Mexican Immigrants and Wage Theft in New Mexico

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In Collaboration with
Somos Un Pueblo Unido

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BIOGRAPHIES:

ANDREW SCHRANK:

Andrew Schrank received his PhD from the University of Wisconsin in 2000 and is currently Professor of Political Science and Sociology at the University of New Mexico. He studies labor markets and their regulation in Latin America and the United States and has recently been focused on immigration from the former to the latter. He has received grants and fellowships from the Social Science Research Council, the National Science Foundation, the Russell Sage Foundation, and the MacArthur Foundation; served as a board member at the *American Journal of Sociology*, *Politics and Society*, and *Latin American Politics and Society*; consulted for the Inter-American Development Bank, the World Bank, and several United Nations agencies; and carried out fieldwork in the US, Mexico, Central America, and the Caribbean. His articles have appeared in a number of different academic and popular periodicals including the *American Journal of Sociology*, *The Journal of Politics*, the *International Journal of Urban and Regional Research*, and the *Boston Review*.

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JESSICA GARRICK:

Jessica Garrick studies the treatment of workers in the low-wage labor market, and the mobilization efforts of workers and their organizations. This line of research started with a project focused on the Santa Fe workers' center **Somos Un Pueblo Unido** and their organizing and legal tactics and has since been expanded to a national scope. She completed her Master's in Sociology at the University of New Mexico in 2012 and will be moving on to the University of Michigan in the fall of 2013 to study similar issues as a doctoral student.

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SOMOS UN PUEBLO UNIDO:

Somos Un Pueblo Unido, founded in 1995, is a statewide immigrant-led organization that promotes racial and worker justice. In 2012, **Somos** opened the **United Worker Center of New Mexico (UWC)** to organize and provide support to low-wage workers irrespective of national origin. In addition to informing workers about labor protections and remedies, the UWC organizes campaigns to improve wages and conditions in the workplace.

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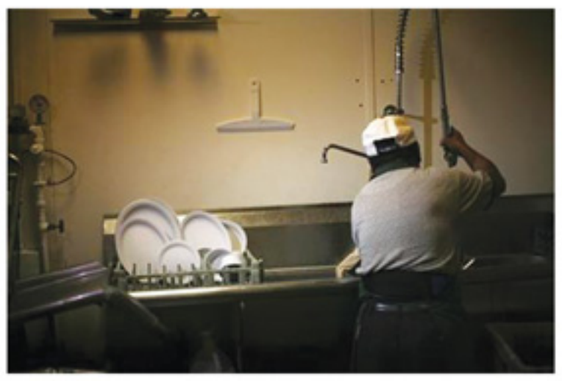
INTRODUCTION:

This study was designed to document immigrant experiences with wage theft—defined as the illegal underpayment or nonpayment of wages—in New Mexico. It builds upon years of work by activists who collected anecdotal evidence on the often deplorable working conditions faced by immigrants—and undocumented immigrants in particular—in the state. Largely concentrated in New Mexico's service, agriculture, and construction industries, immigrants reported not only low wages, long hours, and difficult working conditions, in general, but also violations of labor and employment law, in particular. These included failure to pay the legally mandated minimum wage, forcing workers to work off-the-clock, the nonpayment of overtime, physical and verbal abuse, and health and safety violations, among others.

With their knowledge and contacts in the immigrant community, non-profit organizations like **Somos un Pueblo Unido** of Santa Fe helped workers pursue redress, organize their workplaces, and push for statutory solutions including an unprecedented anti-wage theft law that passed in 2009. The law protects workers who file wage claims from retaliation by vindictive employers, extends the statute of limitations for the claims themselves, and mandates stronger penalties for employers who are found to be at fault. Employers who commit wage theft may therefore be required to pay their victims triple the amount of unpaid wages in damages. In 2013, moreover, the original law was amended to ensure wage theft cases are expedited in New Mexico courts, thus allowing immigrant workers—who are often itinerant and/or living paycheck-to-paycheck—to recover their wages more promptly than they otherwise might. Finally, activists in New Mexico have also had success at the local level. In 2003, for example, a coalition of faith-based organizations, community activists, and labor unions helped pass a living wage law in the state capital of Santa Fe, thus giving the city one of the highest statutory minimum wages in the country—currently set at $10.51 an hour. And this year the City of Albuquerque followed with a less generous, but nonetheless substantial, minimum wage increase of its own.

Perhaps of equal importance, activists have worked to make sure that the protections afforded by the state's laws and statutes are available to all of the state's workers. They understand that legal reforms will not necessarily help workers who live in fear of state agencies, and they have therefore endeavored to discourage sweeping anti-immigration bills—like the ones adopted in neighboring Arizona—and to make New Mexico a model for the protection of immigrant rights more generally (e.g., the rights to operate motor vehicles and attend public universities). In addition, local law enforcement agencies have frequently—if by no means universally—resisted collaborative agreements with Immigration and Customs Enforcement agents.

New Mexico thus combines anti-wage theft laws with a broader body of legislation and regulation designed to address the root causes of non-compliance: weak penalties that fail to deter employers from cheating their workers; administrative hoops that actually deter workers from seeking redress; and a climate of fear that lends itself to impunity and abuse more generally. While stronger laws are almost certainly necessary, they are by no means sufficient, for immigrant workers continue to experience alarming rates of wage theft—not to mention concomitant violations of their rights on the job. This study was designed to understand the extent of wage theft, in particular, among immigrants to New Mexico. The results suggest that immigrants to the state continue to experience wage theft at alarmingly high rates, albeit less frequently than immigrants in other parts of the country, and thus counsel for even more aggressive efforts to crack down on employer abuse.



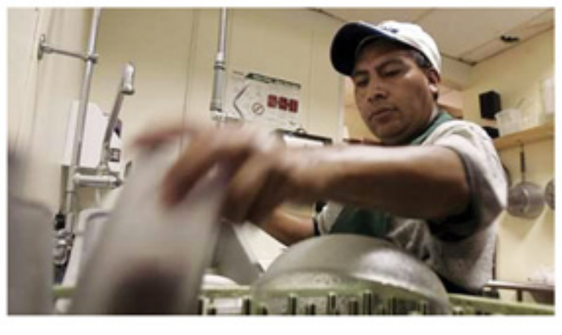
Mexican Immigrants and Wage Theft in New Mexico

STUDY:

Our study follows on the heels of studies undertaken elsewhere in the United States that suggest that wage theft and related violations of labor and employment law have reached epidemic proportions and that immigrants are particularly vulnerable. For instance, Annette Bernhardt and her colleagues recently surveyed a representative sample of more than 4,000 low-wage workers in New York, Chicago, and Los Angeles and found that fully 26 percent were paid less than the minimum wage in the week before they were interviewed and that more than half had been underpaid by more than $1 an hour (Bernhardt et al. 2009, p. 2). Furthermore, immigrant workers would appear to be particularly tempting targets. Bernhardt et al. found that more than 30 percent of foreign-born workers—and almost 40 percent of undocumented immigrants—had experienced a minimum wage violation in the previous week, and that female immigrants were at disproportionate risk (p. 42). Nor are their results atypical. On the contrary, Elizabeth Fussell found a striking rate of wage theft (41.2 percent) in a study of largely undocumented immigrants in New Orleans in 2007-2008 (Fussell 2011, p. 37), and Aaron Schneider and his colleagues found almost identical rates of violation among construction workers in New Orleans in 2009—and noted a marked increase in reported victimization from a baseline study carried out three years earlier (Schneider et al. 2010). Organizations like **Somos un Pueblo Unido** have collected accounts of wage theft from immigrant workers in New Mexico as well; until this study, however, there had been no systematic efforts to document the extent to which immigrants in New Mexico experienced this crime.

METHODS:

Fussell carried out her survey in the waiting room of the Mexican consulate in New Orleans. Immigrants come to the consulate for many reasons (e.g., to receive advice in the event of a medical emergency), but perhaps the most common is to obtain a national identity card (*matricula consular*) that is issued by the Mexican government and used to obtain financial and other services in the US. The *matricula* is available to documented immigrants of longstanding as well as their undocumented counterparts, but the former have "access to other kinds of identity documents" (Suro 2005, p. 3), and immigrants who come to the consulate are therefore more likely to be new arrivals and less likely to be documented than the immigrant population as a whole. "While these biases may be seen as a limitation," Fussell explains, "they are in fact an advantage for researchers who want to study this difficult-to-reach population which can only be estimated with more conventional surveys of the labor force, like the Current Population Survey or census" (2011, p. 8; see also Suro 2005). We therefore followed Fussell's methodology by interviewing 210 immigrants in the waiting room of the Mexican consulate in Albuquerque and the mobile consulate in Santa Fe in the summer and fall of 2012. Questions concerned their experiences in the New Mexico labor market as well as their socio-economic profiles. All the surveys were collected between July 2012 and October 2012.We had the cooperation of the Mexican consulate and received advisory support from **Somos un Pueblo Unido**.



PERSONAL ACCOUNT

After working in the construction and dairy industries in Texas for several years, one respondent moved to Clovis, New Mexico, where he had heard that there were more opportunities in the dairy industry. Here, however, he was often paid less than what he was owed and was subject to verbal abuse. When asked why he did not report the employer, he stated that he was scared of losing his job.

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RESULTS:

27.22 PERCENT OF RESPONDENTS HAD EXPERIENCED AT LEAST ONE INSTANCE OF WAGE THEFT BY AN EMPLOYER IN NEW MEXICO

Wage theft is not limited to undocumented immigrants. While the percentage of undocumented immigrants who acknowledged experiencing at least one instance of wage theft was particularly high (29.6 percent), 22 percent of immigrants with legal documentation acknowledged wage theft as well. Immigrants to New Mexico thus appear to be decidedly vulnerable to wage theft, albeit perhaps less vulnerable than immigrants in other parts of the US.

Men are even more likely to report wage theft than women. In fact, we found that 32 percent of the male respondents had been victimized by wage theft compared to 22 percent of our female respondents.

Sectoral and occupational differences are not particularly pronounced. We found that 33.3 percent of all construction workers in the sample had experienced wage theft, followed by 29.4 percent of respondents in food preparation and service occupations, and 25.5 percent of janitors, housekeepers, and maintenance and landscape workers.

Education and English language ability matter, but in surprising ways. We found a modest but positive association between educational attainment (OR = 1.10; p = .054) and self-reported English language skills (p = .069) and self-reported wage theft. Since these results were theoretically unexpected, we suspect they may imply the underreporting of wage theft among less educated workers and non-English speakers who either did not fully understand or feared our questions. If true, this means that our data probably underestimate the prevalence of wage theft in New Mexico.

RESULTS

PERSONAL ACCOUNTS

One young female respondent who had been in the US since she was four years old reported that she was currently working as a waitress in a restaurant in Belen, New Mexico—her first paid job. She was, however, working only for tips: The owners of the restaurant said they could not pay her an hourly wage because she did not have a social security number. Like so many others, she did not want to report her employers because she felt scared to lose her job.

A construction worker from Mexico told the survey team that he was often paid less than what he was owed by his employers. While he typically worked more than 40 hours a week, he was never paid the mandatory overtime rate. He considered going to the labor department, but then decided he did not want to stir the pot and be seen as a troublemaker.

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RESULTS:

RESPONDENTS ALSO REPORTED EXPERIENCES WITH WORKPLACE ABUSE (VERBAL OR PHYSICAL VIOLENCE ON THE PART OF EMPLOYERS)

Workplace abuse is common. Of the full sample, 18.33 percent had experienced abuse by a New Mexico employer.

Documentation status matters. Undocumented immigrants were more than twice as likely (21.6 percent) to have been victims of workplace abuse as documented immigrants (9.2 percent)

Gender differences are limited. Female respondents were only slightly more likely to report workplace abuse (20.7 percent) than their male counterparts (16.3 percent)

Sectoral and occupational differences are limited as well. We found that 21.3 percent of janitors, housekeepers, and maintenance and landscape workers had experienced workplace abuse, followed by 17.6 percent of food preparation and service workers, and 16.7 percent of construction workers.

Violations tend to cluster. Workers who experienced wage theft were significantly more likely to report employer abuse (including but not limited to physical violence) as well (35 percent of wage theft victims v. 12 percent of non-victims; p = .001). Similarly, workers who experience wage theft were significantly more likely to report forced overtime than workers who did not suffer wage theft (24 percent v. 3 percent; p = .001). This is consistent with previous studies which suggest that violations cluster, i.e., employers who violate one labor law are likely to violate others.

RESPONDENTS WHO SUFFER ON THE JOB ARE UNLIKELY TO REPORT THEIR VICTIMIZATION TO THE PROPER AUTHORITIES

Wage theft is dramatically underreported. Only 12 percent of self-reported wage theft victims reported the crime to an authority, and only four of those who did so went to a government agency. Of those four, moreover, only one resulted in an actual case. Other respondents tended to report the crime, if at all, to the human resource departments of their companies.

Underreporting and victimization reinforce each other. When asked why they did not report the crime, victims tended to cite fear or reprisals, lack of knowledge, and concerns about the bureaucracy. If immigrants fail to report wage theft, however, or the authorities refuse to take action when they do so, employers will be empowered to commit the crime again.

RESULTS

PERSONAL ACCOUNTS

One female respondent reported that while working for an Albuquerque hotel as a housekeeper, she experienced numerous occurrences of wage theft. She often was not paid for all the hours she worked, and on four separate occasions, she did not receive her paycheck at all. Simultaneously, the housekeepers were expected to clean rooms at a dangerous pace and were verbally abused and insulted by their supervisors. After 15 years working for this hotel, she decided that she could not take the stress anymore and quit. She never reported her employer to the authorities because she did not know where to go.

One male respondent who worked for a small money exchange business stated that his boss would insist on shifting some of his hours to another work week in order to avoid paying overtime. He was also required to work off the clock. The respondent did not report his employers because he did not know where to go.

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RECOMMENDATIONS:

New Mexico should position itself as a leader in the fight against wage theft by taking several common-sense measures.

COMMUNITY EDUCATION

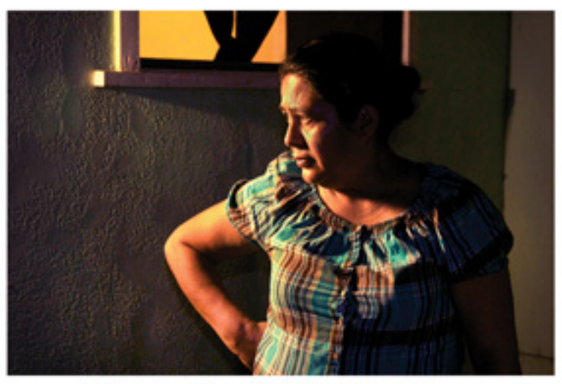
State agencies such as the New Mexico Department of Workforce Solutions and the Attorney General's office should publicize the law and ensure that immigrant workers, in particular, know their rights. Many workers are unaware of the laws governing wages and hours and/or their means of redress when those laws have been violated. New Mexico should undertake a concerted effort to inform workers and employers of their rights and responsibilities, so that nobody operates in ignorance of the law.

CONSOLIDATING ENFORCEMENT

Consolidate enforcement. American labor and employment laws are enforced by a multitude of agencies at several different levels of government (e.g., the Wage and Hour Division of the US Department of Labor, the Wage and Hour Bureau of the New Mexico Department of Workforce Solutions, the City Manager in Santa Fe, the City Attorney in Albuquerque, etc.). This wastes scarce enforcement resources and leaves workers confused as to their options when their rights have been violated. By creating a single office (i.e., a "one stop shop") devoted to informing workers of both their rights and means of redress and placing (and publicizing) branches of the office around the state, New Mexico could go a long way toward breaking down the bureaucracy and empowering workers to defend their rights. By mandating cooperation across the different enforcement agencies, the state could go a long way toward offsetting the cost of its disjointed regulatory apparatus in the first place. Short of creating a one-stop shop, New Mexico should aim for more coordination across the various agencies and with community organizations.

INCREASING ENFORCEMENT RESOURCES

Increase enforcement resources. The state currently devotes very few resources to labor and employment law enforcement. A paucity of inspectors means that almost all investigations are post hoc, and the odds that any particular employer will be inspected in a given year are remarkably low. By recruiting and training more investigators and deploying them in a proactive—rather than post hoc—manner, New Mexico could put violators on notice that their abuses will no longer be tolerated.



RECOMMENDATIONS

PERSONAL ACCOUNTS

One respondent who had just graduated from high school worked for an auto mechanic shop in Santa Fe. He reported a flat wage of $400/week, despite the fact that the he often worked 10 hours day, 6 days per week. Thus, he was not being paid the minimum wage required by Santa Fe's Living Wage Law. Nor was he being paid the legally mandated overtime wage for working more than 40 hours a week. He was unsure of what his rights were and did not realize that he was not being paid his legally-owed wages.

One female restaurant worker reported that she had once received a paycheck that had far fewer hours on it than she worked. However, she reported that the far more troubling aspect of her workplace was that the employers often insulted and verbally abused many of the Latino workers, while also paying them less than white workers.

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RECOMMENDATIONS:

STRENGTHENING ENFORCEMENT MECHANISMS

Unlike many other states, New Mexico's "on the books" penalties for errant employers are strong—largely thanks to the 2009 anti-wage theft law. But enforcement tends to lag in practice. In our experience, the Department of Workforce Solutions rarely, if ever, pursues three important routes for recourse enshrined in the law. These include:

- requiring the employer to pay the worker treble damages, rather than simply the back wages owed
- charging employers who violate the law with criminal misdemeanors
- other relief orders such as requiring employers to post notices of their violations of the law in the workplace

These provisions have the potential to serve as effective deterrents in theory, but we have seen little evidence that they are invoked in practice, giving errant employers little reason to take them seriously. The Department of Workforce Solutions, along with the district attorneys, should make sure that administrative law judges are aware of these penalties and how to pursue them.

IMPROVE LANGUAGE ACCESS

Finally, significant language barriers still exist. While many state agency documents are now in English and Spanish, correspondence throughout a wage claim largely occurs in English, leading to confusion and missing information for claimants with limited English skills. The state's labor agencies should work to implement a system by which all claimants can be kept fully informed of their cases as they make their ways through the system.

The beneficiaries of these measures would include not only workers who are currently victimized by wage theft but law-abiding employers and their workers, who are currently at risk of seeing their profits and wages dragged down by the unfair competition of their dishonest neighbors and rivals.

RECOMMENDATIONS

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