

Wolf – Forthcoming

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## **The Pandemic Revolt of New York City’s Immigrant “Small Business” Unions**

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### **Intro**

In what would become an iconic image of the pandemic in New York City, Tipu Sultan climbed on top of a yellow cab on Broadway in front of City Hall with a bull horn. He raised his fist in the air and led hundreds of cabbies in a chant, “Debt forgiveness now! No more bankruptcies! No more suicides!” Tipu is a yellow cab driver and organizer with the New York Taxi Workers Alliance (NYTWA), a union of 24,000 yellow and app-based drivers in the City. The NYTWA was protesting to demand that the Mayor provide debt relief for medallion owner-drivers, whose medallions had been sold to them at artificially inflated prices. The NYTWA argued that the City lied to the immigrant drivers about the value of the medallions, which then collapsed after the City allowed Uber to flood the market with thousands of new drivers. The pandemic was the final straw as most drivers would lose their life’s work and savings if the City did not act. The crowd of drivers were determined to win, “Driver power! Union power!” This chant might strike some as peculiar since these drivers own their own cars and therefore are not workers. The NYTWA’s insists that they are a union, but many drivers are—at least on paper—immigrant small business owners. Taxi drivers were not the only immigrant small business owners which organized “union style” movements that became militant during the pandemic as app-based delivery workers, street vendors, and undocumented excluded workers all formed powerful movements despite lacking formal employee protections. This chapter attempts to understand why immigrant small business owners organized “union style” movements despite

being self-employed and evaluates what factors account for the similarities and differences between the different pandemic movements.

Immigrant small business owners organize as workers because for many becoming self-employed was not a deliberate choice, but a reality forced upon them. Immigrants choose to self-employ due to pull (positives) and push (negatives) factors (Aldrich and Waldinger 1990). Both pull and push factors for immigrants derive from their marginalization and the discrimination they face in the traditional labor market. Pull factors are not the potential of massive windfall profits but the ability to carve out an existence with minimal majority white interference. This chapter adds an additional component to our understanding of immigrant self-employment push factors, deliberate firm strategy. This takes two forms. The first is workplace fissuring where firms use contracting and misclassification to deny immigrants employee rights by labeling them proactively as independent contractors. Second, immigrant small businesses can find themselves dependent on the government due to restrictive licensing often passed at the behest of larger majority-dominated firms.

It is these two forms of forced immigrant entrepreneurship—misclassification and restrictive licensing—which accounts for why immigrant small businesses choose to form “union style” organizations. This chapter explores four such movements by organizations whose membership was pushed to the brink during the pandemic: the New York Taxi Workers Alliance, Los Deliveristas Unidos, the Street Vendor Project, and the #FundExcludedWorkers coalition. This chapter is based on years of ethnographic work and interviews with the first two groups and interviews with the leadership of the latter two. The form and strategies employed by various immigrant small business movements during the pandemic was driven by the logic of their industry, their memberships’ immigration status, and their relationship to the question of

whether their membership should be considered employees or not. While all four movements engaged in “union style” campaigns, the groups with more secure membership, in terms of industry structure and immigration status, more closely resembled traditional unions structures.

### **The Creation of Dependent Immigrant Business Owners**

The recent upsurge of immigrant activism during the COVID pandemic in New York City was decades in the making. When New York’s political economy changed following the 1970s financial crisis, the city emerged reformed as a global city (Sassen 1996) built around a bifurcated urban service economy with finance and real estate services at the top generating huge demand for low-end service jobs in industries like food service and domestic work. These service jobs were filled by a massive influx of new immigrants. Unlike previous European dominated waves of immigration these new immigrants were from all over the Global South. This demographic change was due to passage of the 1965 Hart-Celler Act, which eliminated the U.S.’ country of origin quota system that had favored European immigration. This relaxation resulted in an explosion of immigrants from South and East Asia as well as Africa (Zhou and Bankston 2016), but the new immigrants primarily chose to settle in just a handful of America’s largest cities. The urban concentration radically reformulated the demographics of cities like New York City and generated difficult questions about how to politically and economically incorporate these new arrivals.

Once they had settled in New York City, the post-1965 immigrants faced a wide variety of employment experiences. For immigrants, researchers find this process largely flowed what is variously called ethnic networks, enclaves, or niches (Massey et al. 1987; Portes and Bach 1985; Waldinger 1996). Ethnic niche jobs are typically at the bottom of employment opportunity ladder

and the social closure of immigrant networks allows groups to keep outsiders out (Waldinger 1996). These niches, while important sources of jobs, can also serve to limit immigrants' opportunities to enter other more lucrative industries.

The post Hart-Celler immigrants developed employment niches not only in traditional low-wage immigration service occupations but unexpectedly developed niches in different forms of self-employment at much higher rates than previous immigrants had. The choice of immigrants to pursue self-employment was driven by a combination of pull (positives) and push (negatives) factors, which shape immigrants' opportunity structures (Aldrich and Waldinger 1990). The dominant pull factor for immigrant small businesses is the ability to operate in markets that are not in competition with the dominant majority-owned firms. This is accomplished by focusing on underserved or abandoned markets, markets characterized by low economies of scale, markets with unstable or uncertain demand, and markets for exotic goods (Aldrich & Waldinger 1990; Light 1972). Pull factors for immigrant self-employment, while they exist, provide smaller benefits than one might expect given the risks. This naturally leads one to consider the push factors driving self-employment.

The push factors driving immigrants to self-employment are all the social forces, which prevent immigrants from obtaining gainful incorporation into the traditional labor market. The lack of opportunities in the primary labor market makes the relatively weak pulls stronger (Waldinger, et al. 1990). Push factors include lack of English proficiency, non-transferable home country education or skills, weak social networks, and racial discrimination (Zhou 2004). Understood in this framework immigrant self-employment is not fulfilling an entrepreneurial American dream but a case of immigrants turning to their last resort (Ward, 1987). Indicative of

this reality research finds that when presented with an alternative most immigrants abandoned minority-neighborhood entrepreneurship (Bates and Robb 2014).

In addition to the push and pull factors this chapter raises the overlooked push factor of deliberate firm strategy. In the cases under study here there are two dominant firm strategies driving precarity, misclassification and lobbying for restrictive licensing. These factors shape dependent self-employment and shape the individual strategies immigrants in each industry took in organizing. The increasing dependence of immigrant entrepreneurs is often a direct strategy of firms. Following the financial crisis in the 1970s firms devised new ways to exclude workers from labor protections through subcontracting and outsourcing, known as employment fissuring (Weil 2014). Government's failure to modernize their laws in response to these changes have allowed them to persist. The logical extreme of this is the gig economy, where employment is outsourced to each individual worker (Wolf 2021). In both the Uber driver and food delivery worker case these apps misclassify their workers as independent contractors to avoid paying the minimum wage, unemployment insurance, or give them the right to form a union. Instead, these companies recast these workers as independent small business owners.

On the other hand, immigrant small businesses can find themselves dependent on the government due to restrictive licensing often passed at the behest of larger firms. Street vendors are not marginalized from misclassified but from the dominant white business associations lobbying the state to criminalize these businesses. In the case of street vendors restrictive licensing requirements force these workers to operate illegally. Here the immigrant entrepreneurs would like to be small business owners but are constrained by wider societal forces.

The vendors' worked to create a *de facto* workers' organization even though their dependence is not without historical precedent. In New York City's Chinatown during the great

depression the small family Chinese laundries, which represented the dominant industry in the community, organized the Chinese Hand Laundry Alliance (CHLA). CHLA formed in 1933 after the City imposed a \$25 a year registration fee on businesses and a requirement that laundries post a \$1,000 bond. This was done at the behest of large-scale white-owned laundries, who were mad that the Chinese laundries undercut their prices. Chinese immigrants at the time faced extreme employment discrimination leaving many with no other option than to engage in this marginal business (Kwong 1979). The CHLA operated as a “union style” organization of dependent immigrant businessmen. In a more recent example, the independent lobsterman in Maine organized a union with the International Association of Machinists to combat the exploitation that they faced from the buyers on the docks, who often worked for multinational corporations (Fitzsimons & Lurie 2022).

### **The Multiple Approaches to Immigrant Business Organizing**

The pandemic represented a massive challenge to the livelihoods of all New Yorkers, but the effects were more concentrated on communities of color (Purkayastha 2020). Immigrants, both documented and undocumented alike, experience uncertainties derived from their status as immigrants, which undermined their ability to manage their health, incomes, government interactions, and their communities during the pandemic (Wolf 2022b). This forced them to attempt to keep working despite the public health threat, creating a reinforcing spiral of disease transmission in immigrant communities, and turning neighborhoods into what Queens councilman Daniel Dromm dubbed “the epicenter of the epicenter.” As the *New York Times* reported, the seven square miles of Central Queens which is the center of immigrant New York

was the community hardest hit by COVID (Correal and Jacobs 2020; Khullar 2020). This small area had nearly as many COVID cases as did all of Manhattan.

Four groups that were prominent in this immigrant revolt will be discussed in detailed case studies below: the New York Taxi Workers Alliance (NYTWA), the Workers' Justice Project (WJP), the Street Vendor Project (SVP), and a coalition these three groups and others formed during the pandemic #FundExcludedWorkers (FEW). These four movements all achieved the stunning victories during the pandemic. These four “union style” movements were also unique in that they organized and fought primarily for immigrant small business owners. Despite their similarities, these groups each took different approaches given the unique challenges faced by the workers in each industry, a comparison of these movements can be found in Table 1. In particular, the strategies and organizing objectives employed by each group during the pandemic were shaped by whether their members were misclassified or legally dependent; were documented or not; and the group's organizational form.

**Table 1. Comparison of Organizational Form and Pandemic Responses Along Select Characteristics**

	<b>New York Taxi Workers Alliance</b>	<b>Workers' Justice Project</b>	<b>Street Vendor Project</b>	<b>#FundExcludedWorkers</b>
<b>Industry</b>	Taxi and App Drivers	Food Delivery, Domestic Work, and Day Labor	Street Vendors	All Industries
<b>Organization Form</b>	Union	Workers' Center	Advocacy Group	Coalition
<b>Funding</b>	Mostly membership dues and some foundation	Foundations, City Contracts, and some membership dues	Formally connected to NGO and some membership dues	Coalition partners and foundations
<b>Workers Immigration Status</b>	Overwhelmingly Documented	Mostly Undocumented	Mostly Undocumented	Undocumented
<b>Reason for Business Dependence</b>	Yellow Taxis (Legal) & App (Misclassified)	Misclassified	Legal	N/A
<b>Employee Status Approach</b>	Employee Status	Unsure	Independent	N/A
<b>Pandemic Organizing Goals</b>	Debt forgiveness, employee status, and a union	Minimum wage, health & safety, Enforcement, and representation	Legalize businesses through increased licensing and stop police harassment	Social protection benefits for undocumented and excluded workers

For all four groups the pandemic brought simmering conflicts for their membership to a boiling point. All movements were able to utilize their workers’ newfound essential status to mobilize public support and push long stalled organizational goals to victory. The experience of organizing during the pandemic, for all these immigrant groups, showed their communities that victory is possible and has left them better connected and positioned to continue to advance their agenda.

*The New York Taxi Workers Alliance*

The New York Taxi Workers Alliance was born out of South Asian immigrant organizing in Queens in the early 1990s that decided the only way to improve the community was to improve the industry which dominated it. The Union first organized in 1998 against Mayor Giuliani’s increased harassment of drivers through expensive “quality of life” tickets and his xenophobic demonetization of drivers. The immigrant rights origins of the union shaped its focus of fighting for not just drivers, but their immigrant communities as well.

By the time the NYTWA had begun organizing, the New York City taxi industry had become a shell of its former self. Taxi driving had long been a steady middle class job for the City’s white-ethnic communities and was a popular job for working class and middle-class kids looking for a flexibility as they worked their way through college. In the late 1960s, taxi drivers unionized under the leadership of Harry Van Arsdale Jr., the powerful New York labor leader of the IBEW, Local 3. Throughout the 1970s the industry went through a radical change mirroring the general fiscal crisis experienced by the City. Facing pressure from the rise of black dispatch cabs, the Uber of the day, and gradual financialization of the industry as garages transformed themselves into medallion brokers the union lost power. By the end of the 1970s the union existed only in name, and taxi drivers had lost their employee status after the City legalized leasing. As the industry declined, those who could got out. In their place, this newly diminished job was filled by the Post-Hart-Celler immigrants from South Asian, the Caribbean, Africa, and China. By 2020, over 90% drivers were foreign-born (TLC 2021). Taxi driving had become a classical example of an immigrant employment niche. Drivers’ reclassification as independent contractors due to the introduction of leasing also represented an example of forced independent immigrant businesses.

From this initial success, the NYTWA has only grown with each successful campaign. The City's taxi regulatory body the Taxi & Limousine Commission (TLC) had long been dominated by fleet interests. The NYTWA counteracted this through effective public protest and utilizing the TLC's petition for rule making procedure to advance their demands and legitimate drivers' concerns. This petition process became a powerful tool for the Alliance, enabling them to secure economic and other material gains from the city and fleets without formal bargaining rights (Gaus 2014; Johnston 2018; Wolf 2022a). Overtime, the Alliance established *de facto* regular tripartite bargaining through the TLC.

The NYTWA has always maintained that it is a union. Scholars like Fine (2006) have instead considered it a workers' center, as they represent workers outside of the protection of formal labor law. A union-worker center hybrid is perhaps a more accurate description. When asked why it is important to consider themselves a union, Desai explained, "When you hear "union" you think working class power, but "workers' center" is more academic...to us, a group of workers that bands together is a union, so that is what we are. Not to mention many unions are collective bargaining agents but not unions because they don't fight." Owning the term union is empowering for drivers. Drivers did not choose to be small businesses; they were forced into this status by the introduction of leasing and Uber's misclassification. Calling themselves a union lets them own the term workers and make demands based on their class position.

The formation of a driver's union and their impressive gains through the establishment of tripartite bargaining in the City all came under threat with the introduction of Uber to the City. Uber entered New York City illegally in 2014 refusing to comply with local taxi regulations because they insisted, they were a tech company not a taxi service provider (Wolf 2022a). By 2019, Uber had exploded, with 85,000 unique vehicles per month. Importantly, as the NYTWA

argues, Uber reintroduced a more standard employment relationship to the industry. The NYTWA argues Uber's algorithmic control of drivers is not indirect and constitutes an employer-and-employee relationship, meaning drivers are misclassified. As a result, the yellow taxi membership more closely resembles dependent entrepreneurship through regulation while the app-drivers represent dependent entrepreneurship through misclassification.

Immediately following the governor's emergency COVID shutdown order, in March 2020, the taxi industry was decimated. The Alliance quickly focused on providing drivers and their communities mutual aid, assistance navigating public services, and engaged in a series of aggressive campaigns to defend drivers' rights (Wolf 2022b). The two most prominent campaigns were fighting for app drivers to be considered employees under New York State's unemployment insurance system and fighting for debt forgiveness for medallion owner-drivers. These fights highlight examples of how union style campaigns are utilized to combat the two dominant forms of dependent immigrant businesses- those misclassified and those legally dependent.

Indicative of the complicated overlapping structures of U.S. labor law, different statutes have different definitions of "employee." New York State's definition of employee under its unemployment insurance law has a particularly expansive definition. As a result, the NYTWA successfully sued the State for denying app-drivers access to UI benefits in 2018 (Scheiber 2020). Despite this ruling, Uber and other app companies refused to comply with the law and, when the pandemic hit, withheld wage data from the DOL. The union again sued the New York State Department of Labor to force them to hold gig companies accountable and follow the Department's 2018 determination. This lawsuit was successful and ensured Uber drivers as

employees were entitled to hundreds of additional dollars in benefits a week during the pandemic.

The NYTWA approach to the employee status question is to unequivocally push for employee status for app drivers. This demand contrasts with the Deliveristas, discussed in detail below, who have not yet determined how to address this issue, given the largely undocumented workforce they represent. The Alliance's position does in part come from the more secure immigration status of its members but also because, as President Bhairavi Desai explains, "In NY, after our victories, it meant they are basically employees, New York is just excluding them from a few other rights paid sick, disability, etc, wage theft these are benefits that cost the least. Brick by brick we laid the floor and now we got to fix the cracks." She went on to note their victory during the pandemic, securing drivers employee status under New York Unemployment Insurance law, had really highlighted for the membership the impact of fighting misclassification. It meant Uber drivers got hundreds of dollars more a week in benefits than they would have if they had only gotten Pandemic Unemployment Assistance under the CARES Act.

The pandemic also brought to a head the long simmering medallion debt crisis. In the 2000s, the city would sell these medallions through an auction system for which the city was accused of artificially inflating their value (Rosenthal, 2019). The influx of competition from Uber, and the city's initial reluctance to regulate Uber, resulted in the collapse of the medallions' value and drivers' earnings more generally. Those who own these medallions today have seen their lives' work and investment fall by hundreds of thousands of dollars. This leaves the drivers underwater, as they still owe the banks the original amount. Faced with the burden of inflated

medallion debts and declining fares due to the flood of Uber cars on the road, nine drivers took their own life (Roberts & Woods 2019).

During this fight for medallion relief the NYTWA developed new allies in the New York congressional delegation. Since many of the medallion mortgage lenders were federally regulated cooperatives, Senator Chuck Schumer and Representative Alexandria Ocasio-Cortez both became intimately involved in attempting to find a solution to the debt crisis. The Alliance got Schumer to include funding in congress' COVID relief bill for the city to restructure the medallion owners' debt in accordance with the Alliances proposed program. Despite the federal money, Mayor de Blasio instead attempted to institute his own plan which was less generous to the drivers. The union called his plan a "bank bailout." The union established a 24/7 protest camp in front of city hall. There they stayed for forty-five days despite dropping temperatures. But the City would not budge, and on October 20 the union began a hunger strike that garnered international media attention. In total, six drivers fasted for fourteen days, with seventy-eight people, including City Council members, joining the strike in solidarity at various points (Crabapple 2021). Throughout, the union engaged in civil disobedience, blocking traffic on the Brooklyn Bridge with their cabs and joining with elected officials to block traffic on Broadway next to city hall. Pitching themselves as heroic essential workers who had helped doctors and nurses get to work in the early day of the pandemic, the Alliance received broad public support and sympathetic editorials in the local press. On November 3, the Alliance and City reached an agreement that adopted nearly every detail of the drivers' plan. For some drivers, this victory meant relief of half a million dollars of debt. In the heart of the pandemic when 90 percent of their members had to stop working, the union achieved two of their major goals: getting the New

York State DOL to enforce the ruling that app-drivers were employees under UI law and achieving debt relief for medallion drivers.

The pandemic had a profound impact on the Alliance and served as a model galvanizing other immigrant movements during the pandemic. As Desai explain, “Our victories, built worker and community trust.” It was important for the union to have a pandemic campaign for both yellow and app drivers so that there was not tension between the membership. Desai explains winning for one group sends a message to the other that the union is how you advance your interests, “The number of app drivers watching that fight for medallion relief was impactful. It shows we are leaving no one behind. So many app drivers came to the victory party. It built pride and confidence. I feel the change myself in the members and the staff.”

#### *The Workers’ Justice Projects’ Los Deliveristas Unidos Campaign*

The NYTWA were not the only group fighting for immigrant gig workers during the pandemic. The crisis saw the rise of a powerful movement of gig food delivery workers who called themselves Los Deliveristas Unidos. The Deliveristas began as informal networks of Latinx delivery workers who maintained WhatsApp groups to share information while working, plan soccer games, and provide emergency assistance when members faced bike robberies. During the pandemic app-based food delivery exploded as people stayed home and ordered food. For immigrant workers, who worked traditional immigrant niche jobs like restaurants or construction, they found themselves without a job. Since many of these workers were undocumented, they could not apply for benefits. Working apps became a last resort occupation for these workers during the pandemic. Given the demanding distances the apps require workers to travel most are compelled to purchase ebikes to complete this work. These ebikes are very

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expensive, between \$1,000-2,000. On the abandoned pandemic streets of New York City these undocumented workers operating expensive ebikes quickly became targets of a rash of armed robberies. Angry but afraid these workers eventually turned to the Workers' Justice Project for assistance.

The Workers Justice Project (WJP) was founded in 2010 as a Brooklyn based Latinx Workers' Center to organize domestic and day labor construction workers. WJP has since grown considerably and now has 12,000 members and three offices. In an early victory to improve conditions for day laborers, WJP won a contract from the city to maintain a fair hiring hall for these workers. WJP provides numerous services for its members including work training, health & safety classes, legal support, and mutual aid. It was Hurricane Sandy which cemented WJP's place in the community as their Herculean efforts to provide relief raised their stature with the community and in the eyes of the City.

When the pandemic hit, WJP quickly attempted to mimic their Hurricane Sandy mobilization. WJP set up food pantries, raised cash relief, gave out PPE, and provided other basic essential services. As their membership is mostly undocumented, they had to find ways to fill the void left by the lack of access to social protections. As Executive Director Ligia Guallpa explained, "overnight we had to turn from a workers center to an emergency relief center." They turned their Bensonhurst office into a food pantry, they got money to hire their members to make masks turning their Sunset Park office into a factory, and the Williamsburg office became a centralized referral office. In March of 2020 they raised over \$2 million dollars to provide cash relief. Given the amount of money raised, they asked their membership to recommend who else in their communities needed support, and someone offered, "there are these indigenous guys who all ride bikes."

This brought the Deliveristas into contact with WJP. Many Deliveristas are indigenous from Guatemala and Mexico. As such, some of them struggle with Spanish literacy and have limited or no English proficiency. They were marginalized within their own communities and had few connections outside of their immediate circles. Most of these workers were young men often living in crowded boarding houses in Bensonhurst. As WJP members convinced these young men to come to the food bank and receive the cash assistance from WJP they began to build mutual trust. A full-scale organizing effort quickly took off. In April and May 2020, they began holding meetings in a park in Bensonhurst. Despite the picture that gig workers are isolated, they are, in fact, in constant contact. They were already organized, and they were upset. They just needed the WJP to help push them towards action. The biggest issues they faced were discrimination, lack of access to bathrooms, wage and tip theft, bike robberies, and lack of health care when they contracted COVID or injuries. The robberies were particularly upsetting because of police inaction. As Gualpa explained, “They felt invisible and that agitated them. They feel they mean nothing to the government.”

WJP and the Deliveristas eventually decided to go public with a large protest bike ride. Much like taxi drivers, they felt no one was listening to immigrants during the pandemic. They had to protest to have their voices heard. The City was celebrating essential workers, but no one included delivery workers in this praise. The protest ride was held in August, beginning in the Upper West Side at 72<sup>nd</sup> where a large amount of the robberies had occurred and rode down Broadway to City Hall to demand action. Nearly 400 Deliveristas showed up. After the march, WJP committed much more organizing time and resources to supporting their efforts. In October, they held another rally, this time to make public their specific demands. This rally drew thousands. As WJP political director, Hildalyn Colón Hernández explained, “the role of

protesting is significant. Showing your numbers shows you are mobilizing. The numbers matter and that is why these protests were so effective. It broke cultural barriers and helped us reach beyond the Latinos.” She went on to note that they learned from the failed gig worker organizing against Prop 22 in California that you had to win the customers’ support. The marches were to educate the customers as well.

Coming out of these rallies, the WJP demanded that Deliveristas receive a minimum wage, have the right to use the bathroom at the restaurants they pick-up orders from, have the apps provide safety equipment, limit the miles per order, and create greater pay and tip transparency. While the WJP had positive relationships with many council members they had never attempted such a big lift. The NYTWA could appeal to the TLC with a formalized rule system to regulate for-hire vehicle in the city, but there was no such agency or institutional legacy the WJP could point to. The WJP worked to build their political capacity by building relationships with other unions like SEIU 32BJ, community groups like Transportation Alternatives, and local elected officials. In early 2021, the WJP partnered with the Cornell Worker Institute to conduct a survey of app delivery workers to put numbers to their campaign (Figueroa et al., 2021). The report received wide media attention and garnered lots of public support. These efforts resulted in the successful passage of these bill in City Hall. This established the first in the nation minimum wage for app-based delivery workers.

While the WJP’s Deliveristas campaign has been impressive challenges remain. Unlike the NYTWA, most of the WJP’s membership is mostly undocumented. For the WJP the campaign for the Deliveristas empowered the workers, when they were most desperate to demand their dignity. It showed the workers that elected officials would respond if they organized. As Gualpa explained, “Before they wouldn’t want to talk to [politicians] and now

they go up to them at our events and make demands. Immigration status is important but focusing on it isolates ourselves. These workers are trying to say it is an aspect of my life but not my life. I'm a Deliverista first.”

The workers' immigration status has complicated WJP's approach to the employee status question. As Gualpa stated, “philosophically I think they are employees and it's the right thing to do, but we need to understand the workers' reality. We don't want our members to lose their job. Independent Contractor status has kept them working on the app.” Colón Hernández noted, “Many of these workers as immigrants have been considered workers at other jobs and still didn't get their rights. They don't care what you call them, they want rights.” WJP is trying to come up with a proposal that does not jeopardize their members livelihoods but holds the apps responsible.

In terms of organizational form, WJP considers itself, and more closely resembles, a classic workers' center. Part of this stems from the fact that WJP is attempting to represent Latinx workers regardless of their industry. The Deliveristas is just one of the industries they organize. NYTWA in contrast represents many communities but only organizes in one industry. WJP hopes to build toward a union for the Deliveristas but currently they must be a, “laboratory to explore organizing innovation,” Gualpa explained, “Business are operating differently these days so our organizing needs to evolve to match what we find. With some of our members this meant we had to become a coop, with others a hiring hall, with others it meant health and safety committees, we will have to see what we need to become for the Deliveristas.” The WJP does not believe being undocumented prevents them from collective bargaining and is looking to successful models from farm workers out west as they continue to evolve.

Street vending is an industry of choice—or last resort—for those excluded from the formal economy. As the city industrialized and cars were introduced vendors became viewed as a menace. The colorful push carts that dotted orchard street were now viewed as hostile to traffic, and therefore modernity. Mayor LaGuardia, during the depression, was the first mayor to crack down on the industry, attempting to remove vendors from the Lower East Side and regularize them through the establishment of markets, such as the famous Essex Street Market. This marked the turning point where immigrant small businesses were criminalized in the eyes of the City.

The contemporary fights over the status of street vending in New York City can be traced to the post-1970s crisis era where the City focused on rebuilding its economy around real estate. Mayor Koch, the conservative Democratic mayor, stepped in and took aim at street vendors, passing local law 50 in 1979 which instituted the first cap on general merchants. In 1983 he expanded the cap to include mobile food permits as well. This cap imposed at the urging of the white-dominated real estate and restaurant lobbies mirrors the imposition of licensing fines on the Chinese Laundries during the depression. While driving and food delivery represent forced immigrant entrepreneurship through misclassification street vending is forced out of desperation and then dependent due to legal constraints and criminalization.

Koch's cap did nothing to stem the growth of street vending in the City. The Street Vendor Project (SVP) was formed in 2001 to provide a voice for these increasingly criminalized and harassed immigrants. The SVP is a project of the Urban Justice Center a mutual aid and legal service clinic that formed in East Harlem in 1984 engaging a wide variety of issues. While much of its funding comes from the Urban Justice Center and foundations, the SVP does also have some dues pay members. SVP, like the NYTWA, was formed in large part in response to Mayor Giuliani's "quality of life" campaign. As with taxi drivers, street vendors

were viewed as a nuisance that needed to be cleaned up through police enforcement. Much like taxi drivers, street vendors viewed Giuliani's campaign as an attack on them as immigrants.

The SVP originally operated as a clinic providing legal assistance against unwarranted tickets and fines in the Giuliani era. Over time, they also engaged in political lobbying. An early successful campaign involved fighting Bloomberg's 2006, quadrupling of penalties from a maximum of \$250 to \$1,000 per ticket for illegal vending. An SVP lawsuit got these fines temporarily suspended but needed City Council to make these rulings permanent. It took until 2012 when they finally got the bills passed. Over that time SVP made deeper relationships with City Council's rising stars, building their political power. Today the SVP has grown to 2,000 members of the estimated 20,000 vendors in the city. According to SVP, vending added \$300 million to the local economy and \$71 million in tax revenue. Unlike taxi and food delivery, vending is majority female 57% industry and has a much older worker force, with 67% of vendors being over 50 years old (WIEGO 2021).

In contrast to the NYTWA, the SVP does not view itself as a union. SVP views itself as a vendor advocacy organization and couches their rhetoric in the language of protecting immigrant businesses' right to the free market (Devlin 2015). Additionally, SVP fights for the rights of its members to truly operate as independent not dependent businesses while the NYTWA and WJP are fighting for their members to have employment rights. They are a "union style" organization as they organize more like a union than a business association and they make demands from a class position, much like the CHLA had, but unlike the misclassified workers discussed above their goal is to fight the dependence of vendors' existence. As Dunn (2017) notes this treatment of vendors in New York City as small businesses is in contrast to much of the world where

vendors are seen as informal workers. The ILO refers to street vending as “own account workers” recognizing the relative dependence of this work.

As with the taxi and food delivery workers the pandemic brought vendors simmering issues to a crisis point. The pandemic decimated street vending in the city. By April 2020 nearly all street vendors had stopped work and only 26% had gone back by June. Vendors’ earnings disappeared as 98% reported zero earnings in April and few vendors found government relief with 63% denied food assistance and 26% reporting having not received a stimulus check (WEIGO 2021). Instead, 76% had to either borrow money, draw down their savings, or pawn their belongings during the pandemic. Much like the NYTWA and WJP, the SVP had to quickly reformulate themselves into a mutual aid organization. SVP quickly crowd-funded \$147,000 in relief funds, which they distributed to 490 members. They later raised \$300,000 from the Open Society Foundation for their undocumented members and a massive \$2.25 million in relief funds from the Robin Hood Foundation and Morgan Stanley. SVP developed COVID education and safety training programs for their members. For those that could, they helped them apply for PUA and worked with a handful of New York based foundations to provide small business loans which vendors would otherwise have been excluded from given their lack of licensing. SVP also worked with elected officials in Queens to hire vendors to work as cooks in the large number of food banks the city worked to establish in immigrant neighborhoods (WIEGO 2021). Additionally, as discussed below, SVP became key members of the Excluded Worker Fund Coalition which provided relief for their members.

Beyond the mutual aid efforts, SVP, much like the NYTWA, used the crisis and the workers newfound essential status to move long stalled licensing reform. Their demands were formulated into council bill 1116. In addition to lifting the cap, the law would also move

enforcement from the NYPD to a civilian agency, the Department of Consumer and Worker Protection, who would also establish a Street Vendor Advisory board. Since SVP is not organizing employees their approach to their memberships' immigration status is to diminish interactions with authorities, which 1116 would help accomplish. The advisory board would regulate the industry and propose changes to laws similarly to the TLC has for taxis. The advisory board holds the potential to generate a tripartite bargaining structure between the City, vendors, and the real estate/restaurant lobby, similar to that which the NYTWA created at the TLC. Like the other immigrant pandemic movements, the SVP engaged in massive protests to garner attention and break through the invisibility which immigrants were feeling. The vendors led large and colorful marches over the Brooklyn bridge carrying protest signs designed to look like iconic New York City street foods like pretzels, hot dogs, and coffee in the traditional blue Greco-Roman style cups. The size of the protests and these visuals garnered media attention and public support. The real estate and restaurant lobbies were on the defensive and attempted to fight back by arguing that the timing was bad given the pandemic. They also attempted to pit small mom and pop brick-and-mortar stores against vendors arguing that an influx of new vendors would harm the devastated restaurant industry. SVP successful countered that the bill would not increase the number of vendors, but instead legalize those already working in the shadows. Additionally, they commissioned an economic impact study which showed that vendors do not compete with stores and that the City currently spends more on enforcement that it makes on vendors fines. The SVPs lobbying efforts proved successful and the council passed local law 1116 on January 28<sup>th</sup>, 2021.

The SVP as an advocacy organization, as opposed to a union or workers' center, more closely resembles the CHLA. This difference from the other pandemic movements stems from

their industry's status as dependent through law not misclassification. While the SVP, like the NYTWA and WJP, found their membership recast as essential workers during the pandemic and used the crisis moment to push forward long stalled reforms, it is the difference between misclassification and legal dependence which shaped their organizational form and strategy to organizing immigrant small business owners. Their "union style" reflects their memberships' class position and dependence not their direct exclusion from rights by an employer.

*The #FundExcludedWorkers Coalition*

When the pandemic shut New York City down immigrant rights groups knew the greatest impact would be felt by their undocumented members. These groups estimated that half a million undocumented immigrants lived in the City. While Congress quickly passed the CARES Act and extended unemployment benefits to independent contractors and expanded small businesses loan programs, undocumented immigrants did not stand to access this relief. The NYTWA, WJP, and SVP all responded with mutual aid and fundraising for their undocumented members and communities, but everyone knew it was not enough. Many of the excluded workers FEW was fighting for were immigrant small businesses that fell into the misclassified or legal restricted categories outlined above. The labor and immigrant movement decided to fight to make billionaires pay for the pandemic and it should include a \$3.5 billion relief for excluded immigrant workers. With the linking of these two fights the organizations coalesced around the name #FundExcludedWorkers (FEW). Over the next year the coalition grew into 200 immigrant, labor, religious, and community organizations across the State.

FEW kicked off their campaign in May 2020 with four town halls in the Mid-Hudson Valley, Long Island, Manhattan, Brooklyn, and Queens. It was particularly important that this

not just be seen as a New York City issue, so FEW worked hard to foreground the funds potential benefits for rural areas. FEW released a report on the pandemic's impact on undocumented New Yorkers conducted by the Fiscal Policy Institute, who was the primary research partner in FEW throughout the fight. Given the need for social distancing and inspired by the NYTWA's taxi protests, FEW utilized the car caravan protest tactic under the banner #MakeBillionairesPay. These caravans would start in FEW's immigrant neighborhoods traveling to the communities where billionaires were hiding from them pandemic such as in the Hamptons. NYTWA in their iconic yellow cabs served as marshals for these caravans and the dissonance of yellow cabs on the beaches of Montauk garnered a large amount of press. In July, 100 excluded workers slept outside Amazon CEO Jeff Bezos' house in the City and fasted for 24 hours. They aimed to highlight amazon's record profits during the pandemic while they survived on nothing. In total, the movement engaged in 25 mass mobilizations across the State while pushing for the bill. As the bill stalled in March the coalition began a hunger strike in front of the iconic Civil Rights Movement Church the Cathedral of St. John the Divine in the Upper West Side. The hunger strike lasted for 23 days ending when the bill was passed on April 7<sup>th</sup>. The victory, passing a \$2.1 billion dollar fund for excluded immigrant workers, was a major accomplishment.

The FEW coalition, as a movement of movements, highlights interesting dynamics in understanding the limits of immigrant mobilization during the pandemic. As discussed earlier, undocumented workers are more precarious than their documented neighbors and therefore organizations fighting for their interests tended to focus on legal and legislative fights with simpler demands. As these workers operate in informal employment relationships there were less clear regulatory and state systems to provide them with relief. Additionally, the need to form a massive coalition that included labor unions and religious organizations not only reflects the

heavy lift of providing undocumented immigrants with benefits but also highlights the challenges of pushing State programs. The immigrant groups discussed in this chapter are urban based often tied to particular immigrant communities. While they might be politically powerful and connected in their neighborhoods, they lack the ability to move the State Legislature on their own. This coalition represents an interesting alliance of a broad range of immigrant groups attempting to find an organizational form to coordinate their demands in a sphere where each individual group cannot operate on their own. As an umbrella organization which brought the different immigrant revolts of the pandemic together, the FEW coalition contains the opportunity to serve as a unifying force and voice for these insurgent immigrant communities going forward. While the NYTWA, WJP, and SVP represent the “union style” movements of immigrant communities during the pandemic, the FEW coalition provides an organizational form for these communities to channel their new found political voice in the political sphere.

## **Conclusion**

The four movements of immigrant small business owners in New York City evaluated here challenges our conception of who forms a union and why. The movements show that unionism is a form immigrant groups can employ to make demands around their work given the communities relative exploitation and marginalization. While these workers are not traditional workers, a union form is beneficial in advancing their struggles within the work-citizenship nexus. Immigrants face intersecting marginalizations given both their labor market position and status as immigrants. These pandemic movements highlight that the archetypical immigrant small business might in fact be a myth. Cab drivers, Uber drivers, Deliveristas, street vendors, and excluded workers would all ideally like to work as employees and receive employment protections with the associated right to government social protections. These workers were

funneled into these jobs by their immigrant networks because there were few other options available in the formal labor market. They became entrepreneurs out of necessity.

This chapter adds deliberate firm strategy to our understanding of the push factors which drive immigrant entrepreneurship. Two forms of this are considered: misclassification and restrictive licensing. Misclassification is where firms label workers as independent contractors when they in truth are economically dependent on the firm. Restrictive licensing is instead when majority-dominated firms lobby the government to criminalize and police immigrant businesses turning their aims for independence into state dependence. The gig workers under study here are an example of misclassified immigrant business owners. While the medallion drivers, street vendors, and excluded workers are legally dependent immigrant businesses. This difference combined with immigration status and the relative stability of the industry were the primary factors that account for the differences in movement form and strategy. The NYTWA with a primarily documented, misclassified, and relatively economically lucrative profession took a more union form with a more aggressive strategy and demands compared to the other groups. In contrast the Street Vendor Project with a female, undocumented, and informal industry of truly independent businesses took a more legal advocacy form and strategy.

All of these movements were not just “unions style” worker movements they were immigrant community movements. In this sense these movements question who should be privileged in our understanding of community unionism, is it the community or the union? While most studies of community unionism explore how unions fight for workers at both their job and in their community, these immigrant small businesses movement during the pandemic show that sometimes unionism is a movement form borrowed by communities whose advancement depends on improving conditions in an industry which dominates their community. These

movements borrowed union forms because the logic of unionism reflected their perceived class position and exploitation in the work-citizenship nexus. Dependence is more important than legal label in determining who has the right to working class organizational forms.

The immigrant pandemic revolt in New York City, which was led by these small business owner movements, was part of a larger trend towards greater social and political incorporation of the post-Hart-Celler immigrants. Beyond the groups discussed in this chapter, immigrants during the pandemic organized against racial discrimination and attacks during the pandemic, fought for free tuition at CUNY, engaged in a massive mobilization against Trump's efforts to undercount their communities during the census, and secured the right of noncitizens to vote in local elections. The crisis of the pandemic catalyzed a broad immigrant movement into action. The four movements studied here were prominent parts of a broader political awakening in these post-Hart-Celler immigrant communities who are demanding greater political and social incorporation.

## Disclosures

The author was hired as a consultant by the New York City Department of Consumer and Worker Protection, discussed herein, to advise on their work regulating app-food delivery work in the City.

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