms it negotiated to hold the end user and the growers responsible for the workers' conditions of recruitment. By contrast, the case studies I present here focus on the work the organizations are doing in Mexico to support workers in addressing their own conditions of recruitment.

<sup>8</sup> Ley Federal del Trabajo [LFT] [Federal Labor Law], *as amended*, Artículo 28, 1 de Abril de 1970 (Mex.); *Article 28 of Mexico's Federal Labor Law: Legal Analysis* (ProDESC memo, n.d.) (draft on file with author).

<sup>9</sup> Jorge Fernandez Souza, Magistrate Judge, Professor of Law and former Dean, Universidad Autónoma Metropolitana, México, Remarks at the Binational Labor Justice Convening (Oct. 6, 2007).

<sup>10</sup> DECRETO por el que se reforman, adicionan y derogan diversas disposiciones del Reglamento de Agencias de Colocación de Trabajadores [DECREE Amending, Supplementing and Repealing Various Provisions of the Regulation of Worker Placement Agencies], Ley Federal de Trabajo [LFT] [Federal Labor Law], Art. 28-B, 21 de Mayo de 2014, *available at* [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5345536&fecha=21/05/2014](http://www.dof.gob.mx/nota_detalle.php?codigo=5345536&fecha=21/05/2014).

<sup>11</sup> The ProDESC case study below outlines that organization's demands for better regulation and for effective enforcement of law on the books in Mexico.

While the United States extensively (if often ineffectually) regulates the terms of *employment* for H-2 visa-holders, U.S. officials have generally emphasized that the terms of *recruitment* are not under their jurisdiction, and should instead be addressed by origin country governments.<sup>12</sup> Nonetheless, the U.S. Department of Labor prohibits employers from accepting or requesting money from migrants for recruitment costs,<sup>13</sup> and also requires employers to contractually forbid their labor recruiters from seeking or accepting payments from prospective employees.<sup>14</sup> These provisions appear to be rarely enforced.<sup>15</sup> The Department of Homeland Security likewise should not grant a petition for H-2 visas if it is made aware that the employer itself or its recruiter has collected or made an agreement to collect a fee from a worker as a condition of obtaining the H-2 employment.<sup>16</sup>

Within the past decade, advocates in the U.S. and (to a lesser extent) Mexico, as well as some U.S. trade unions and the AFL-CIO, have begun highlighting and attempting to combat the flaws in the existing regulation of recruitment in both countries. In the U.S., the Centro de los Derechos del Migrante (CDM), Global Workers Justice Alliance, National Guestworkers Alliance, and Southern Poverty Law Center have been in the forefront in this regard, together with the global union federation Education International on behalf of teachers, the Alliance for Ethical International Recruitment Practices on behalf of migrant nurses, and a number of other unions and non-profit organizations. The International Labor Recruitment Working Group was founded in 2011 by these labor groups and several key anti-trafficking organizations to coordinate recruitment-related advocacy in the U.S. and international fora.<sup>17</sup> In addition, CDM and Global Workers have succeeded in making the transnational legal representation of returned migrants a viable task for organizations throughout the United States, where a mere decade ago the obstacles were all but insurmountable.

In Mexico, there are far fewer organizations addressing recruitment issues.<sup>18</sup> ProDESC has been the central Mexican actor in efforts to advocate for strong regulations and a more effective Mexican government response on recruitment issues. Other key actors

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<sup>12</sup> See Eleanor G. Carr, *Note: Search for a Round Peg: Seeking a Remedy for Recruitment Abuses in the U.S. Guest Worker Program*, 43 COLUM. J.L. & SOC. PROBS. 399, 410-11 (2010) [hereinafter Carr, *Search for a Round Peg*].

<sup>13</sup> H-2A: 20 C.F.R. § 655.135(j). H-2B: 20 C.F.R. 503.16(o).

<sup>14</sup> 20 C.F.R. § 655.135(k).

<sup>15</sup> See Carr, *Search for a Round Peg*, *supra* note 12, at n.64; see also Letter from Low Wage Worker Legal Network et al. to Elaine L. Chao, U.S. Sec'y of Labor 18, 13-14 (July 7, 2008), available at [http://www.friendsfw.org/h-2B/DOL H-2b 2008-07-07.pdf](http://www.friendsfw.org/h-2B/DOL%20H-2b%202008-07-07.pdf). In June 2014, ProDESC filed a FOIA request with the Department of Labor seeking information about its enforcement of the recruitment provisions of the law. The DOL has not responded with any information to date.

<sup>16</sup> See, e.g., 8 C.F.R. § 214.2(h)(5)(xi)(A); 8 C.F.R. § 214.2(h)(6)(i)(B).

<sup>17</sup> International Labor Recruitment Working Group ("ILRWG") website: <https://fairlaborrecruitment.wordpress.com/>; see also, ILRWG, *The American Dream Up for Sale*, *supra* note 2. For a full list of ILRWG institutional members, see <https://fairlaborrecruitment.wordpress.com/about-ilrwg/ilrwg-members/>.

<sup>18</sup> I discuss this issue in greater depth in Part 3 below.

in this arena have been CDM, Global Workers, the Jornaleros-SAFE project, and Mexican think-tank INEDIM.<sup>19</sup> Mexican trade unions have not taken up recruitment as an issue.

## **PART 2: The Importance of Migrant Participation in Efforts to Regulate Recruitment**

The advocacy, education, and representation of the non-governmental organizations just mentioned has been critically important in driving change in recruitment practices in the United States and Mexico. With a few exceptions, however, migrants' participation in these efforts has been limited to receiving know-your-rights education to combat abuse in the future, and bringing claims after their rights have been violated, with the support of non-governmental organizations. In addition, migrant workers who have been severely abused are sometimes asked to give testimony in support of policy changes.<sup>20</sup>

This paper argues that migrants have the knowledge and ability to contribute much more than they currently do to the improvement of conditions on the ground. Potential roles for workers include as **policy designers**, recommending standards and procedures based on their intimate knowledge of how the recruitment system works; **monitors and enforcers** of laws and contracts, deputized to observe recruiter behavior and provided with multiple routes to report non-compliance; **peer educators**, providing information pre- and post- departure not only about formal rights but about real conditions and sources of support on the ground; and as **participants in unions and in NGO campaigns** to change the behavior of governments, employers, and recruiters.

Broader and more active migrant participation in efforts to address recruitment abuses is essential for a number of reasons.

- ❖ **Democracy and self-representation:** As the central participants in global labor migration, migrants should have the opportunity to represent themselves in shaping efforts to address those problems. This is particularly important since migrants may have different perspectives than advocates on some issues.
- ❖ **Quality of initiatives developed:** Migrants have the most detailed and accurate knowledge of the problems they face during recruitment and employment, and

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<sup>19</sup> Other entities in Mexico that have at times addressed recruitment include the think-tank FUNDAR Mexico and the COMPA Coalition in Mexico.

<sup>20</sup> In addition to the three case studies profiled in this paper, exceptions include the National Guestworkers Alliance ("NGA"), headquartered in New Orleans, and the Centro de los Derechos del Migrante, Inc. ("CDM"), a U.S. non-profit based in Mexico. I discuss NGA's work briefly in the first case study and in the final section, but do not describe it more fully here because it does not have staff that work in Mexico. CDM is largely dedicated to rights education, the facilitation of legal representation for transnational migrants, and policy advocacy on their behalf. While worker activism is not CDM's primary focus, it has developed migrant worker committees whose members carry out outreach and peer education and participate in the organization's advocacy efforts, and in at least one case CDM has supported migrant worker organizing in the United States. See CDM Program Areas, available at <http://www.cdmigrante.org/cdms-work/program-areas/>. In late 2014, CDM launched "Contratados," a website based on a Yelp model, where migrants can leave reviews of recruiters and obtain know-your-rights information. See <http://www.cdmigrante.org/contratados/>; [www.contratados.org](http://www.contratados.org).



also experience first-hand the obstacles to the effectiveness of existing policies. They are therefore in a unique position to offer observations about failures in the migration process and to propose concrete, context-specific, and reality-based reforms.

- ❖ **Effective monitoring and enforcement:** Migrants are present during all recruitment and employment transactions in both origin and destination countries, and thus are uniquely positioned to monitor recruiters' and employers' compliance with laws and private agreements—so long as they are aware of what their rights are, can easily access reporting mechanisms that trigger enforcement, and have effective protection from retaliation.
- ❖ **Building a path to rights and representation:** For guest workers to overcome the many obstacles to their participation in organizing and advocacy efforts, and for those efforts to succeed, the migrants must be able to rely on anti-retaliation mechanisms and ongoing institutional support. Where new initiatives have begun to provide workers with those things, they merit wholesale backing as potential routes to organization on a much larger scale in the future.

Organizations with a physical base and ongoing work located in origin countries—ideally groups native to those countries, but also including destination-country actors with origin-country offices and activities—are in a position to support these processes in ways that organizations solely based elsewhere cannot. Some of the reasons for this are pragmatic. Recruitment takes place in Mexico and can only be monitored there. And when migrants are back home between seasons, they have the privacy and time necessary to meet and talk openly with advocates and organizers, features lacking in the destination country amidst the surveillance and fear of retaliation that they experience on the job. Others justifications are broader. Migrants are citizens in their origin countries as they are not abroad, and thus have both a need for and a right to institutional support at home to demand action from their governments, from improved domestic policies on recruitment issues to worker-protective conditions in trade and migration agreements with other nations.

The following section profiles three efforts with a presence in Mexico that have taken diverging routes to the same goal: reaching labor migrants while they are at home, in order to engage them actively in efforts to advance and protect their own rights during recruitment and while employed abroad.

## **PART 2: CASE STUDIES**

### **❖ Case Study 1: ProDESC and the Coalición de Trabajadoras y Trabajadores Temporales de Sinaloa, Mexico<sup>21</sup>**

The Proyecto de Derechos Económicos, Sociales, y Culturales (Economic, Social, and Cultural Rights Project, or “ProDESC” for its initials in Spanish) is a Mexico-based human rights organization founded in 2005 that works with migrants, miners, indigenous communities and communal landowners in Mexico to defend and advance their rights. With regard to mining and other extractive industries, ProDESC has focused in particular on combatting the negative effects of incursions by transnational corporations.<sup>22</sup> In the migration context, it has emphasized the need for improvements in Mexican policy and enforcement practices, as well as for transnational collaborations between advocates. ProDESC uses what it terms an “integrated” approach to its advocacy, combining community education and organizing with human rights litigation and policy interventions. It seeks to bridge the gap between the lawyer-led approach of many high-profile international human rights organizations and the purely local emphasis of many bottom-up community organizations.

ProDESC initially began working on recruitment issues in 2008, counseling individual workers who had experienced fraud in Mexico. Its engagement with these issues entered a new stage in 2011, when the organization began laying the groundwork that would lead in 2013 to the founding of the Coalición de Trabajadoras y Trabajadores Temporales de Sinaloa (Sinaloa Temporary Workers’ Coalition, or “Coalition”).<sup>23</sup> The Coalition’s goal is to support its migrant members’ direct involvement in improving conditions of recruitment and work abroad, including the demand for a place at the table for migrants themselves in the Mexican government’s policy-making on issues of recruitment and migrant labor.

The Coalition’s roots lie in a two-year collaboration between ProDESC and the National Guestworkers Alliance (NGA), based in New Orleans, Louisiana. In 2011, following several years of discussions and staff exchanges, the two organizations decided to undertake a joint effort to build binational support for migrants from Sinaloa on Mexico’s west coast who worked seasonally in the Louisiana seafood industry. To lay the foundations for this transnational work, in 2011 ProDESC and NGA organizers began to conduct home visits and organizing meetings in Sinaloa to meet with workers on their home turf. Their first contacts were with active NGA members, H-2B guestworkers who had returned from Louisiana to Sinaloa for the off season. From there, ProDESC organizers traced wider circles into the communities, with a particular focus on the town of

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<sup>21</sup> This case study is based on a series of interviews with Alejandra Ancheita, Atzín Gordillo Acevedo, and Dante López of ProDESC (see Appendix A for complete list), and on author’s interview with Olivia Guzmán and Joba Reyes, Coalición de Trabajadoras y Trabajadores Temporales de Sinaloa (Sinaloa Coalition of Temporary Workers) (Mar. 12, 2014).

<sup>22</sup> For a description of ProDESC’s campaigns, see <http://www.prodesc.org.mx/en/>.

<sup>23</sup> Author’s interview with Alejandra Ancheita, ProDESC (Nov. 20, 2014).

Topolobampo, which has a concentration of migrants to the Louisiana seafood industry.<sup>24</sup> The process of gathering information and building trust took two years of house visits and small gatherings, followed by a series of larger public meetings.

In the course of these meetings, migrants raised concerns about fraud, illegal fees, and the unpredictability of re-hire as critical problems with the recruitment process. One recurring issue related to the informal structure of recruitment in the Louisiana seafood industry, where it is common for a company to appoint as its recruiter a migrant worker in whom the employer has confidence. Employers do not ordinarily pay the chosen worker for playing this role, but she receives significant benefits, often including the opportunity to select the highest-paying assignments and the best living arrangements for herself and her relatives. Even more important is the power that the worker/recruiter exercises in Mexico, far from the employer's eye. She can give preference to friends and family in the recruitment process, while demanding money and favors from others in exchange for putting their names on the recruitment list. This arrangement creates great anxiety for migrants, whose access to work each season depends on staying on the worker/recruiter's good side year-round.

Most H-2 workers from Sinaloa are women traveling on H-2B visas. A central aspect of ProDESC's initial approach was to create opportunities for female workers to meet separately from their male counterparts, in order to facilitate open discussions of the ways that gender had shaped their experiences of labor migration, and to ensure that this gender analysis was reflected in the ultimate plan that emerged from the organizing process. During these gatherings, recurring themes included sexual harassment and assault, lower wages than male counterparts, routine mistreatment of pregnant women, and the pain of leaving children behind.

In June of 2013, a group of migrants in Sinaloa reported to ProDESC that they had been defrauded by the employee of a recruitment agency. The representative of a well-known agency in Monterrey had called a public meeting in a Sinaloa village, where he said he was recruiting men for 200 jobs in the U.S. construction industry. He demanded a \$200 "deposit" from those who wished to be put on the list for these positions. Men from the region have little access to H-2 employment, and many in attendance were eager to sign up. Forty paid on the spot. The recruiter left with their money, never contacting the would-be migrants again and refusing to respond to their calls.

ProDESC brought these defrauded migrants together with others with whom they had worked since 2011, beginning a process of analysis of the experience and debate over ways to address the fraud and other abuses in the recruitment industry. While the group of migrants defrauded by the Monterrey recruiter was mostly male, the women who had been meeting separately with ProDESC in Sinaloa were active participants in meetings leading up to the formation of the Coalition. The group reviewed the existing laws regarding recruitment in Mexico, many learning for the first time that recruitment fees were banned. They discussed why these regulations are routinely ignored in practice. Ultimately, the migrants decided that in order to take on this fraudulent recruiter and other problems in

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<sup>24</sup> The formal collaboration between the two organizations came to a close at the end of this period.

the industry, they would need to build power as a group rather than asserting claims individually.

With ProDESC serving as a source of guidance and information, and after several months of research and further discussion, the workers formed the *Coalición de Trabajadoras y Trabajadores Temporales de Sinaloa* (Sinaloa Temporary Workers' Coalition) on October 18, 2013.<sup>25</sup> The workers decided that Coalition's mission would be to defend the rights of all temporary workers during the process of recruitment and employment, and in particular to pressure the Mexican government to make good on the promises in its laws setting out protections for recruited workers. A total of forty migrants declared themselves as founding members of the Coalition. Many more had been participating in the meetings, but declined to formally join the Coalition for fear of retaliation from employers and recruiters. The Coalition created a leadership structure of six representatives, three women and three men. Over the course of late 2013 and early 2014, the Coalition introduced itself to local and federal government officials, beginning to make its presence known.

The Coalition's first goal was to obtain redress for the victims of the fraud perpetrated in Sinaloa by the Monterrey agent. In January 2014, the Coalition met with officials from the Mexican Secretaría de Trabajo y Provisión Social (Secretary of Work and Social Protection, or "STPS" for its initials in Spanish), to present itself as an organization and to ask the government to take administrative action in the case of the Monterrey fraud. As a starting point, its members requested that STPS undertake an inspection of the recruitment agency, using a power STPS possessed under existing law, but rarely if ever employed.

This meeting proved critical in several respects. First, STPS recognized the Coalition as an interlocutor, acknowledging that labor migrants were a category of Mexican workers on whose behalf STPS was mandated to act. In the past, STPS had denied that H-2 workers were entitled to its protection. STPS's position was that because migrants' employers were in the United States, the U.S. government was responsible for addressing issues that arose in the migration process, with the support if necessary of the consular network managed by the Mexican Secretaría de Relaciones Exteriores (Bureau of Foreign Affairs). Yet the only protection for migrants from recruitment abuse was to be found in Mexican labor law,

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<sup>25</sup> The choice to form a "coalition" rather than a "union" (the other option for worker organization under Mexican law) was informed by ProDESC's experience and research. The workers wanted the ability to organize, and to negotiate and bargain as a group, which made unionization seem a logical goal. However, under Mexican law, a union will only be recognized by the government if it includes at least 20 currently active employees of a company registered in Mexico. *See* LFT, Art. 365. This condition is impossible for migrants to meet, since by definition they labor for firms not registered or operating in Mexico. Furthermore, unions must register with the government to obtain recognition (LFT, Art. 365), a process rife with delays that ProDESC had seen the government manipulate in order to slow down labor struggles. Author's interviews with Atzín Gordillo Acevedo, Organizer, ProDESC, (Mar. 10, 2014; June 30, 2014; and Oct. 1, 2014); *see also* author's interview with Dante López, Director of Organizing, ProDESC (Oct. 1, 2014). The unionization process is also fraught with obstacles related to the high level of protection contracts and collusion between employers, protection unions, and the government. *See* sources cited in note 83. Coalitions, while offering fewer rights than unions, protect workers from employer retaliation for their advocacy, and are legally recognized as soon as two or more workers declare that they have formed a temporary coalition to defend or advance their rights. *See* LFT, Art. 355.

enforced exclusively by STPS. STPS's recognition of the Coalition as a group of workers represented a significant victory for ProDESC's ongoing campaign to have the Mexican government accept its obligation to protect migrants' rights as labor rights from the moment of recruitment.<sup>26</sup>

Second, STPS responded to the Coalition's request by carrying out an inspection of the Monterrey agency, one of the first times it had ever used this power. The inspection revealed 27 violations of the law, and resulted in fines of 48,000 pesos, or approximately \$3500.<sup>27</sup> ProDESC then filed a collective criminal complaint with the Sinaloa Prosecutor's Office in Los Mochis, Sinaloa, on behalf of fifteen of the defrauded men, seeking what would be the first-ever fraud conviction of a Mexican labor recruitment agent.<sup>28</sup> Because Mexican law has no provisions that make a recruiting firm liable for criminal malfeasance, this complaint is a novel effort on ProDESC's part to use the law criminalizing individual fraud in order to penalize corporate action against a class of workers.<sup>29</sup> The case is currently under investigation by the Prosecutor's Office of Los Mochis, a division of the Sinaloa Attorney General.

As the 2014 season ended and workers returned to Mexico in November and December of 2014, ProDESC again began meeting with the Coalition. It is already evident that fear is on the rise among returning workers. Since the Coalition was founded, workers have been blacklisted by employers and recruiters for their activism. Observing this, others have become afraid to step forward. This and other challenges that the Coalition faces are substantial. It is not by happenstance that the fraud case that the Coalition chose to pursue as its first initiative was against a recruitment agent based in the distant state of Monterrey. Such a target raises far fewer concerns of retaliation than taking on a local recruiter with relationships in the community, which the workers fear would lead directly to blacklisting. In addition, Sinaloa is notorious as a headquarters for narcotrafficking, which increasingly has expanded to include the movement of human beings as well as drugs over borders.<sup>30</sup> Pursuing cases against recruiters located in Sinaloa increase the risk of retaliation by organized crime against Coalition members and ProDESC staff.

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<sup>26</sup> Author's interview with Dante López, ProDESC (Oct. 1, 2014); Atzín Gordillo Acevedo, ProDESC (Oct. 1, 2014).

<sup>27</sup> STPS, Acta Final/Resolución, March 26, 2013 [*sic*—date should be March 26, 2014](copy on file with author). While this amount is low, the imposition of a fine at all is significant, as it represents the first time that STPS has penalized a recruiter of H-2 workers.

<sup>28</sup> Author's interviews with Atzín Gordillo Acevedo, ProDESC (Oct. 1, 2014); Dante López, ProDESC (Oct. 1, 2014); Alejandra Ancheita, ProDESC (Nov. 20, 2014). For description of the complaint and video of the Coalition's press conference in Mexico City the day after the filing, see Conferencias de Prensa [Press Conferences], Cencos, available at <http://www.cencos.org/conferencia-de-prensa/prodesc-y-la-coalicion-de-trabajadores-migrantes-temporales-denuncian-violaciones-a-sus-derechos-lab>.

<sup>29</sup> The Mexican Ley Penal de Trata [Criminal Trafficking Law] does include a narrow provision criminalizing a firm's recruitment of workers into trafficked situations, but it does not apply to fraud or other recruitment abuses independent of trafficking. See Art. 10, Mexican Criminal Trafficking Law (2012).

<sup>30</sup> See Richard Marosi, *The strands of the Sinaloa drug cartel web*, L.A. TIMES, (July 26, 2011), <http://articles.latimes.com/2011/jul/26/local/la-me-cartel-20110726>; see also Jeffrey Scott Shapiro & T. Michael Andrews, *SHAPIRO & ANDREWS: Declaring war on the cartels*, THE WASHINGTON TIMES (July 23, 2014), <http://www.washingtontimes.com/news/2014/jul/23/shapiro-andrews-declaring-war-on-the-cartels/?page=all>.

Despite these obstacles, the Coalition's members are determined to move forward. Members are eager to explore options beyond legal cases, and anticipate developing their own policy proposals to present to the Mexican government. They are considering other courses of action, including founding a workers' center that may include worker-controlled recruitment as one of its functions. ProDESC and Coalition members are also contemplating the launch of new chapters of the Coalition in Mexican states beyond Sinaloa.

❖ **Case Study 2: FLOC's Monterrey, Mexico Office and its Collective Bargaining Agreement with the North Carolina Growers' Association<sup>31</sup>**

The Farm Labor Organizing Committee (FLOC) is a farm worker union based in Ohio.<sup>32</sup> In the wake of FLOC's success organizing Ohio tomato and cucumber pickers in the 1980s, brand-name companies turned to North Carolina in the 1990s seeking cheaper produce harvested by non-union H-2A workers. FLOC followed them south. After a five-year boycott campaign targeting key pickle processor Mount Olive, and a parallel set of lawsuits<sup>33</sup> against the North Carolina Growers' Association (NCGA), Mount Olive's primary source of H-2A labor, FLOC succeeded in negotiating a three-way accord with Mount Olive and NCGA in 2004.<sup>34</sup> The agreement raised workers' wages, created incentives for growers to provide workers compensation coverage, and committed NCGA to recognizing the outcome of a card-check vote on union representation by its workers.<sup>35</sup>

When the majority of NCGA workers subsequently signed cards supporting unionization, FLOC and the NCGA bargained the first U.S. guest worker union contract in September 2004.<sup>36</sup> A decade after it was first signed, the FLOC/NCGA agreement remains the largest and the most sustained example of union representation of guest workers in U.S.

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<sup>31</sup> This case study is based on multiple interviews with Baldemar Velasquez and Justin Flores of FLOC in 2013 and 2014, in addition to other sources cited here. Parts of this case study are adapted from Gordon, *Regulating Global Labor Recruitment*, *supra* note 4.

<sup>32</sup> FLOC 2013 LM-2, available by entering query at <http://kcerds.dol-esa.gov/query/getOrgQry.do> (U.S. Dep't of Labor) [hereinafter Union Search].

<sup>33</sup> The National Labor Relations Act, which governs union recognition in most U.S. industries, does not cover agricultural workers. *See, e.g.*, 29 U.S.C. § 152(3). There is thus no federal law that requires growers to heed a vote for unionization by a majority of their employees; any such agreement must be negotiated between the parties. In that context, litigation was a critical factor in bringing NCGA to the table. A key case was *De Luna-Guerrero v. North Carolina Grower's Ass'n, Inc.*, 370 F. Supp. 2d 386 (E.D.N.C. 2005).

<sup>34</sup> For an overview of the FLOC strategy leading up to Mt. Olive campaign, *see* DAVID DALTON, BUILDING NATIONAL CAMPAIGNS: ACTIVISTS, ALLIANCES, AND HOW CHANGE HAPPENS 32 (2007), book available for download at <http://policy-practice.oxfam.org.uk/publications/building-national-campaigns-activists-alliances-and-how-change-happens-115412>. For the assertion that NCGA is the largest H-2A employer, *see* Victoria Bouloubasis, *Be Our Guest Worker*, THE AM. PROSPECT (Nov. 7, 2013), <http://prospect.org/article/be-our-guest-worker>.

<sup>35</sup> Author's interview with Baldemar Velasquez, Founder and President, Farm Labor Organizing Committee ("FLOC") (July 18, 2014); Julie M. McKinnon, *FLOC sets its sights on future fights*, THE BLADE (Oct. 3, 2004), <https://www.toledoblade.com/business/2004/10/03/FLOC-sets-its-sights-on-future-fights.html>; Teófilo Reyes, *8000 "Guest Workers" Join Farm Union in North Carolina*, LAB. NOTES (Sept. 30, 2004), available at <http://www.labornotes.org/node/939>. After the first three years, Mt. Olive has continued to make a small increase annually to the amount it passes through NCGA for workers' wages. *See* author's interview with Baldemar Velasquez, FLOC (July 18, 2014).

<sup>36</sup> The accord was amended and renewed in 2008 and again in 2012.

history. It currently covers about 7500 H-2A workers laboring for approximately 640 growers through the NCGA.<sup>37</sup>

Recruitment is a primary focus of the FLOC/NCGA contract.<sup>38</sup> As the entity managing recruitment from the United States, NCGA sits at the top of the labor supply chain. It is NCGA that applies to the U.S. government for H-2A visas, and manages the distribution of workers to growers once the migrants arrive. To find and process the workers in Mexico, however NCGA contracts with CSI Labor Services, a major Mexican H-2 recruitment firm headquartered in Monterrey. CSI, in turn, contracts with local recruiters and their agents in other parts of Mexico.

In the wake of the NCGA contract, migrants gained a new set of rights during the recruitment process, with NCGA and CSI's compliance overseen by FLOC. A system that before had been based solely on grower preferences (including a notorious blacklist for workers who complained of mistreatment) was converted to one based on seniority. Growers now must recruit and hire new workers in order of years worked with the H-2A program and according to the tiers described below. They must demonstrate just cause for firing and refusing to rehire workers, and give three warnings before taking action. There is a formal grievance procedure for violations.

The FLOC-NCGA contract in effect today creates four tiers of workers. First priority goes to those designated by growers as "Preferred," including experienced workers and—in a recent addition—their relatives if the employer so chooses.<sup>39</sup> Vacancies are next filled by "Active" workers in order of seniority, independent of employer preferences. The third tier is for workers whose employers designated them Preferred, but who wish to switch to Active status and take a job with another employer or come at an earlier time than their employer needs them; those workers get access to the remaining full-season jobs through a bid system the union has created.

Finally, as of 2012, any worker with three years or more working in the H-2A program is permitted to recommend new workers with no experience. These "zero seniority" workers are usually hired at the end of the season when relatively little work remains, but then have the advantage of being considered "Active" workers the following year.<sup>40</sup> While any worker with sufficient seniority can call the NCGA or the recruiter

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<sup>37</sup> Author's interview with Baldemar Velasquez, FLOC (Mar. 21, 2104); *see also* Karin Rives, *Guest workers note progress: Labor contract has brought changes*, RALEIGH NEWS & OBSERVER (Aug. 29, 2005), <http://www.smfws.com/art8292005.htm>. The workers covered by the agreement are exclusively male. Author's interview with Baldemar Velasquez, FLOC (July 18, 2014).

<sup>38</sup> While the contract does address some other aspects of work—for example, time off and the protection of worker health and safety—it explicitly sets aside wages and housing as beyond its scope. *See* NCGA and FLOC Agreement (effective May 4, 2012-December 31, 2014), Article 4, Section 1 (copy on file with author). The Agreement notes that such terms are governed by laws regarding the H-2A program, although (as it also mentions) the law sets a floor rather than a ceiling, and growers are free to pay more or provide better accommodations than those mandated.

<sup>39</sup> Employers also have the right to designate a worker "No Return" under certain circumstances; such a designation will bar a worker from participation in the program. NCGA and FLOC Agreement 2012, Article 5. FLOC grieves these designations when it believes that they are retaliatory. Author's interview with Baldemar Velasquez, FLOC (July 18, 2014).

<sup>40</sup> Author's interviews with Baldemar Velasquez, FLOC (Mar. 21, 2014; July 18, 2014); *see also* NCGA and FLOC Agreement 2012, Article 5.6. In around September, when the first three recruitment categories are

directly to make such recommendations, active FLOC members can submit these requests to the union, which then follows up with the NCGA to confirm that the recommended workers are indeed hired. Because the union's intervention has proven much more effective than a direct call by a worker to NCGA, Flores describes this provision as a "big plus" in terms of recruiting members.<sup>41</sup>

All of the NCGA's H-2A workers are men. Flores describes this as the product of selection by growers and recruiters and self-selection by workers to date. Women could be recruited into the program if nominated as zero-seniority workers by more senior workers, or requested by a grower as the relatives of a Preferred worker. Flores notes that since the FLOC contract has a clause barring discrimination in recruitment and hiring, as soon as a woman is nominated or requested, FLOC will be in a position to grieve any discrimination she faces in the recruitment and hiring process. In addition, recent FLOC organizing in North Carolina has brought in new union members who are women. Those women are currently involved in contract campaigns. If they succeed, the union will have both men and women under contract in the state.

Over time, FLOC has made adjustments to aspects of the recruitment system that continued to breed abuse despite the contract. For example, the FLOC-NCGA agreement now forbids cash payments from workers to recruiters, even though the law would otherwise permit recruiters to charge migrants up front for the cost of the visa and ground transportation. (Employers must reimburse workers for both expenses soon after arrival). After several years of observing the situation, the union concluded that allowing cash to change hands in this context too often opened the door for recruiters to demand additional side payments from workers. The agreement was amended so that workers deposit money for legitimate expenses with a designated bank, and give recruiters the bank receipt. The recruiter can then arrange for bank-to-bank transfers to the U.S. Consulate and the bus company.<sup>42</sup>

Recruiters fought back against FLOC's incursion on their territory for years. When FLOC opened its Monterrey, Mexico office in 2005, recruiters subjected its staff to escalating harassment and surveillance, broke into the office, and are believed to be responsible for the 2007 torture and murder of Santiago Rafael Cruz, a FLOC organizer, inside the union's Monterrey headquarters.<sup>43</sup> After failing to defeat FLOC, however, and following the institution of protective measures for FLOC by the Inter-American Court of Appeals in the wake of the murder, recruiters have made an uneasy peace with the union, and there have been no major incidents since 2007.

The Monterrey office continues in operation today as the base for FLOC's Mexico operations. It has two full-time staff, both former H2A workers. FLOC Vice President Justin Flores manages the union's Mexico operations from its base in North Carolina. The Monterrey office is charged with implementation of the contract's recruitment provisions

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exhausted, the NCGA generally has about 500 positions to fill for the brief time remaining in the season. Author's interview with Baldemar Velasquez, FLOC (Mar. 21, 2014).

<sup>41</sup> Author's interview with Justin Flores, Vice President, FLOC (Sept. 19, 2014).

<sup>42</sup> Author's interview with Baldemar Velasquez, FLOC (Apr. 21, 2014).

<sup>43</sup> See Dan La Botz, *Farm Labor Organizer Murdered in Mexico*, COUNTERPUNCH (Apr. 14-16, 2007), <http://www.counterpunch.org/2007/04/14/farm-labor-organizer-murdered-in-mexico/>.



and the management of related grievances, and the coordination of the union's organizing and leadership training efforts for workers while they are in Mexico.<sup>44</sup>

The majority of H-2A workers are in North Carolina from March through October or November, and in their hometowns from December through February. The work of the Monterrey office varies with these seasons. From January through early March, while members are in Mexico, the office coordinates and carries out a series of meetings in areas where its membership is concentrated, most recently in the Huasteca region including San Luis Potosí and Hidalgo.<sup>45</sup> These open membership meetings attract between 30-100 people each. Members bring friends and family, and curious onlookers inevitably add to the numbers. FLOC uses these meetings to discuss the NCGA contract recruitment and bidding process, and to highlight the protections offered by union membership. They discuss permissible charges, tell workers how to figure out if they are being cheated, and explain how the union handles grievances. They also update attendees on FLOC's ongoing campaign against the tobacco company RJR Reynolds, the bulk of whose fields are located in North Carolina. If that campaign succeeds, far more Mexican H-2A workers will gain the protections of the FLOC contract.

These regional meetings are the prelude to FLOC's national membership meeting in Mexico. Between sixty and eighty of the union's most active and involved NCGA members travel to Monterrey for this two-day organizing effort (for many, a journey of sixteen hours or more) at the end of March. New and experienced activists meet to share information about their contractual rights and to discuss ways to use the contract and their collective power to address abuses during the recruitment process. Flores describes the meeting as similar to a shop steward training, ensuring that member-leaders are prepared to educate their co-workers on the contract provisions, help fellow workers file grievances, and defend their rights under the contract.

Meanwhile, the recruitment season begins in January, gathering force before it peaks between March and May, and then continues at a slower pace through August. FLOC staff in Monterrey manage the Mexico end of the bid system, and field calls from workers seeking information about their recruitment status or wanting to address a problem. When FLOC determines that the contract has not been followed with regard to a particular worker's recruitment, it informs the NCGA, which asks its Mexico-based recruiter CSI to communicate with the local agent to resolve the problem.<sup>46</sup> If violations of the contract's recruitment provisions remain unaddressed, Monterrey staff investigate and grieve the issue on behalf of the worker.

H-2 workers repeatedly describe job security as their primary concern, and they are well aware that an employer is unlikely to ask workers who protest abuses to return the following season. For those covered by the FLOC contract, the bid system permits a migrant to grieve a violation of his rights during the season with the assurance that—if, as a result, he is not listed as “Preferred” by the employer for the following season—he will be

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<sup>44</sup> Author's interview with Baldemar Velasquez, FLOC (Mar. 21, 2014).

<sup>45</sup> Author's interview with Justin Flores, FLOC (Sept. 19, 2014).

<sup>46</sup> *Id.*

able to obtain work elsewhere by submitting a bid as an Active worker.<sup>47</sup> FLOC encourages all workers, even those who have been told by their employers that they will be on the “Preferred” list, to submit bids as “Active” workers as early as possible. This offers them protection in case they fall through the cracks or the employer retaliates against them by leaving their name off the list. In the context of H-2A work, this is this is a unique and deeply meaningful protection. Flores describes the bid system as the union’s best way to demonstrate the power of unionization to workers.

FLOC staff take advantage of the multiple outreach opportunities the Monterrey location offers. Monterrey is the hub of H-2 migration from Mexico to the United States.<sup>48</sup> Tens of thousands of migrants from twenty Mexican states pass through the city each year on their way to the United States, bound for every kind of H-2 work. From March through August, they regularly spend time talking with workers in the lobbies of the Monterrey hotels where H-2 migrants stay while they await consular processing, and make frequent visits to the plaza in front of the US Consulate where workers wait for consular interviews and board busses bound for their workplaces. These contacts offer FLOC staff the chance to discuss the union with farm workers headed for North Carolina, emphasizing its capacity to intervene to prevent abuses in recruitment or on the job, and encouraging workers to sign a union card before they depart. Since North Carolina is a “right to work” state, workers do not automatically become union members on being hired by a company that has signed a union contract. Non-member workers must receive the same wages and contract protections as dues-paying members. This puts FLOC in the position of constantly having to explain and demonstrate the advantages of union membership to workers who could easily free-ride on the contributions of others.<sup>49</sup>

FLOC also reaches out to migrants bound for other states and other industries, putting the union in a position to identify new avenues for organizing. As the season draws to a close in the fall and the NCGA busses workers back to Monterrey, many stop into the FLOC office to check in and debrief about their time in North Carolina before completing their journey home. This gives the union a final opportunity to get a sense of how the

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<sup>47</sup> *Id.* By the terms of the contract, any worker with at least one year of seniority, who finished the last season in good standing and who submits a bid, must be placed in a job the following season. Author’s interview with Baldemar Velasquez, FLOC (Mar. 21, 2014). It is important to note that this is only possible because the FLOC contract is with the NCGA, an association of multiple H-2A employers. If a union has a contract with a single employer, it would be necessary to negotiate a re-hire guarantee with that employer to achieve parallel protection.

<sup>48</sup> Indeed, it is the hub of all H-2 migration world-wide. 94% of all H-2A visa-holders come from Mexico, and 50% of all H-2A applications are processed through the Monterrey consulate. See U.S. Gov’t Accountability Office, GAO-12-706, H-2A VISA PROGRAM: MODERNIZATION AND IMPROVED GUIDANCE COULD REDUCE EMPLOYER APPLICATION BURDEN (2012) at p. 15, available at <http://www.gao.gov/assets/650/648175.pdf>; see also Centro de los Derechos del Migrante, *Recruitment Revealed*, *supra* note 2, at 5 (reporting that “Mexicans have always accounted for between 71-83% of the total number of individuals admitted to the US on H-2A and H-2B visas.”).

<sup>49</sup> In addition to access to the union’s advocacy on behalf of friends and family who the member nominates for zero seniority positions, FLOC has developed a set of benefits available only to dues-paying members. These include a small amount of financial assistance in case of an emergency need to return to Mexico, a minimal weekly payment if the worker is injured on the job and has not yet received workers compensation (a process for which the union offers legal representation), and a death benefit for family members. Author’s interview with Justin Flores, FLOC (Nov. 11, 2014).

season has gone, and to learn about problems in the fields that workers may not have felt comfortable reporting while on the job.

President Velasquez and Vice President Flores describe having a base in Mexico as crucial to the union's success in organizing H-2A workers. In addition to the practical benefits of being able to communicate more easily with workers in the off-season and to manage the recruitment process in the country where it is taking place, organizers spend time with workers in Monterrey and in their hometowns, where they are much more comfortable and candid than they can be under the 24-hour surveillance that characterizes H-2A labor. Flores believes that having migrants see the union as an active presence at both their origin and destination has been critical in building worker trust and confidence in FLOC. This has translated into an effective base for recruitment. It is often in Mexico, not in North Carolina, where H-2A workers sign FLOC union cards, deepen their ties with the union, and begin to take on leadership roles.

Flores notes, however, that much of what FLOC has reaped from having a strong presence in Mexico could not have been achieved without the Monterrey office's full integration with FLOC's office in North Carolina, and with the union's focus on enforcing a collective bargaining agreement that binds key actors in the supply chain. He cautions that unless a base in the origin country is part of a functioning union in the destination country enforcing rights enumerated in a contract that covers temporary migrant workers, a U.S.-based union or organization that has a Mexico office will be limited to the much slower and less effective mechanisms of legal redress and policy appeals.

❖ **Case Study 3: CIERTO, a UFW-EFI Recruitment and Training Pilot Based in Mexico**<sup>50</sup>

The United Farm Workers (UFW) is known around the world for its pioneering approach to organizing farmworkers under the leadership of Cesar Chavez in the 1960s and '70s. At its peak, its membership approached 50,000 workers.<sup>51</sup> In the past few decades, however, the consolidation of the retail food industry, among other factors, has posed serious challenges to the union's ability to sustain its organizing model.<sup>52</sup> The union's current membership is about 4500.<sup>53</sup> In response, the union has begun to explore new ways to improve wages and working conditions for farmworkers within the context of a highly concentrated industry, where supermarkets and other retailers demand prices so low that unionized farmers are unable to stay in business.<sup>54</sup>

The UFW's leading effort in this regard is its participation in the Equitable Food Initiative (EFI), a multi-stakeholder organization developed in collaboration with FLOC and

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<sup>50</sup> This case study is based on multiple interviews with Erik Nicholson, Joe Martinez, and Jaime Padilla of the United Farm Workers ("UFW") in 2013 and 2014, in addition to other sources cited here. Parts of this case study are adapted from Gordon, *Regulating Global Labor Recruitment*, *supra* note 4.

<sup>51</sup> See MARSHALL GANZ, *WHY DAVID SOMETIMES WINS: LEADERSHIP, ORGANIZATION, AND STRATEGY IN THE CALIFORNIA FARM WORKER MOVEMENT* 7 (2010).

<sup>52</sup> Author's interview with Erik Nicholson, National Vice President United Farm Workers and Chair Equitable Food Initiative ("EFI") (May 28, 2014).

<sup>53</sup> UFW 2012 LM2, Line 20, at Union Search.

<sup>54</sup> Author's interviews with Erik Nicholson, UFW and EFI (May 28, 2014 and July 14, 2014); Joe Martinez, Global Advocate and Mexico Program Director, UFW (Apr. 17, 2014 and July 21, 2014).

other migrant and farmworker organizations, with the support of Oxfam. Erik Nicholson, UFW National Vice President, is the current EFI chair. EFI has developed a certification system addressing three issues: farmworker wages and working conditions, environmental stewardship, and food safety.<sup>55</sup> EFI has established an extensive set of standards to cover these three areas. The Initiative seeks to have a broad impact on industrial agriculture by adding “value and quality throughout the food system, benefiting workers, growers, retailers and consumers alike.”<sup>56</sup>

This “value proposition” is based on the observation that the large sums lost to the industry due to waste, spoilage, contamination, and consumer concerns about food safety could be mitigated by improved training, compensation, and retention of farmworkers, and in particular by involving workers in the process of solving these problems before they affect a company’s bottom line.<sup>57</sup> A core element of the EFI program is support for growers to create problem-solving structures on each farm, through which they can work collaboratively with workers to develop ways to eliminate waste and hazards. Workers receive higher wages at firms that are EFI-certified, a raise that continues only as long as the grower remains in good standing, thus creating incentives for them to work with the grower to achieve and maintain compliance.<sup>58</sup> EFI encourages growers to share the increased profits created by this process with workers in the form of raises and bonuses.<sup>59</sup>

A pillar of the EFI program is the involvement of farmworkers at all levels. Workers brought their intimate knowledge of farm labor to the process of developing the standards, reviewing them and making numerous changes before they were final.<sup>60</sup> Many of the gender equity standards were directly shaped by this farmworker participation. As the standards were taking shape, EFI held multi-day meeting bringing together women from the memberships of participating unions (UFW, FLOC, and Pineros y Campesinos Unidos del Noroeste), to discuss the problems they faced as female farm workers and to ensure that the EFI certification process addressed these issues. Standards that grew out of these conversations include those making sexual harassment grounds for immediate de-certification,<sup>61</sup> barring discrimination in hiring, compensation, and firing on the basis of sex and sexual orientation; and prohibiting adverse actions based on pregnancy or lactation.<sup>62</sup>

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<sup>55</sup> EFI at <http://www.equitablefood.org/>; EFI Standards are available for download at <http://www.equitablefood.org/#!certification/c24gy>.

<sup>56</sup> Labor-Management Collaboration Makes for Better Produce, EFI available at [http://www.equitablefood.org/#!what\\_we\\_do/cjcr](http://www.equitablefood.org/#!what_we_do/cjcr).

<sup>57</sup> Author’s interviews with Erik Nicholson, UFW and EFI (May 28, 2014 and July 14, 2014).

<sup>58</sup> See EFI at <http://www.equitablefood.org/#!certification/c3c>.

<sup>59</sup> Author’s interview with Erik Nicholson, UFW and EFI (July 14, 2014); *The Equitable Food Initiative Standards*, EFI at 11 (June 2013), available at <https://www.cspinet.org/foodsafety/Equitable-Food-Initiative-Standards.pdf>.

<sup>60</sup> *Id.* The unions involved in developing the EFI—PCUN, FLOC, and the UFW—held discussions about the standards with their members, and all three sent members to a special women farmworker’s Congress to spend several days reviewing and revising the standards. *See id.*

<sup>61</sup> Benchmark ND-2, EFI STANDARDS, at 8 (Jan. 2015), available at [http://media.wix.com/ugd/e9574b\\_4dd1d0cbe3b24aee86c8226ef4e848e9.pdf](http://media.wix.com/ugd/e9574b_4dd1d0cbe3b24aee86c8226ef4e848e9.pdf),

<sup>62</sup> *See id.* for Benchmark ND-1; ND Indicators 1.1 and 1.3.

As noted in the FLOC case study, there are particular concerns about gender discrimination in the H-2A program. H-2A visa holders are over 95% male,<sup>63</sup> a result of employer preferences, recruiter selection, and practical obstacles such as housing set up to accommodate one sex at a time.<sup>64</sup> In recognition of this fundamental inequality in access to employment, an EFI gender equity standard that applies specifically to the H-2A program requires that employers create an action plan that “assesses gender equality in H-2A hiring and identifies milestones for achieving greater gender equity” in guest worker hiring.<sup>65</sup>

EFI has invited major retailers to require EFI certification from their growers, with retailers funding the cost of growers’ compliance by paying slightly more for certified produce.<sup>66</sup> EFI launched with two companies as its initial participants: Costco and (on a smaller scale) Bon Appetit, a high-end food service provider.<sup>67</sup> These retailers will be the first to require EFI certification for some, and eventually all, of the fruits and vegetables that they purchase. In 2013, Costco initiated its participation by asking its produce suppliers to volunteer to become EFI certified, while making clear that all its produce purchasing decisions would soon depend on certification and ongoing compliance.<sup>68</sup> The salad greens brand Earthbound Organics and Andrews & Williamson, a major strawberry grower with 2000 acres under production in the U.S. and Mexico,

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<sup>63</sup> Global Workers Visa Pages, <http://www.globalworkers.org/visas/h-2a#C2>, citing information from 2010 provided to Global Workers by the Department of State, Visa Office, Immigrant Visa Control and Reporting Division. Labor migration *within* Mexico, however, includes many more families, and therefore more women.

<sup>64</sup> Author’s interview with Erik Nicholson, UFW and EFI (July 14, 2014). Although U.S. anti-discrimination laws apply to growers, the H-2A program does not prohibit *recruiters* from discriminating, including on the basis of gender, and the DOL has not investigated employers for violations of U.S. laws prohibiting discrimination in hiring when that discrimination takes place at the recruitment stage abroad. Farmworker Justice, *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers*, 26-27 (2011) available at <http://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.6%20fwj.pdf>; see also *Reyes-Gaona v. North Carolina Growers’ Ass’n*, 250 F.3d 861 (4th Cir. 2001) (Age Discrimination in Employment Act does not apply to Mexican man who applied in Mexico for a job in the United States but alleged that he was rejected due to his age.).

<sup>65</sup> Benchmark H2A-1, EFI STANDARDS, at 10 (Jan. 2015), available at [http://media.wix.com/ugd/e9574b\\_4dd1d0cbe3b24aee86c8226ef4e848e9.pdf](http://media.wix.com/ugd/e9574b_4dd1d0cbe3b24aee86c8226ef4e848e9.pdf). It remains for a future iteration of the EFI standards to develop indicators relating to the achievement of those goals. Initial EFI deliberations resulted in the H2A gender equity plan requirement being classified a “minor” factor in certification. However, a grower will not be certified unless it is in compliance with all requirements, both major and minor. Email to author from Erik Nicholson (Nov. 19, 2014) (on file with author).

<sup>66</sup> Author’s interview with Erik Nicholson, UFW and EFI (May 28, 2014); author’s interview with Joe Martinez, UFW (Apr. 17, 2014); for details about certification see *EFI Scheme Documentation*, EFI, <http://www.equitablefood.org/#!certification/c3c7>.

<sup>67</sup> Author’s interview with Erik Nicholson, UFW and EFI (July 14, 2014); for an example of Costco’s public support for EFI, see Herb Weisbaum, ‘Culture-changing’ initiative to stop food contamination on the farm, NBC NEWS (Aug. 19, 2013), <http://www.nbcnews.com/health/health-news/culture-changing-initiative-stop-food-contamination-farm-f6C10855682>.

<sup>68</sup> Author’s interview with Erik Nicholson, UFW and EFI (May 28, 2014); see also Stephanie Strom & Steven Greenhouse, *On the Front Lines of Food Safety*, N.Y. TIMES (May 24, 2013). Costco has since informed several of its suppliers that they must obtain EFI certification in order for Costco to continue purchasing their products. Author’s interview with Erik Nicholson, UFW and EFI (July 14, 2014).

stepped forward. Their first farms were certified in July 2014.<sup>69</sup> Costco and Bon Appetit are covering their suppliers' costs for certification.

The EFI standards address recruitment as well as working conditions. In order to be certified, a grower must ensure that H-2A recruitment is free of cost to the worker, and that the recruiter complies with recruitment laws in workers' origin countries and in the United States and does not discriminate on the basis of gender.<sup>70</sup>

To offer EFI-certified businesses a way to demonstrate that their recruitment practices meet these requirements, and to train workers on how to work in compliance with the standards—including, most critically, on identifying practices that stand in the way of higher standards on safety, product quality, and productivity, and on ways to collaborate with growers to resolve them—the UFW is in the pilot phase of an initiative called CIERTO (Centro de Investigación, Entrenamiento, y Reclutamiento del Trabajador Organizado, or Workers Center for Research, Recruitment, and Training), based in Mexico. CIERTO is currently structured as a project of the UFW with major funding provided by the Buffet Foundation and additional support from Andrews & Williamson and Costco, but the intent is to transition in 2015 to an independent 501(c)(3), and within 5 years to be supported entirely through employer payments.

CIERTO, based in Mexico, is both a unique worker training endeavor and an alternative, union-run recruitment enterprise. Its goals include removing the recruiter as a source of debt, fear, and retaliation for workers, freeing them to participate fully in the EFI program without fear of repercussions; reducing turnover in the farm workforce and increasing workers' ability to rely on re-hire in successive seasons; and training the workforce in the value they add to the supply chain.<sup>71</sup> Training modules include coverage of EFI standards and the ability to identify violations; joint problem-solving techniques; an understanding of the "value proposition" of EFI and the importance of consumer safety in agriculture, and effective communication skills. The training curriculum was developed by the UFW, with Andrews and Williamson collaborating on a unit on productivity and quality control.<sup>72</sup>

CIERTO initiated its first pilot in December 2014 at an Andrews and Williamson farm custom-built for the EFI program in Baja California, Mexico.<sup>73</sup> The workers were chosen from Andrews and Williamson's existing employees. The next rounds of training will take place in early 2015, involving a pool of 200-400 would-be migrants from San Luis Potosí. Participants were identified by Respuesta Alternativa, a network of priests and community members dedicated to advancing workers' and human rights, as workers committed to completing the training and testing the new system, and also deeply tied to

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<sup>69</sup> Author's interview with Erik Nicholson, UFW and EFI (July 14, 2014). A large grower will have scores of farms in varying locations; under EFI each farm must be audited and certified individually.

<sup>70</sup> *Compliance Criteria v. 1.0, 'Benchmark H2A'*, EFI, at 28-30, available at <http://www.equitablefood.org/#!certification/c3c7>.

<sup>71</sup> Author's interview with Erik Nicholson, UFW and EFI (July 14, 2014).

<sup>72</sup> Author's interview with Joe Martinez, UFW (July 21, 2014).

<sup>73</sup> EFI decided that the first pilot should involve internal migration to avoid the extra layer of complication added by United States immigration law. The plan is to expand to include H-2A workers by mid-2015. Author's interview with Joe Martinez, UFW (Nov. 12, 2014).

their communities of origin.<sup>74</sup> To guarantee at least some gender balance, UFW Mexico Program Director Joe Martinez carried out two outreach trips specifically targeting women in the core communities in San Luis Potosí. Many women he spoke with were reluctant to participate, citing recruiters' regular rejections of women applicants, the tradition of women remaining at home to take care of the family while men migrated, and concerns about debt. Nonetheless, a number of women have come forward to join the initial group.<sup>75</sup>

Third party verification of growers' compliance with EFI's recruitment and job treatment standards will be managed by EFI's auditor, while CIERTO's recruitment practices will be monitored by Catholic Relief Services-Mexico.<sup>76</sup> Workers will play critical roles in reporting violations of the EFI standards. As one grower seeking EFI certification told the New York Times, referring to the monitoring role that farmworkers play on certified farms, "This program means that instead of one auditor coming around once in a while to check on things, we have 400 auditors on the job all the time."<sup>77</sup>

Workers pay a nominal fee to CIERTO for recruitment or the training they receive. Graduates will be certified to work in EFI fields, and will receive an immediate \$200 bonus from Andrews & Williamson to compensate them for their time and prospective added value to the company. During the first half of 2015, the workers from San Luis Potosí will migrate internally to Baja California to pick strawberries and organic tomatoes in Andrews & Williamson fields. The next stage of the pilot will involve H-2A recruitment of approximately 175 workers for EFI-certified Costco suppliers' fields in the United States. CIERTO plans to rapidly scale up its recruitment and training to cover at least 1000 workers in its second year.<sup>78</sup>

### **PART 3: ANALYSIS**

Each of the efforts described above involves the creative rethinking of traditional organizing models on a substantial scale.

ProDESC has supported the emergence of an organized coalition of migrant workers for the first time ever in Mexico, seeking to represent their own interests before the Mexican government and advocate for improved recruitment and working conditions more broadly. In a context where Mexican law does not allow the formation of a union of those who work abroad, and Mexican unions have shown no interest in organizing or representing those who leave the country, the Coalition offers a previously unexplored avenue to organizing within the country's large migrant sector.

For its part, FLOC is the only U.S. union to organize substantial numbers of H-2 workers, maintain an office for them in their home country, and negotiate and service a collective bargaining agreement that addresses their terms of recruitment alongside other protections. And, finally, the UFW has stepped outside the collective bargaining mold

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<sup>74</sup> Author's interview with Joe Martinez, UFW (July 21, 2014).

<sup>75</sup> *Id.*

<sup>76</sup> Email to author from Joe Martinez (Dec. 15, 2014) (on file with author).

<sup>77</sup> Strom & Greenhouse, *supra* note 68.

<sup>78</sup> *Id.*

entirely with its support for EFI and for CIERTO, which reconceptualizes fair recruitment for migrant workers as an essential part of a supply-chain certification scheme emphasizing worker-employer collaboration on improvements in the production process, leading to increased firm profitability and higher compensation for migrants.

All three efforts have concrete plans for significant expansion in the short term—and significant uncertainty about exactly how their plans will unfold. ProDESC and the Coalition are contemplating a national network of Coalition branches, but face continued challenges to organizing posed by migrants' fear of retaliation and the drug crime and impunity rampant throughout much of Mexico. FLOC is in the midst of a campaign targeting major tobacco company R.J. Reynolds, which has encountered stiff resistance for almost a decade. If successful, the campaign will bring tens of thousands of additional H-2A workers under contract with the union. EFI-CIERTO has barely begun its first training as this is written, but has the strategy and funding in place to be training and recruiting well over a thousand H-2A workers by 2016 and many more thereafter.

Even at this early stage, the initiatives profiled here offer critical insights about what it will take to build a strong presence in Mexico of Mexican and U.S. trade unions, human rights and other advocacy organizations, and migrants to the United States, engaged together in combatting the abuses of recruitment at home and of employment abroad. As a starting point for future work, I briefly outline some key challenges in the Mexico-US context, and then highlight two issues that these and other efforts must grapple with going forward.

### ❖ **Challenges/Obstacles to Active Participation by Migrants**

Migrants who depend on recruiters for access to work abroad are in a difficult position when it comes to defending their rights during recruitment and on the job. Willing workers are plentiful around the world; positions legally open to labor migrants, by comparison, are few. Recruiters have a chokehold on access to most of these positions. Employers, too, have great power over guestworkers. Immigration laws in the United States and many other countries make low-wage temporary migrants entirely dependent on a single employer to maintain their visas. Most employers subcontract recruitment to agencies that in turn deal with brokers in remote communities, creating a labor supply system that allows each actor to plausibly deny any knowledge or legal responsibility for abuses that take place further down the chain. This system delivers to employers a labor force coerced into silence by debt, need, and fear. A migrant who speaks up risks losing the current job on which she and her family depend, the visa that allows her to remain employed in the United States, and the hope of finding future work through her recruiter.

The unique circumstances of each country further complicate this picture. In Mexico, migrants face the additional fear created by the role of organized crime in recruitment.<sup>79</sup> Mexican government officials have offered little by way of protection. Indeed, it has recently come to light that Mexican consular officials in Canada themselves

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<sup>79</sup> See generally Carr, *Search for a Round Peg*.



created a blacklist barring the re-hiring of several migrants who supported a UFCW-Canada union organizing campaign on a farm staffed by guest workers.<sup>80</sup> Until very recently, Mexico had made little effort to address abuses in the recruitment process, and none to strengthen and modernize its law in the field. The United States, for its part, has been an unwilling partner, until recently largely refusing to acknowledge any responsibility for recruitment since it takes place on Mexican soil.<sup>81</sup>

Finally, with ProDESC as an exception, very few Mexican non-profit organizations have made the treatment of Mexican migrant workers by recruiters and foreign employers a focus of their work. Mexican human rights organizations have tended to focus on the abuses of migrants to and through Mexico from Central America, rather than those affecting Mexicans abroad. In addition, little funding is available for Mexican organizations seeking to work on out-migration. Meanwhile, no Mexican trade unions have sought to address the recruitment or working conditions of Mexican migrants to the United States. In one sense, this is not surprising: trade unions in Mexico, as elsewhere around the world, are focused on the concerns of their current membership. To shift their focus to migrants would be to advocate for workers who no longer pay dues and no longer work in the country. Mexican workers who migrate seasonally, however, might argue that their work lives *as a whole*, both at home and abroad, should be of concern to Mexico's unions. There are certainly trade unions in other countries of origin that have made the rights of migrants a major issue.<sup>82</sup> In Mexico, the high level of corruption and the predominance of corporatist and company unions, and the fact that more democratic elements of the Mexican labor movement are preoccupied with a fight for survival in the face of government repression, are among the impediments to such a perspective.<sup>83</sup>

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<sup>80</sup> See British Columbia Labour Relations Board's (BCLRB) 2014 decision in *Certain Employees of Sidhu & Sons Nursery Ltd.*, BCLRB (Mar. 20, 2014), available at [http://s3.amazonaws.com/migrants\\_heroku\\_production/datas/1509/2014canlii12415\\_original.pdf?1396367837](http://s3.amazonaws.com/migrants_heroku_production/datas/1509/2014canlii12415_original.pdf?1396367837). BCLRB found that the Mexican Consulate in Vancouver had blacklisted several Mexican citizens employed on temporary visas in British Columbia, making it impossible to return to their jobs the following season, because they had supported an organizing effort by the United Food and Culinary Workers Union Canada.

<sup>81</sup> See, e.g., Centro de los Derechos del Migrante, *Recruitment Revealed*, *supra* note 2, at 24. In 2014, as an outcome of ministerial consultations resulting from a series of NAALC complaints on the treatment of migrant workers, the U.S. government formally committed to working with the Mexican government to provide migrants and employers with information on migrants' rights during recruitment and on the job. "Ministerial Consultations Joint Declaration," available at <http://www.dol.gov/opa/media/press/ilab/ILAB20140543-US-Mex-Declaration.pdf>. CDM was a leading participant in the coalition that filed the most recent of the NAALC complaints. See <http://www.cdmigrante.org/cdms-work/special-initiatives/the-north-american-agreement-on-labor-cooperation-petition/>.

<sup>82</sup> See, e.g., Jennifer Gordon, *Towards Transnational Labour Citizenship: Restructuring Labour Migration to Reinforce Workers' Rights*, UC BERKELEY L. SCH., THE CHIEF JUSTICE EARL WARREN INST. ON RACE, ETHNICITY, & DIVERSITY, 33-38 (2009), available at [https://www.law.berkeley.edu/files/Gordon Transnatl Labour Final.pdf](https://www.law.berkeley.edu/files/Gordon%20Transnatl%20Labour%20Final.pdf) [hereinafter Gordon, *Towards Transnational Labour Citizenship*].

<sup>83</sup> For a discussion of corporatism and corruption in Mexican unions, see GRACIELA BENSUSÁN & KEVIN J. MIDDLEBROOK, *ORGANIZED LABOUR AND POLITICS IN MEXICO: CHANGES, CONTINUITIES AND CONTRADICTIONS* (2012). For a brief overview of recent human rights concerns relating to Mexican unions, see Mexico 2013 Human Rights Report, State Dep't at 41-44 (Country Reports on Human Rights Practices for 2013, published 2014).

## ❖ Key Areas of Focus Going Forward

If migrants are to become involved on a larger scale as actors and agents in the fight against recruitment abuses, they will require systematic support in a number of areas. Here I highlight two aspects of this that appear particularly important at the current stage: a) effective protection from retaliation by recruiters and employers, and b) transnational advocacy and organizing structures that workers can access wherever they are in the migration chain.

- ***Protection from Retaliation***

In order to be able to fill the roles recommended in this paper, migrant workers must be protected against retaliation. Such measures are necessary to curtail the ability of recruiters, employers, and origin governments to blacklist guest workers who defend their rights; and of employers to fire such workers knowing that the U.S. government will then deport them. Both Mexican and U.S. law have inadequate protections in this regard, and what provisions exist are largely unenforced.

In the absence of effective laws, the U.S.-based case studies reveal two alternative approaches to anti-retaliation measures. FLOC uses a collective bargaining agreement to ban retaliatory firing and make re-hire presumptive. Its NCGA contract establishes a baseline of hiring by seniority, with a presumption of annual return. The union has the right to grieve firings or refusals to rehire that the worker believes are retaliatory. EFI/CIERTO also leverages supply chain pressure, and also forbids retaliation, but focuses on making the re-hire of trained and experienced workers affirmatively desirable from the perspective of growers that want to obtain and retain EFI certification. This is reinforced by penalties against participating growers that retaliate against workers.<sup>84</sup>

Within the United States, the National Guestworkers Alliance has launched a number of innovative initiatives to combat retaliation in guest worker programs. NGA has fought for large numbers of guest workers to be granted U or T visas after they were fired for their activism in labor disputes, winning them permission to stay and work in the United States with their families while they pursued claims against their employers, and eventually to apply for permanent residence and, later, citizenship for themselves and their families. Between 2010 and 2014, its lawyers assisted over 600 migrants with such cases, winning visa certifications for labor trafficking, forced labor, obstruction of justice and fraud in foreign labor contracting. NGA's legal team has begun to use fora like the National Labor Relations Board to contest retaliation against and blacklisting of guest workers in the home country by recruiters as well as in the US by employers. And it is currently piloting its own Anti-Forced Labor Accord for US-based multinational brands. The Accord requires signatories to prohibit retaliation in their supply chains, including by recruiters.<sup>85</sup>

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<sup>84</sup> EFI Standards, available at <http://www.equitablefood.org/#!/certification/c24gy>.

<sup>85</sup> Author's interview with JJ Rosenbaum and Jacob Horwitz, NGA (Apr. 25, 2014); emails to author from JJ Rosenbaum (Dec. 19, 2014; Dec. 21, 2014; Jan. 7, 2015; and Jan. 8, 2015) (on file with author); The Forced Labor Prevention Accord (draft on file with author); Michelle Chen, *What if Your Ability to Stay in This Country*

It is worth reiterating how many of these strategies rely on the dynamics of the supply chain.<sup>86</sup> FLOC uses supply chain pressure in its organizing campaigns to bring end users in the *product supply chain* to the table, with the goal of winning card-check recognition for the union and the right to bargain a contract with growers. Growers are then required to take responsibility for the actions of the recruiters in the *labor supply chain*. EFI is wholly built around the principle of shared responsibility and shared benefit within the supply chain. Its ultimate penalty for a grower whose recruiter violates the EFI standards is removal from access to critically important supply chain buyers, through the threat of de-certification in a context where a retailer like Costco has committed to purchase only from certified growers. And the NGA's Accord is also a supply chain initiative.<sup>87</sup>

The importance of supply chain mechanisms as components of efforts to regulate recruitment requires repeated emphasis, given the high level of subcontracting in industries that use guest workers and the fact that recruitment itself is almost always a subcontracted function. To be effective, supply chain initiatives must impose swift and substantial economic penalties on non-compliant recruiters and employers. Predictable enforcement of penalties—and, in some contexts, the offer of incentives for compliance—is necessary to create meaningful market consequences that will shift the incentives of key actors away from participation in labor supply chains characterized by abusive recruitment practices.<sup>88</sup> This is especially essential given the weaknesses of the existing legal framework.

- ***Transnational Institutional Support***

In order to participate effectively in efforts to change the way they are recruited, migrants also need ongoing institutional support. Because guest workers by definition live part of the year at home and part of the year abroad, this can only truly be effective if it is

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*Depended on Your Employer*, THE NATION BLOG (June 12, 2014), <http://www.thenation.com/blog/180192/what-if-your-ability-stay-country-depended-your-employer#>.

<sup>86</sup> Multinational companies have not been a target of ProDESC's work with migrants to date. The Coalition of Temporary Workers of Sinaloa, in particular, has focused to date on changing policy and practices within, rather than outside, Mexico. However, ProDESC has a long history of working to change the practices of multinationals in its other work areas, in particular in its efforts to defend the rights of miners, indigenous communities, and communal landholders against encroachment by transnational extractive enterprises operating in Mexico. ProDESC's list of strategies to explore in the future with regard to its advocacy for migrants includes supply chain campaigns that target multinationals benefiting from the services of workers recruited under exploitative conditions.

<sup>87</sup> Some Mexican unions also have experience conducting corporate campaigns in supply chain contexts, and in developing strategies to address blacklisting. This commonality could be a basis for discussions between those unions and organizations that support migrant workers.

<sup>88</sup> The Fair Food Program of the Coalition of Immokalee Workers, and the enforcement of its Fair Food Code of Conduct by the Fair Food Standards Council, is an excellent example of a worker-driven program that has created market consequences for non-compliance with a code of conduct. *See, e.g.*, Gordon, *Regulating Global Labor Recruitment*, *supra* note 4, at 57-61 (discussing Coalition of Immokalee Workers' case study); *Fair Food Program: 2014 Annual Report*, FAIR FOOD STANDARDS COUNCIL (December 2014).

present in both places.<sup>89</sup> Models for achieving this include a destination country institution with an active presence in the origin country (or an origin country institution with an active presence in the destination country, although this has yet to emerge in the Mexico-US context<sup>90</sup>), or active collaborations between organizations that bridge the two locations.

Given the paucity of potential Mexican partners noted above, it is not surprising that the most common structure for bi-national support for migrants has been for United States organizations to open an office, sponsor a program, or run a campaign in Mexico. FLOC, EFI/CIERTO, CDM, and Global Workers all follow this pattern. At times, all of these organizations have also sought to work directly with Mexican actors. EFI/CIERTO in particular has collaborated with Mexican entities such as Respuesta Alternativa, Catholic Relief Services-Mexico, and others. It has also tried to build relationships with Mexican state government officials, although none have proven sustainable to date. Global Workers trains Mexican lawyers to coordinate the representation of returned migrants with US attorneys, and both CDM and Global Workers have done advocacy work in coalition with Mexican partners.

The model of a U.S. organization with a Mexican base and of a transnational collaboration between a Mexican and a U.S. organization each has advantages. The all-in-one approach of a U.S. entity with a base in Mexico, represented here by FLOC and the EFI-CIERTO, facilitates a unified strategy, because the work plan in both places can be centrally coordinated to further one mission. While communication, decision-making and transparency can be challenging within a single organization when it operates across borders, the obstacles pale by comparison to those faced by independent groups attempting to collaborate transnationally. In addition, supply chain strategies that seek to hold employers responsible for the actions of their recruiters require the capacity and authority to operate at a high level within destination countries' legal and political systems, functions that to date have required U.S.-based lawyers and organizers.

However, Mexican-led initiatives, such as the ProDESC Coalition profiled here, offer strengths often lacking in destination-country-run approaches. These include essential expertise in Mexican law and policy and the authority to act within those realms; institutional knowledge of and alliances with other Mexican actors, a deep understanding of the country's economy and politics, and the ability to make autonomous decisions about goals and strategy that further their own goals in the Mexican context. Lacking such a perspective, a unilateral effort runs the risk of making avoidable errors, marginalizing key origin country actors, minimizing the origin country government's responsibility for addressing recruitment violations, and creating solutions that prioritize destination country interests.

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<sup>89</sup> See generally Gordon, *Towards Transnational Labour Citizenship*, *supra* note 82. Instead of this coordinated support, most migrants who get assistance do so through organizations that work on only one side of the border. Communication between such organizations in the U.S. and Mexico takes place on an ad hoc basis, if at all.

<sup>90</sup> It has, however, been piloted elsewhere. See, e.g., Gordon, *Towards Transnational Labour Citizenship*, *supra* note 82, at 41-43 (discussing a Philippines union working in Hong Kong).

Although this paper sees democratic collaborations between organizations in both countries as normatively desirable, it also recognizes the many hurdles to their realization. For a Mexico-US collaboration to be genuine, successful, and sustained, actors must go beyond information-sharing, signing a joint petition, or attending meetings together. Mexican organizations have much less access to funding than those based in the United States, and operate under conditions that raise grave concern for the security of their staff and members. They do not have the option to pull out should conditions become too dangerous. From the perspective of many Mexican activists, past efforts at transnational advocacy have too often replicated North-South power dynamics.<sup>91</sup> To address these imbalances and the difficulties of communication and coordination across national borders, it is critical that these transnational relationships grow from a democratic process through which the participants identify shared goals and strategies that advance both organizations' missions, and be undergirded by a commitment to joint problem-solving, transparency (including with regard to funding), and the open exchange of information.

## **CONCLUSION**

It is important to acknowledge that there are places where migrants are unlikely to be able to take active roles in the fight for fair recruitment practices. At a minimum, precursors to meaningful migrant engagement include the presence in either (and ideally both) the origin or the destination country of trade unions or civil society organizations that are dedicated to working on recruitment issues in ways that include migrants as key actors and agents, rather than only as the recipients of services; a political environment that allows at least some room for activism; and the possibility of activating existing protections against retaliation or creating new ones. Where these elements are in place, however, as in Mexico and the United States, ProDESC/Coalition, FLOC's NCGA contract, and the UFW's EFI-CIERTO initiative demonstrate that groups of migrants can organize against recruitment abuses in ways once inconceivable, challenging previously entrenched practices of employers, recruiters, and governments.

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<sup>91</sup> See Jennifer Gordon, *Concept Paper: Funding Transnational Work on Immigration Issues along the United States-Mexico-Central America Corridor*, at 11 (report for Unbound Philanthropy, Feb. 9, 2012)(copy on file with author); Alejandra Ancheita, interviews conducted for project on Genuine Transnational Collaboration, 2010, cited here with Ancheita's permission.

## **Appendix A: Interviews Cited in this Paper**

Alejandra Ancheita, Founder and Executive Director, ProDESC (by telephone, November 20, 2014)

Justin Flores, Vice President, FLOC (by telephone, September 19, 2014 and November 11, 2014)

Atzín Gordillo Acevedo, Organizer, ProDESC, Mexico City (March 10, 2014; June 30, 2014; and by telephone, October 1, 2014)

Olivia Guzmán, Elected Representative, Coalición de Trabajadores y Trabajadoras Temporales de Sinaloa (Sinaloa Coalition of Temporary Workers), Mexico City (March 12, 2014)

Jacob Horwitz, Organizer, National Guestworkers Alliance, New Orleans (April 25, 2014)

Dante López, Director of Organizing, ProDESC (by telephone, October 1, 2014)

Joe Martinez, Global Advocate and Mexico Program Director, United Farm Workers (by telephone, April 17, 2014; July 21, 2014; and November 12, 2014)

Erik Nicholson, National Vice President United Farm Workers and Chair Equitable Food Initiative (by telephone, May 28, 2014 and July 14, 2014)

Joba Reyes, Member, Coalición de Trabajadores y Trabajadoras Temporales de Sinaloa (Sinaloa Coalition of Temporary Workers), Mexico City (March 12, 2014)

Jennifer J. Rosenbaum, Legal and Policy Director, National Guestworkers Alliance, New Orleans (April 25, 2014)

Baldemar Velasquez, Founder and President, FLOC (by telephone, March 21, 2014; April 21, 2014; and July 18, 2014)



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