

Temporary labor migration programs

Governance, migrant worker rights, and
recommendations for the U.N. Global Compact for
Migration

Report • By **Daniel Costa** and **Philip Martin** • August 1, 2018

Executive summary

Circular or temporary labor migration programs (TLMPs), also referred to as “guestworker” programs, aim to add workers temporarily to a country’s labor force without adding permanent immigrants to the population. Many industrial countries and major countries of destination for migrant workers operate TLMPs. This report makes the case that TLMPs—even if carefully managed by governments—have left too many migrant workers vulnerable to exploitation and abuse and too many employers reliant on temporary, low-wage migrant labor and therefore without the incentive to develop a sustainable local workforce and improve salaries and working conditions.

The report seeks to inform United Nations (U.N.) member states as they prepare to adopt the Global Compact for Safe, Orderly, and Regular Migration (GCM) in December 2018 at the U.N. Intergovernmental Conference in Marrakesh, Morocco. The process of preparing the GCM began with the September 19, 2016, New York Declaration, a resolution of the U.N. General Assembly, calling on member states to improve global governance and coordination on migration by developing a Global Compact for Safe, Orderly, and Regular Migration. Annex II of the New York Declaration lists 24 migration-related “elements” that could be included in the GCM, including the “promotion of labor mobility, including circular migration” (UNGA 2016).

During the intergovernmental negotiations that took place in 2017 and 2018 to draft and finalize the GCM text, U.N. member states debated how to create a new framework for cooperation on a variety of urgent global migration issues, including labor migration. On July 13, 2018, the GCM’s final text was released. It includes Objective 5, “Enhance availability and flexibility of pathways for regular migration,” and calls on states to consider a number of options, including “temporary, seasonal, circular, and fast-track programmes in areas of labour shortages...” (U.N. 2018). As U.N. member states shift to the implementation phase of the GCM after its formal adoption in December 2018, new bilateral and multilateral efforts to facilitate and

SECTIONS

1. Executive summary • 1
2. Introduction: Global labor migration • 5
3. Circular and temporary labor migration programs • 7
4. Governance and program management • 14
5. Migrant worker rights • 33
6. Distortion and dependence, and other pitfalls of TLMPs: the need for a new path forward • 47
7. Conclusion: Recommendations for improving governance and labor standards in temporary labor migration programs • 52

About the authors • 57

Endnotes • 57

increase labor migration may be launched. Given their prevalence around the world, governments engaging in such efforts are likely to consider creating new TLMPs or expanding existing ones.

However, governments seeking to facilitate labor migration, create new legal pathways for migration, or remedy alleged labor shortages by starting or expanding TLMPs should beware of significant pitfalls. Our review of TLMPs in the United States and other industrial countries reveals that poorly paid and exploitable workers still bear nearly all of the risk when migrating abroad, and that workers in vulnerable situations are not an appropriate or effective vehicle to jumpstart development in countries of origin.

Instead of expanding flawed TLMP models, governments should instead consider labor migration models that foster authentic development while protecting the rights of migrant workers and the local workers in destination countries who labor alongside them. For countries that are considering TLMPs, as well as those that are currently operating TLMPs, we offer concrete steps to improve TLMP operation and transition toward models that promote decent work both in countries of origin and destination. A list of our recommendations appears at the end of this executive summary, and full descriptions of each, including rationales, can be found in the concluding section of the report.

We hope governments will use the adoption of the GCM as a moment to reflect and take a critical look at how TLMPs have failed to remedy labor shortages and protect the human rights of migrant workers seeking opportunities for decent work. Following are highlights of the main observations in this report:

Temporary labor migration program rules and structures are inconsistent with international human rights norms and labor standards enforcement is inadequate, leading to extreme vulnerabilities and exploitation of guestworkers.

- Most migrant workers pay relatively large sums to labor recruiters to access temporary jobs in destination countries, leaving them indebted and therefore more vulnerable to workplace abuses, and in some cases human trafficking.
- Guestworkers are usually tied to one job and employer by contracts and visas, which makes them inherently vulnerable. If guestworkers lose their jobs (because they complain of wage theft or abuse, for example), they lose the right to be in the destination country, along with any financial investment made to work abroad, including the payment of recruitment fees.
- Many guestworkers—especially those employed in low-wage jobs—have no path to permanent immigrant status or naturalization in destination countries. As a result, their temporary status denies them the chance to remain in the destination country or integrate, and can deprive employers of a stable workforce.
- Many guestworkers in low-wage jobs cannot bring family members to destination countries, depriving them of the right to family unity.

- Freedom of association is a fundamental right under international law, but many guestworkers face major challenges to join unions and worker organizations and engage in protected concerted activities like organizing, because the structures of TLMPs and the nature of the employment relationship in TLMPs make guestworkers inherently vulnerable to retaliation.
- Labor standards enforcement is inadequate in TLMPs, and as a result few employers are punished for unpaid wages and other legal violations.
- The structures of TLMPs and the temporary visa statuses that guestworkers have when employed through TLMPs can make it difficult for them to access legal services or representation, or avail themselves of the protections that labor standards enforcement agencies could provide.
- As a result of all these factors, guestworker abuses are common across the wage and skill spectrum. Migrants traveling to and from every region of the world too often face fraud, discrimination, economic coercion, retaliation, blacklisting, and, in some cases, forced labor, indentured servitude, debt bondage, and human trafficking.

Temporary labor migration programs have failed to achieve the goal of remedying real or perceived labor shortages, and these programs may keep wages artificially low for guestworkers in destination countries.

- Labor shortage is the major rationale for the creation and operation of temporary labor migration programs; however, the need for guestworkers is generally determined by employers rather than governments.
- While wages for workers have been largely stagnant in major countries of destination around the world, many employers are not required to prove that labor shortages exist before hiring guestworkers, or to pay their guestworker employees prevailing wage rates in destination countries, which allows employers to hire guestworkers even when local workers are available.
- Even when TLMPs include prevailing wage rules, they sometimes operate to keep wages artificially low for guestworkers, as a result of manipulation and lobbying by employers.

Nearly all temporary labor migration programs in industrial countries grow larger and last longer than anticipated as employers and migrant workers become dependent on them.

- Employers may make investment decisions that assume guestworkers will be available, and then resist migration policy changes that would raise labor costs (i.e., raise workers' wages) and reduce profits. This phenomenon is known as "distortion."
- Such distortion can create structural labor shortages, as when farmers plant apple

trees in remote areas with few available workers and expect governments to allow them to employ guestworkers to harvest them.

- Migrant workers and families who chronically lack decent work opportunities at home may become accustomed to foreign jobs and remittances, a phenomenon, known as “dependence,” which can extend to entire nations and regions.
- As a result of distortion and dependence, the creation of guestworker programs is a one-way street: there are few examples of employers reverting to local workers after years or decades of employing guestworkers absent a major structural change, such as mechanization in agriculture that replaced hand pickers with machine operators for some crops.

There is little reliable and consistent data on temporary labor migration programs.

- Lack of transparency in TLMPs and on labor recruiters increases the vulnerability of guestworkers to abuse, as they generally have no means to independently verify the veracity of job opportunities and work contracts in destination countries that are promised by for-profit recruiters.
- Data gaps and differences in variables tracked make it difficult to analyze and compare TLMPs of different countries and measure their impact on workers’ rights and labor standards in countries of origin and destination.
- The lack of reliable data about TLMPs also impedes effective enforcement by national labor standards enforcement agencies of labor and employment laws that can protect guestworkers.
- The information deficit caused by data gaps can lead to ill-informed public debates about the impacts of TLMPs in countries of origin and destination and on how to structure TLMPs in ways that adequately protect all workers.

Recommendations for improving governance and labor standards in temporary labor migration programs

- 1) Replace temporary labor migration programs with programs that, after a short provisional period, allow migrant workers to petition for permanent immigrant status, and allow family members to join guestworkers.
- 2) Establish expert groups or commissions to determine whether migrant workers are truly needed by analyzing labor market data and weighing the trade-offs that are inevitable in labor migration.
- 3) Experiment with job or visa portability, allowing guestworkers to at

least change employers within an industry or when labor disputes arise.

4) Take actions that allow workers in temporary labor migration programs to exercise their freedom of association without fear of retaliation and removal.

5) Implement clearly defined and strictly enforced “firewalls” between labor standards enforcement agencies and immigration enforcement agencies.

6) Help guestworkers access justice by providing legal services and postponing removal and other immigration enforcement actions for guestworkers involved in labor disputes.

7) Implement mandatory registration systems to better regulate labor recruiters, ensure transparency in the migrant worker recruitment process, and prevent worker-paid fees.

8) Cooperate with governments in countries of origin by publicly sharing information about labor recruiters and employers, and take measures to hold recruiters and employers jointly liable for legal violations.

9) Integrate unions and worker organizations into the governance processes of temporary labor migration programs.

10) Collect and publish more data on temporary labor migration programs and cooperate with other governments to develop new international standards for measuring program impacts and effectiveness.

Introduction: Global labor migration

Most of the world’s 3.3 billion workers (ILO 2017) never leave their country of birth, and far more leave temporarily to work abroad than emigrate and settle permanently abroad. Matching workers from one country with jobs in another country can often be difficult. To recruit migrants, many employers rely on intermediaries, such as labor recruiters and employment agencies, and on informal social networks that link current migrant workers to friends and relatives in the country of origin. The socioeconomic costs of migrating even long distances are falling, helping to explain why internal and international migration flows may rise even as the fundamental demographic and economic differences that motivate migration shrink (Taylor and Martin 2001; Kuptsch 2006). Many of the world’s guestworkers today are from middle- rather than low-income developing countries, for example

guestworkers in the United States who came from Mexico rather than poorer Nicaragua.

Most migrants are of working age: The International Labour Organization (ILO 2015b), an agency of the United Nations, estimated that, of the 232 million international migrants in 2013, 150 million, or 65 percent, were in the labor forces of the countries to which they moved. And while migrants make up 3.9 percent of the total global population (aged 15 years and older), they are overrepresented in the workforce, constituting 4.4 percent of all workers (ILO 2015b). Migrants also have a higher rate of labor force participation than nonmigrants, ILO reported: 73 percent of international migrants were employed or seeking jobs in 2013, compared with 64 percent of nonmigrants. Both male and female migrants had higher labor force participation rates than nonmigrants: 78 percent for migrant men compared with 77 percent for nonmigrant men and 67 percent for migrant women compared with 51 percent for nonmigrant women (ILO 2015b).

A third of the 150 million migrant workers were in Europe, a quarter in North America, and most of the rest in Asia, in 2013. Three-fourths of migrant workers were in what the ILO considers to be high-income countries, while only 2 percent were in the lowest-income countries (ILO 2015b).¹ The Gulf oil-exporting countries had the highest shares of migrants in their workforces; in some of the Gulf Cooperation Council (GCC) countries, 90 percent or more of private-sector workers were migrants in 2013 (Martin and Malit 2017).

This geographic distribution of the migrant workforce differs from the global workforce, according to more recent data from the ILO (ILO 2017), which estimated that there were 3.3 billion workers in the world in 2017, including 565 million or 17 percent in high-income countries and 2.7 billion or 83 percent in lower-income countries.²

The distribution across sectors is also different among migrant workers than among the population of all workers. The ILO (2015b) estimated that in 2013, 11 percent of the world's 150 million migrant workers were employed in agriculture, 18 percent were employed in industry, and 71 percent were employed in services, including almost 8 percent in domestic work.

In contrast, in 2017, 23 percent of the world's employed workers were employed in industry, 27 percent were employed in agriculture, and 51 percent were employed in services. There is a marked difference between sectoral shares of employment in high- and lower-income countries. In high-income countries, only 3 percent of workers were employed in agriculture while 74 percent were employed in services. In lower-income countries 31 percent were employed in agriculture and 46 percent were employed in services (ILO 2017).

Some migrant worker populations raise special concerns. According to the ILO, in 2013 there were 12 million migrant domestic workers (that is, workers who crossed national borders to work in private homes), three-fourths of whom were women, (ILO 2015b). Many work long hours in situations in which they are isolated and not covered by basic labor and employment laws, leaving them vulnerable to abuse. Migration for higher wages poses difficult trade-offs for mothers, who often go abroad to take care of children in higher-income countries while entrusting their own children to relatives at home (Parreñas 2015). The demand for migrant domestic workers is expected to increase in aging

industrial countries.

ILO conventions and some national laws require equal treatment for migrant workers, which means they should receive the same wages and benefits as local destination-country workers. ILO conventions stress that equal treatment is the best way to protect local workers from “unfair” competition from migrants, who may be willing to work for lower wages than local workers and under substandard conditions. Truly equal treatment is hard to achieve—especially for workers in temporary labor migration programs—because they are normally required to remain with a single employer to whom they are tied by virtue of their contracts and visa terms, while local destination-country workers can change employers or report workplace violations to authorities without fear of losing their visa status or being forcibly removed from the country.

There are two other reasons why equal treatment is difficult to achieve. First, only about half of the world’s workers are earning wages or salaries—the rest are self-employed or in unpaid family jobs—and only a quarter of all jobs offer work-related benefits (ILO 2015c).³ In many countries, employers of migrant workers are exempt from contributing to some benefit programs such as the countries’ equivalent program to Social Security in the United States; this exemption reduces their cost to employers.⁴ Second, only half of the world’s countries have national minimum wages, and in countries with minimum wage laws, sectors that employ the most migrants, including agriculture and domestic work, are sometimes exempt, or migrant and local workers may be subject to different minimum wages.⁵

Circular and temporary labor migration programs

Economies have three major sectors: agriculture, industry, and services. In developing countries, the largest single employment sector is the agricultural sector, which is populated by workers (especially young workers) who are willing to fill jobs in all sectors of higher-income country labor markets. This reality suggests that labor migration can theoretically provide a perfect match between “excess” developing-country workers and vacant industrial-country jobs.

What appears to be a neat match between excess labor supply in some countries and unfulfilled demand in others is often messy in practice. Economics teaches that there are often alternative ways of producing goods and services, so that recruiting and hiring migrant workers is only one option available to firms and employers. The alternatives may include making jobs more attractive to local workers, using labor-saving mechanization, or increasing imports. Employers who approach governments for permission to hire migrant workers have usually decided that employing migrant workers is their best or least expensive option, and the question for governments is whether to permit employers to hire migrants and to determine how to regulate the movement and employment of migrant workers.

Governments have policy options, which include admitting permanent immigrants to increase labor supplies when necessary. A century ago, permanent or settlement immigration was the dominant form of migration, which meant that a person left one country to begin anew in another, and could change jobs and occupations after arrival at will. Some migrants returned to their countries of origin, and those who settled quickly obtained permanent immigrant or settler status, and eventual citizenship without needing the permission of their employers to do so.

But the policy option of choice in more recent years is to arrange for temporary migrant workers, or “guestworkers”—persons employed away from their home countries in temporary labor migration programs, which are referred to as TLMPs in this report but which are also often referred to as circular or “guest” worker programs.⁶ (We use the terms temporary migrant workers and guestworkers interchangeably.) Temporary and home can be defined in many ways, with “temporary” ranging from several months to several years and “home” usually meaning the worker’s country of birth or citizenship. The major motivation of migrant workers is higher earnings abroad, but there may also be noneconomic motivations, including a desire to experience work and culture abroad.

The terminology used emphasizes the rotation principle at the heart of circular and temporary work programs: migrants are expected to work from several months to several years before returning to their countries of origin. Today, most of the migrants crossing national borders for employment are temporary migrant workers who may not be able to ever settle permanently or become citizens of the destination countries (Ruhs 2013).

Rationales

The major rationales for TLMPs programs are summarized in **Table 1**. The most common argument for using TLMPs is that they help employers fill vacant jobs, especially when employers assert that there is a shortage of local workers at prevailing wages (row 1). Market economies normally resolve labor shortages via changes in prices and wages. When storms that destroy apples raise their price, some consumers switch to bananas, and the supply of and demand for apples is balanced. Similarly, labor shortages should lead to rising wages, which both reduces the demand for workers and increases their supply. In other words, the mark of a true worker shortage is rising wages. However, wages have been largely stagnant, especially for low-skilled workers in many industrial countries over the past several decades (ILO 2016b).

The major policy question for governments weighing claims of labor shortages is whether they should allow naturally occurring wage changes to balance labor supply and demand when employers complain of labor shortages, or whether they should use migration policy to admit new workers into the country to address shortages. And if governments decide to admit new migrant workers, the next question that arises is what the terms and conditions of their admission should be. For example, should new migrant workers be admitted as permanent immigrants with freedom in the labor market or as temporary workers who are tied to a particular employer? In recent decades, many governments have chosen the latter, leading to a proliferation of TLMPs.

Table 1

Major rationales for temporary labor migration programs

Typical origin/goal	Examples
1. Fill jobs left vacant due to a labor shortage	
Labor supply has shrunk and is not meeting demand	Regions are short agriculture workers because local workers have found better nonfarm job options, and/or agriculture employers failed to raise wages high enough to keep workers and attract new workers.
Labor demand has risen faster than labor supply	Demand has increased for information technology and health care jobs at the same time training requirements have increased, but since wages have not increased, IT and health care workers have not invested in needed training and potential new workers have not entered these occupations.
Labor demand has risen but the supply is constrained by low wages.	Demand has risen for in-home caregivers, whose wages are low because they serve in the public sector and are thus financed by taxes that politicians do not want to raise. Low wages have made it difficult to attract additional local workers.
2. Manage inevitable migration	
Geopolitical changes have led to migration flows that governments must respond to.	<p>The German government did not want to erect new walls after the Berlin Wall fell in 1989 so it created seasonal worker programs for workers from Poland and other Eastern European countries.</p> <p>European Union Mobility Partnerships were created with countries outside the EU. Receiving-country governments provide aid and some legal migration slots in exchange for sending-country governments taking steps to reduce unauthorized migration to the EU.</p>
3. Allow cross-border commuting	
National borders have divided natural labor markets.	Malaysia and Singapore share a labor market; some seasonal farmworkers working in the United States under the H-2A visa program live in Mexico.
4. Facilitate youth exchange programs and admit foreign students	
Cultural, scientific, and education exchanges that permit employment in destination countries promote foreign	The U.S. allows J-1 visa exchange visitors to work while learning about the U.S.; Australia's Working Holiday Maker program supports

Table 1
(cont.)

Typical origin/goal	Examples
policy goals.	youth travel through work visas; Japan allows employers to hire trainees who work and learn for several years.
Foreign students work part time or full time in destination countries to gain work experience.	Foreign students in the U.S. may work part time while enrolled in university or full time after graduating in the Optional Practical Training program.

5. Allow intra-corporate transferees (ICT)

Multinational companies need to move managers, executives, and workers with special knowledge of the firm's operations between offices and subsidiary companies in different countries.	World Trade Organization General Agreement on Trade in Services (GATS) includes commitments to allow ICTs; ICTs in the U.K.; U.S. L-1 visas authorize ICTs.
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6. Fulfill trade agreement provisions

Trade agreements may contain provisions that allow cross-border mobility to workers from trade agreement countries or allow service providers to move employees between countries, either as ICTs, business visitors, or by creating other types of work visas.	WTO's GATS commitments include provisions for ICTs and cross-border service providers; EU free movement; North American Free Trade Agreement TN visa allows professionals from Canada and Mexico to work indefinitely for U.S. employers.
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7. Facilitate foreign investment in countries of destination

It is beneficial to allow foreign investors to live and work in the country where the investment is made, in order to manage their investments, and sometimes these foreign investors need the help of key employees who accompany them.	The U.S. permits investors to reside and work in the U.S. with E-1 visas and permits "essential" employees of the investor to live and work in the U.S. with E-2 visas.
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Sources: Daniel Costa and Jennifer Rosenbaum, *Temporary Foreign Workers by the Numbers: New Estimates by Visa Classification*, Economic Policy Institute, March 7, 2017; Ray Marshall, *Value-Added Immigration: Lessons for the United States from Canada, Australia, and the United Kingdom* (Washington, D.C.: Economic Policy Institute, 2011); Martin Ruhs, *The Price of Rights: Regulating International Labor Migration* (New Haven, Conn.: Princeton Univ. Press, 2013); Christiane Kuptsch and Nana Oishi, *Training Abroad: German and Japanese Schemes for Workers from Transition Economies or Developing Countries*, International Labour Organization, September 1995; Magdalena Osumi, "Abuses Still Abound in Labor-Strapped Japan's Foreign 'Trainee' Worker System," *The Japan Times*, January 2, 2018; World Trade Organization, *General Agreement on Trade in Services* (web library and services database).

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It is important to note that TLMPs are employer-led in the sense that employers seek the approval of governments to recruit and employ migrant workers, and in general employers mostly drive and control the entire process. In lesser-skilled, low-wage job markets, labor supply may shrink and not meet demand, as when local workers who once filled seasonal farm jobs find better nonfarm opportunities, prompting farmers to request guestworkers to

replace them. In higher-skilled sectors, labor demand may rise faster than labor supply because of increased education and training requirements, prompting employers to request permission to recruit and employ migrant workers who already have the necessary skills and training. Labor demand may also increase in sectors in which employers have not improved working conditions and where wages have remained stagnant, or in the public sector when government efforts to not raise taxes have kept wages from rising.⁷ In both cases, local workers may have shunned certain jobs offering persistently low wages and poor working conditions, creating a labor-supply vacuum for migrant workers.

There are also other labor-shortage related arguments made by employers for hiring guestworkers through TLMPs. The “missing ingredient” argument is that a lack of labor supply in one portion of the production process threatens to eliminate jobs for local workers elsewhere, as when a lack of harvest workers threatens the jobs of local packing and trucking workers further down the supply chain. Some employers argue that particular migrant workers are the “best qualified” or “best suited” to fill particular job vacancies, leading them to hire migrants of a particular gender and from a particular region, such as employers on the east coast of the United States who hire mostly Mexican women to pick crabs (CDM and AU 2010). Finally, employers may argue that, if forced to raise wages to attract local workers, they will lack access to enough lower-paid workers, which could cause them to go out of business due to competition from low-priced imports. Government acquiescence to these arguments is ultimately a decision *not* to allow wage changes in the market to bring labor supply and demand into balance.

There are rationales for having TLMPs other than claims of labor shortages. Row 2 in Table 1 provides examples of TLMPs promoted to manage seemingly inevitable migration flows that result from geopolitical changes. After the Berlin Wall fell in 1989, workers who previously found it difficult to leave Poland and other Eastern European countries traveled to Germany and other higher-wage countries and sought jobs, prompting governments that did not want to erect new border walls to manage these new flows of workers with circular and temporary worker programs such as Germany’s seasonal worker programs in the 1990s (Martin 1995).⁸

In some places, national borders sometimes divide natural labor markets, such as in southern Malaysia and Singapore, prompting TLMPs to be used as a way to manage commuting workers (Table 1, row 3). Similarly, some H-2A workers live in Mexico and cross the U.S. border daily to get to jobs in the United States.

Many countries have youth exchange programs to facilitate cultural exchanges and promote development in poorer countries (Table 1, row 4). Japan allows employers to hire trainees who work and learn for several years, while the J-1 visa program in the United States allows exchange visitors to work while learning about the United States and traveling, for a few months to a few years, depending on the program. Australia has a Working Holiday Maker program that allows youth from many countries to work to earn money to cover the cost of their vacation in the country. While these are not standard TLMPs, they are included in Table 1 because some of these programs have been criticized as operating mainly as employment rather than cultural exchange programs and, as a sort

of “TLMP in disguise,” offering few protections for local workers and fewer protections and benefits for migrants than traditional TLMPs (Costa 2011; Stewart 2015; Osumi 2018).

Foreign students are typically allowed to work part time while they study and full time during school holidays (Table 1, row 4). Many countries allow foreign students who graduate to stay and work as paid interns or guestworkers, such as the Optional Practical Training program in the United States. As with exchange visitors and Working Holiday Makers, there are typically few requirements placed on local employers of foreign students. Unlike many other TLMPs, most student programs do not require employers to attempt to recruit local workers before hiring foreign students and recent graduates, and most don’t require that employers pay foreign students more than the national minimum wage.

Other rationales for TLMPs include allowing multinational corporations and firms to move employees between offices and subsidiary companies in different countries. These mobile workers include intra-company or intra-corporate transferees (ICTs), and “posted” workers, who are workers employed by a company in one country who are sent or posted to work in another. As with other programs not linked explicitly to labor shortages, governments usually allow multinational corporations to move managers and workers with specialized skills from one country to another with minimum bureaucracy. However, abuses have arisen, and some employers wind up using ICTs and posted workers as low-cost guestworkers because the programs sometimes lack prevailing wage rules, or the ICT or posted-worker wages are exempt from all or some payroll taxes (Avalos 2014; Flinders 2011).

TLMPs may be created or expanded through bilateral or multilateral trade agreements. The North American Free Trade Agreement (NAFTA) between Canada, Mexico, and the United States led to the creation of the TN visa in the United States, which allows professionals from Canada and Mexico to work indefinitely for U.S. employers. U.S. workers have reciprocal rights to work for Canadian and Mexican employers indefinitely. The World Trade Organization’s General Agreement on Trade in Services (GATS) promotes the lowering of barriers to trade in services, including so-called Mode 4 movements of natural persons to provide services abroad. Most GATS commitments deal with ICTs, but the United States’ schedule of commitments in GATS also promised not to reduce admissions of H-1B guestworkers (college-educated guestworkers) below 65,000 a year and not to include a labor market test for ICTs.

Yet another rationale for establishing a TLMP is to allow investors from one country who invest in another to live in the country of their investment while managing it, such as the E-visa program in the United States. These programs may allow investors to apply to the government to permit key employees to accompany them and work in the country where the investment is located, which is unlikely to require a labor-shortage determination or require that a wage higher than the minimum wage be paid to the worker. In the United States, there is evidence that the lines may be blurred between an “essential” employee following an investor with an E visa and a guestworker in a low-wage job that should require a labor-shortage determination.⁹ These blurred lines, along with the lack of a regulatory framework establishing minimum wages for E visa workers, can lead to

exploitation and abuse (Poston 2016).

There are still more rationales to admit temporary migrant workers, including to promote development in worker countries of origin and to reduce unauthorized migration by enlisting the help of governments of countries where unauthorized migrants come from. New Zealand's Recognized Seasonal Employer program aims to fill vacant farm jobs in New Zealand and to promote development on the Pacific Islands from which workers come, and this program is often touted as an example of a triple-win program. The European Union (EU) and some EU member states developed mobility partnerships with migrant countries of origin, promising more legal opportunities to migrate and financial assistance in exchange for efforts to reduce illegal migration.

Types of programs

There are three major types of temporary or circular labor migration programs. The two key variables are the nature of the job that migrants fill and their status while employed abroad (Martin, Abella, and Kuptsch, 2006):

- **Seasonal jobs, temporary workers.** Migrant workers in agriculture and other seasonal industries provide examples of guestworkers filling seasonal jobs. In the past, local students, stay-at-home spouses, and other part-year workers often filled such jobs, but because of longer school years and more women working full time, the supply of labor at offered wages shrank and did not meet the demand for seasonal workers, prompting employer requests to hire guestworkers. Migrants often circulate between their homes and seasonal jobs abroad, sometimes for decades, as with Canada's Seasonal Agricultural Worker Program. Employers recruit migrants because they are cheaper than the alternatives, which may include investing in machines that are used for only a few months (in agriculture) or raising prices for consumers of landscaping, hospitality, and other seasonal services. Migrants are usually tied to their employers by contracts.
- **Permanent jobs, temporary workers.** Many TLMPs aim to rotate guestworkers through year-round or permanent jobs, meaning that the migrant fills a job for a year or two before returning home. In countries such as Canada, South Korea, and the Gulf oil exporters impose limits on how long a migrant worker may stay in order to prevent low-skilled guestworkers from developing roots and becoming de facto permanent immigrants. Using temporary workers for permanent jobs runs the risk of de-professionalizing occupations and increasing contingent employment, which erode the conditions necessary for decent work.

Governments often find it hard to enforce the rotation or circulation principle in this context. Employers want to keep trained and productive migrants, so they ask that worker visas be extended and request more guestworkers. Young migrant workers often adapt quickly to life abroad and do not want to return to lower wages or unemployment at home, giving them an incentive to prolong their stay or to go abroad again after visits home.

- **Permanent jobs, probationary immigrant workers.** European guestworker programs in the 1960s were probationary immigration programs, allowing workers to renew work permits and granting them more rights with each renewal. For example, after one year of employment and proof of satisfactory housing, guestworkers were often allowed to change employers and bring their families if they had sufficient housing. After five years of employment and good behavior, many countries gave guestworkers and their family members permanent residence rights, so that even if the guestworker lost his or her job, the worker could not be forced to leave. Most European guestworkers returned to their countries of origin, but a third or more settled, giving many European countries significant minority populations as a result of their 1960s guestworker programs (Miller and Martin 1982).

Most of the world's workers and guestworkers have little education and are low-skilled. Governments typically make it easier for educated and skilled migrants with college degrees or more education to enter and stay, often permanently, explaining the adage that TLMP policies generally aim to welcome the skilled and rotate the low-skilled.

Governance and program management

This section examines how governments manage and govern temporary labor migration programs, beginning with the steps employers must take to receive permission to recruit and employ guestworkers. The “gatekeeper” spectrum in TLMPs is framed by two extremes: attestation and certification. Attestation allows employers to assert or attest that they are obeying program rules, and an employer's attestation effectively opens the door to migrant workers. Certification, on the other hand, requires employers to try and fail to recruit local workers, sometimes under government supervision, before the employer receives permission to employ migrant workers.

There are many in-between variations along the attestation–certification spectrum. Some governments maintain labor or occupational shortage lists, erecting few barriers between employers and guestworkers in occupations deemed to have labor shortages. Some governments use expert commissions to determine where there are labor shortages and whether admitting guestworkers is the optimal response to them. Some governments, such as the United States and Canada, have programs in which the employer's need for each job is assessed, at least to some degree.

When seeking permission to recruit and employ guestworkers, employers must sometimes agree to pay minimum or prevailing wages and may be required to offer out-of-area local and migrant workers housing and/or transportation to the worksite that satisfies government-set standards. Most programs allow employers to specify how long they need guestworkers, and require them to guarantee a certain amount of work. For example, the H-2A program for seasonal agricultural workers in the United States has a three-fourths hours guarantee, meaning that an employer offering farm guestworkers a 10-month, 40-hour per week contract would have to pay the worker for at least 7.5 months of full-

time work (U.S. DOL 2010).

The final element of the governance process in TLMPs is enforcing the rules. In many countries, the labor department or ministry of labor is involved in the decision about whether guestworkers are needed, while interior and foreign ministries are involved in issuing visas and admitting guestworkers, and interior or security and labor ministries enforce program rules inside the country. Interior/security ministries (such as the Department of Homeland Security in the United States) are usually responsible for finding and expelling guestworkers who abscond from their employers or overstay visas, and labor ministries enforce laws that protect local workers and guestworkers, ensuring that they receive the appropriate wages and benefits and have safe working and living conditions.

A often-neglected piece of program management within this governance process is collecting and analyzing key data on how the programs are used by employers, including the industries that hire guestworkers and the wages they are paid. Reliable detailed and disaggregated data on TLMPs is notoriously hard to come by,¹⁰ prompting calls for more and better data in the 2030 Agenda for Sustainable Development adopted by the United Nations in 2015 (U.N. 2015) and the United Nations General Assembly's 2016 New York Declaration for Refugees and Migrants (UNGA 2016).

Labor market tests

Employers set the hiring process in motion in most TLMPs by requesting permission to recruit guestworkers under regulations that can be compared along two dimensions: requirements that employers must meet to satisfy governments that migrant workers are needed (i.e., labor market or economic needs tests), and the wages and work-related rights of guestworkers in destination-country labor markets. Under many TLMPs in industrial countries, employers must satisfy certain government requirements for proving that migrant workers are needed to fill vacant jobs, that is, they must undergo a labor market or economic needs test to ensure that local workers are not available. But other TLMPs have no labor market tests. **Table 2** summarizes the two major types of labor market tests as well as the three kinds of TLMPs that do not require labor market tests.

As noted above, there is a spectrum of economic needs or labor market tests that can be framed by two extremes: certification and attestation. Certification means that the government controls the border gate, which is not opened until the employer convinces the department or ministry of labor that local workers are not available. Attestation, on the other hand, allows employers to make assurances that they failed to find local workers despite offering prevailing wages. Certification programs are intended to protect local workers, wages, and working conditions by supervising employer searches for local workers on a job-by-job basis, while attestation programs put more trust in employers and may sometimes purport to protect local workers by putting a cap on the number of visas available.

Certification aims to protect local workers by requiring employers to demonstrate, on a

Table 2

Types of labor market tests or exemptions from labor market tests for TLMPs

Employer duties under labor market test	Nature of the employer-worker relationship	Special features
1. Certification labor market test		
Government verifies recruitment of local workers efforts before granting permission to hire migrant workers.	Employer–migrant worker contract covers wages and benefits (possibly including housing and transportation).	Trade unions may or may not be involved in attempts to check employer efforts to recruit local workers.
2. Attestation labor market test		
Employer assures the government that prevailing wages are being paid and that current employees are not on strike.	Employer–migrant worker contract covers wages and benefits.	Under the theory that the number of jobs in some professional occupations is rising fast, that labor shortages exist, or that adding skilled workers to the labor market is always economically beneficial, there are very few checks on employers seeking to hire foreign workers with college degrees or more.
3. No labor market tests for intra-corporate transfers; free trade professionals		
n.a.	Employer–migrant worker contract exists but does not always include a minimum or prevailing wage requirement.	Labor market tests are not required because intra-corporate transferees (ICTs), workers authorized under provisions in free trade agreements, and investors and their employees are believed to have unique skills that limit competition with local workers.
4. No labor market tests for exchange visitors and foreign students		
n.a.	Arrangements vary widely, from contracts to at-will employment. Programs may or may not include minimum or prevailing wage requirement.	Labor market tests are not required because work is considered ancillary to the main purpose of being in the country of destination.
5. No labor market tests in free-movement zones such as EU		

Table 2
(cont.)

Employer duties under labor market test	Nature of the employer-worker relationship	Special features
n.a.	Arrangements vary widely and can be subject to the laws of the destination country.	Labor market tests are not required because workers may cross national borders without job offers and may be posted abroad by their home-country employer.

Source: Text in Daniel Costa and Philip Martin, *Temporary Labor Migration Programs: Governance, Migrant Worker Rights, and Recommendations for the UN Global Compact for Migration*, Economic Policy Institute, July 2018.

Economic Policy Institute

job-by-job basis, that local workers are not available. In some programs, protections for local workers are twofold: the government certifies the employer’s need for migrant workers and limits the total number of workers who can be admitted.

For example, the H-2B program in the United States—which allows employers to hire workers from abroad to fill jobs in lesser-skilled non agricultural occupations that are temporary or seasonal in nature and that do not require a university degree (Costa and Rosenbaum 2017)—requires certification of an employer’s need for guestworkers and limits the maximum number of visas to 66,000 per year. Because employers sometimes request more workers than the number of available visas, in some years, employers have successfully pressured the U.S. government to temporarily increase the number of H-2B visas available (see for example, Meckler 2018b).

Certification programs are the norm in most developed countries, including in European countries and Canada. In the United States however, certification is required only for the two main TLMPs for low-wage jobs. In countries with low unemployment rates and strong employment services agencies, the certification process may be quick and straightforward. However, when employers request migrants despite high unemployment rates, certification can be controversial, as in low-wage industries such as hospitality and agriculture, and in other industries offering seasonal jobs. Employers in areas with unemployment rates above 10 percent routinely request certification to hire migrant workers, raising questions about the reliability of unemployment rates as a guide to local worker availability (Martin 2008) and the adequacy of employer efforts to recruit local workers. There have also been documented cases in which employers went to great lengths to avoid hiring local workers in favor of temporary migrant workers (Garrison, Bensinger, and Singer-Vine 2015a), which in some cases led to government enforcement measures and lawsuits (U.S. DOJ 2017).

Many governments require employers seeking certification to post job vacancies on local employment exchanges and to interview and hire any local workers who apply for jobs. One challenge with this aspect of certification is that employers have generally identified the migrant workers they want to hire before they seek certification, leading them to find ways to make their search for local workers largely unsuccessful. When local workers do apply, employers may find reasons not to hire them, since the employer knows that the

preferred migrant workers are already in the process of obtaining passports, undergoing health checks, and making other preparations to travel to the job site. Local workers on the other hand, often want a job immediately, not 30 or more days in the future, as may be required by certification rules. Given the time lag, even if the employer did consider hiring a local worker, the employer may fear that the local worker will not show up when the work begins.

Trade unions are sometimes involved in the labor market certification process. For example, in Sweden, before sending an application for a worker to the Swedish Migration Agency, employers must first send their offer of employment to the relevant trade union, and the union must respond with an official statement. Unions are similarly consulted in Denmark, unless a job is on the national shortage occupation list, and in Spain, unions help determine the occupations that make it onto the national shortage occupation list (OECD 2011). In Canada, unions must be consulted by employers in some sectors, and unions can directly challenge in court the government's labor market opinions that permit employers to hire guestworkers. And for the H-2B program in the United States, if an occupation or industry is customarily unionized, the state workforce agencies that play a role in certifying an employer's labor market need must circulate the job offer to the appropriate union to elicit referrals.

Some TLMPs require employers to continue to hire local workers who apply for jobs until a certain portion of the employer-specified work period has been completed. For example, in the H-2A program in the United States, farm employers must continue to hire local workers until 50 percent of the work period is completed, which would be for the first five months of a 10-month work period. Hiring a local worker in month four could require the employer to send home a guestworker at the employer's expense, which makes employers especially eager to find reasons not to hire local workers.¹¹

The attestation process reduces the role of government agencies in testing labor markets for local workers. Under attestation procedures, employers normally make assurances that they have searched for and failed to find local workers despite offering required wages and are not laying off or firing local workers. Attestation programs can aim to protect local workers via two mechanisms: a cap on the number of visas available and enforcement after the migrant workers arrive in the destination country and begin employment.

Employers are more likely to prefer attestation to certification programs because they cost less and require less effort in terms of bureaucracy, especially if the number of visas is sufficiently large and there is limited post-arrival enforcement. The H-1B program in the United States is an example of an attestation program, even allowing most employers to lawfully lay off U.S. workers and replace them with H-1B workers after attesting that the migrant workers will be paid prevailing wages.¹² There is virtually no enforcement unless U.S. or H-1B workers complain and there are few complaints, since most H-1B workers become removable if they are fired and since most hope to be sponsored by their employers for permanent immigrant visas (as the H-1B program allows).

There are many in-between options on the attestation–certification spectrum of labor market tests. For example, certification can be the norm for labor market testing, but

employers seeking workers in occupations and areas deemed to be short of labor can be permitted to use simplified certification or attestation procedures if a government expert advisory body has determined that there are few local workers available.

Some TLMPs impose no labor market tests or attestation requirements on employers. There are several reasons, including the assumptions that some professionals have unique skills, so there is little competition with local workers, and that professional local workers are adequately able to complain of unfair competition from guestworkers. As mentioned earlier, the General Agreement on Trade in Services includes commitments by many countries to allow multinationals companies to easily move managers and professional employees between offices and subsidiary companies in various countries, and most countries do not require local labor market tests or impose minimum salary obligations for these intra-corporate transferees. Similarly, some free trade agreements allow employers in participating countries to offer jobs to professionals in member countries that result in the issuance of indefinitely renewable visas, like the NAFTA TN visa in the United States. Foreign investors may sometimes receive temporary work visas that give them the right to live and work in the country where they make their investment, and sometimes may bring along key employees as guestworkers.

Other TLMPs that do not require employers to search for local workers before hiring guestworkers include youth and professional exchange, visitor, and student visa programs that consider employment a secondary reason to be in the country. Professionals and young exchange visitors and holidaymakers, interns, trainees, au pairs, and other workers in similar programs may remain in the destination country for periods of several months to several years and can generally work for some or all employers without the employer satisfying any special requirements, including minimum wages, providing housing, and other obligations included in TLMPs that provide workers to fill similar jobs. Some of these youth-oriented programs are large and have significant local labor market impacts, such as Working Holiday Makers in Australian agriculture and foreign students and exchange visitors working in U.S. national parks, amusement parks, beach areas, and other tourist attractions.

Finally, no labor market tests are required in free-movement zones established by agreements among countries. The EU may be the best-known freedom-of-movement region, allowing EU nationals to move to other member states and seek jobs and work on an equal basis with local workers. Until the EU enlarged to Eastern Europe in 2004, there was relatively little intra-EU labor migration, but wage differences were sufficient to induce many Polish workers and other Eastern European workers to migrate west, especially to Ireland and the U.K., countries that did not impose the allowed seven-year waiting period adopted by many of the 15 older EU member states. The upsurge in intra-EU labor migration has had political repercussions in some countries, for example, by becoming a key electoral issue in the U.K. during the 2010 parliamentary election (Dunleavy 2012) and contributing to the decision of British voters to leave the EU in 2016 (Szary and McEnaney 2018).

A recent major issue in the EU concerns posted workers, who are, as noted earlier, workers employed by a company in one country who are sent or posted to work in

another. Employers in the EU are free to hire posted workers who are EU nationals, as with Polish citizens posted to work in Germany. Minimum wages and payroll taxes vary between EU member states, and worker advocates in some of the higher-wage EU states complain that temporary staffing agencies and subcontractors are bringing workers from lower-wage EU member states into their countries to do work that could have been done by local workers who would demand higher wages from employers and expect them to pay local payroll taxes. EU court decisions require that posted workers generally receive at least the local minimum or prevailing wage, but differences in payroll taxes often make posted workers less expensive than local workers (Beckman 2017).

Expert commissions and shortage lists

Some countries use expert commissions or staff in government agencies to determine if there are labor shortages in particular occupations and areas. The United Kingdom's Migration Advisory Committee (MAC) may be the best-known example of such an entity. The committee is an independent government agency charged with answering the "3-S" questions.

- Is an occupation one that requires *skills*?
- Is there evidence that there is a labor *shortage*?
- Is it *sensible* to fill that shortage with migrant workers?

The skills question is fairly straightforward, but the shortage and sensibility questions require an evaluation of the trade-offs inherent in deciding whether to admit migrant workers.

Britain in 2008 reformed its policy for admitting migrant workers from outside the European Economic Area, which includes the EU and Iceland, Liechtenstein, and Norway. The number of entry pathways was reduced from more than 80 to five, and the committee was created to advise the government on whether there were labor shortages in particular occupations and whether admitting migrant workers to fill vacant jobs was a sensible policy in response to identified shortages (MAC 2008). The purpose of the five-tiered entry system was to simplify the overall admission system and to move away from an employer-led system to a system that maximizes the benefits of migration for the entire British economy.

The first challenge for the committee was deciding whether particular occupations should be on the shortage list (if an occupation is on the shortage list, employers do not have to try to recruit local workers before receiving permission to hire foreign workers) (MAC 2008). The committee developed a methodology that included 12 top-down labor market indicators to determine if a particular occupation faced labor shortages (MAC 2008; MAC 2010):

- Three price-based indicators, such as the growth in wages in the occupation
- Four volume-based indicators, such as the growth in employment or the unemployment rate in the occupation

- Three employer-based indicators, such as employer reports of labor shortages
- Two other indicators, including job vacancy data

The committee considers an indicator to suggest a labor shortage if the indicator passes a “median plus 50 percent of the median” test. For example, if the median wage increase in all occupations is 2 percent, the median increase in a shortage occupation must be at least 3 percent. If at least half of the 12 top-down indicators satisfy the 50+50 test, the committee can conclude there is a “potential labor shortage” in the occupation.

The committee also solicits bottom-up evidence from employers, unions, and others to decide whether there is a labor shortage, and this bottom-up evidence has been decisive in most cases in which the committee has determined that there are labor shortages. In some cases, the committee decides that only some of the job titles within a broader occupation have labor shortages. For example, there may be no shortage of secondary school teachers, but there may be a shortage of secondary math teachers.

The committee is credited with improving the quality of the debate over whether migrant workers are needed by, for example, explaining that local governments financing in-home care for the elderly from local tax receipts cannot (1) raise the qualifications of caregivers but (2) keep salaries unchanged and (3) expect qualified local workers to seek care jobs in high-cost areas such as London, where two-thirds of caregivers are migrants. British workers with the credentials required to provide in-home care can earn more outside the publicly funded care sector, so training more British workers, a common suggestion to curb labor shortages, would not necessarily yield more local caregivers in high-cost areas.

When the committee finds a shortage it can trigger debates and reviews of occupational training systems. British apprenticeship systems that train workers to be carpenters and electricians have shrunk (Ruhs and Anderson 2010), but such apprenticeship systems are much stronger in central Europe, which is one reason why many British employers turned to Polish plumbers and construction workers to fill jobs after 2004. By calling attention to the links between labor shortages, migration, and training, the committee was able to highlight the choices that policymakers must confront when considering labor shortage issues.

Top-down analysis of labor market indicators requires definitions, and reasonable definitions find few shortages. For example, Veneri (1999) defined a labor-shortage occupation as one in which employment increased at least 50 percent faster than the average of all occupations, wages rose at least 30 percent faster than average, and the occupation in question had an unemployment rate of at least 30 percent below average.

Veneri’s analysis found few labor-shortage occupations in the United States at the height of the 1990s economic boom: the 50+30+30 test was satisfied by seven of 62 occupations between 1992 and 1997. In only one occupation, special education instruction, were there both top-down and bottom-up indicators of shortages, which were attributed to court decisions requiring school districts to quickly expand services to special-needs students. Notably, computer-related occupations did not satisfy the 50+30+30 test despite rapid employment growth and low unemployment rates because earnings in computer

occupations did not rise 30 percent faster than overall earnings.

When the United States was considering comprehensive immigration reforms before the 2008–2009 recession, there were proposals for expert commissions to help take politics out of the labor migration debate by assisting Congress’s migration policy decision-making with data and evidence. None of the proposals laid out a methodology for determining shortages similar to that developed by the committee. Instead, most included detail on how to appoint commissioners and whether the commission’s recommendations should be advisory or binding (Migration Policy Institute 2006; Brookings–Duke Immigration Policy Roundtable, 2009; Bush, McLarty, and Alden 2009).

More specific guidelines for a Foreign Worker Adjustment Commission (FWAC) made by former U.S. Secretary of Labor Ray Marshall in 2009 generated opposition from representatives of the business community who feared that the FWAC would not reach the “correct” recommendations on the need for foreign workers (Waslin 2010). Marshall suggested adopting a framework with at least five indicators of a labor shortage in a particular occupation, including average unemployment over the past three years, employment growth in the occupation, hourly earnings growth, projections of employment growth, and projections of workers needed to replace those who retire or leave the occupation (Marshall 2009). Marshall’s FWAC was attacked by those who felt more comfortable persuading Congress to fix annual numerical limits in TLMPs via legislation rather than trusting an expert commission to analyze data and make recommendations on the annual number of migrant workers to admit.

Other recommendations on labor migration simply *assume* there are labor shortages in high-income countries and explain the mechanics of how to move workers more efficiently over borders. For example, Pritchett’s major concern is increasing the number of migrant workers from low-wage countries in higher-wage countries because of the economic gains that can result, perhaps explaining why he does not deal with the messy realities of how to determine whether migrant workers are needed in particular industries (Pritchett 2006).

Similarly, Clemens focuses more on the benefits that would accrue to migrants and their countries of origin than on whether more migrant workers are optimal for higher-wage countries. His proposed Global Skill Partnership model *assumes* that there is and will continue to be a shortage of nurses in high-income countries, leading for example, to a proposal under which German hospitals would train Moldovan nurses in Moldova who commit to working in Germany, and deduct the training costs that were advanced from the nurse’s German wages (Clemens 2017).¹³

Global skill partnerships sound like flexible arrangements under which employers in high-income countries anticipate their labor needs, provide funds to train more workers in low-income countries than they plan to hire, and recoup their investment in training migrant workers via deductions from wages from the trained workers. There are many issues with such proposals, including how to identify future labor shortages that justify private investment today, how to select workers who will receive the training, and how to recoup the investment in training while protecting the rights of workers and not saddling them with exorbitant amounts of debt. For example, if the training was for a low-skilled job that

paid the minimum wage, could a worker receive less than the minimum wage after training costs were deducted? Could workers escape from employers that abuse them and that break the law before the workers have repaid their training costs?

Advocates for increasing migration through TLMPs often begin from the observation and assumption that there are more jobs than workers in many developing countries, and that some employers in higher-income countries are experiencing bona fide labor shortages because employers complain they cannot find enough qualified workers. Instead of analyzing these labor-shortage claims, they assume there are labor shortages and lay out proposals to move workers over borders to fill them. However, some of these proposals may lead to a class of workers who earn credentials financed by foreign employers—causing them to be indentured to them—which could lead to abuses that violate international standards for human and labor rights.

Labor recruitment and job-matching

Employers seeking workers in other countries often turn to private recruiters in their own country or abroad to find workers to fill jobs, and these intermediary recruiters can make job-matching more efficient, simply add to the cost of matching workers with jobs, or both. Governments often attempt to regulate recruiter–worker transactions, and this regulation could improve protections for migrant workers and reduce their migration costs or add to complications and worker-paid migration costs.

International borders should *increase* employer investment in recruitment to ensure good worker–job matches, but in practice employers often invest little to recruit low-skilled migrant workers. Large wage gaps between origin and destination countries can create an excess supply of workers in countries of origin, meaning that more workers want to work abroad than the number of jobs available.

If there are too many workers seeking jobs abroad, employers may be able to charge for their job offers, extracting from workers some of the wage differential between earnings abroad and at home. Profits from selling jobs or visas to potential guestworkers may encourage some employers to hire more workers than they need, helping to explain slow productivity growth in countries where guestworkers dominate workforces. For example, average labor productivity in the Gulf oil-exporting countries where guestworkers dominate private-sector workforces has been falling, and the share of national income accruing to capital is among the highest in the world (IMF 2014). Such over-hiring may be in the short-term interest of employers, but not be in the national interest of countries that want to raise productivity, wages, and competitiveness over time.

International migration can slow worker–job matches and lead to fees and costs for migrant workers seeking to work abroad. There are four major phases in the international labor migration process, and each can generate migration costs that are paid by workers. Employers set the migration process in motion by developing job descriptions, obtaining government approval to fill jobs with migrant workers (sometimes after seeking and failing to find local workers, or attesting that they have under applicable government rules), and

contacting workers in another country directly or via a recruiter to fill the job. If the employer utilizes a local recruiter, that recruiter may incur costs to contact workers in another country directly or via a recruiter in workers' countries of origin.

Guestworkers appear in the second phase, when they learn about foreign job opportunities, obtain contracts to fill foreign jobs; apply for passports; undergo health, criminal, and other checks before receiving visas; and have their documents and contracts approved before departure. Some guestworkers receive weeks or months of language, skills, or other training before departure and, even if they receive free training, may incur opportunity costs during the time that they study or train rather than work. Most worker payments to recruiters and government agencies are made during this second phase of the migration cycle, and many guestworkers take out loans to cover these costs.

The third phase involves guestworkers employed abroad, typically for two or three years. As the end of their contract approaches, guestworkers may seek to have their contract renewed and remain abroad or return to their country of origin before going abroad again. If guestworkers return and remain in the country of origin, they can invest savings from employment abroad to start a business or to try to find a job offering a better wage. Some guestworkers are entitled to end-of-service bonuses, reimbursement of some expenses, and refunds of social insurance contributions upon completion of their contracts.

The fourth phase involves reintegration at home or preparation to go abroad again. The reintegration process is not well understood, so there is little reliable data on the share of guestworkers who return home permanently versus those who cycle between work abroad, rest at home, and going abroad again. Farm employers say that workers admitted under TLMPs that permit eight or ten months of employment abroad often return year after year for several decades. There are also many reports of so-called serial migrants who work two or three years abroad, return home for a year or two, and then go abroad again as their savings diminish (Parreñas 2015).

Guestworkers incur several types of costs in each of the four migration phases, including monetary fees and opportunity costs. For example, the opportunity costs of not working may be higher than the travel costs paid by rural workers who must go to capital cities to sign contracts and receive pre-departure training. Guestworkers may also incur costs if they receive substandard wages and benefits abroad or if they work abroad in jobs that do not use their skills. In some migration corridors, maximum migration costs and their division between employers, workers, recruiters, and government agencies are specified in bilateral agreements or program rules. In others, only some or none of worker-paid migration costs are regulated.

ILO conventions recommend that employers pay all costs for the migrant workers they hire. Some destination countries for migrants have adopted this employer-pays-all-costs principle, as does the United States for its H-2A and H-2B programs, while others specify the shares of migration costs that employers and migrants must pay, as does Canada with its Seasonal Agricultural Worker Programs with Caribbean countries and Mexico and as does Australia and New Zealand with their Pacific Island seasonal worker programs. Some major countries of origin set maximum worker-paid migration costs before departure. For

example the Philippines, which sets the maximum at one month's foreign earnings or 4.2 percent of foreign earnings for a two-year contract and 2.8 percent for a three-year contract (Martin 2017). In practice however, workers often end up paying more than the law permits, because of inadequate enforcement, especially in countries of origin.

There are a number of ways that some governments have attempted to regulate the labor recruitment process, each with varying degrees of success.

Two countries of origin that have attempted to regulate recruitment include the Philippines and Mexico. In the Philippines, domestic law requires monitoring of policies related to migrant workers in countries of destination and tightened regulations on labor recruitment in the Philippines. Domestic laws also require migrant workers to register with Filipino embassies overseas, and for recruiters in the Philippines to register with the Philippine Overseas Employment Administration (POEA). Additionally, Filipino law requires applicants for recruiter licenses to be college graduates, Filipino citizens, and to have at least three years of experience in recruitment. Recruiters must also invest at least 2 million Filipino pesos (approximately \$45,000 USD) in their business and post a 1-million peso escrow deposit, have a bank account of at least 500,000 pesos, provide two years of tax returns for any shareholders of the business, and rent an office of at least 100 square meters and register this place of business with POEA.

The high cost of becoming a licensed recruiter can become a major reason for recruiters to resolve worker complaints, because recruiters may fear losing their licenses. Filipino law makes local recruiters jointly liable with foreign employers to fulfill the terms of the contracts that Filipino migrants have as they depart, including provisions regarding unpaid wages and work-related benefits. As a result of these efforts, the Philippines system is often considered a best-practice model for protecting migrant workers during recruitment and deployment. However, with more than one million new entrants to the labor force each year and a tradition of achieving upward mobility by working abroad, it is very difficult for the government to prevent Filipinos from paying more than one month's wages for foreign jobs.¹⁴

In Mexico, changes made to federal laws in 2012 led to new recruitment regulations that have been in place since 2014. Gordon (2015) summarizes the relevant changes:

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 [sic] 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.

While these laws look great on paper, as Gordon notes, enforcement by the Mexican government “remains lax.” Regulating recruiters in Mexico as a result, remains a work in progress.

In destination countries, there are fewer efforts to regulate recruitment, and governments often know very little about the recruiters sending workers to their labor markets and the amounts recruiters charge workers. The Canadian government has no national registration system for labor recruiters or recruitment agencies who send migrant workers to Canada. The United States doesn’t either, although information about recruiters must sometimes be listed on application forms for migrant workers, which means the U.S. government has records of some of the recruiters operating in the country.

In 2013, a national registration system was proposed in the United States in S.744, approved by the United States Senate but not enacted into law. S.744 would have required all recruiters to register with the U.S. Department of Labor if they are recruiting workers for jobs in the United States; to disclose information about the workers they recruit and the employers and subcontractors they work with, to disclose job terms, and to post a bond. Employers and recruiters would have been prohibited from discriminating or retaliating against workers, or from charging recruitment fees. A new complaint and investigation process would have been established along with administrative fines and a private right of action, allowing either the government or an aggrieved person to bring a civil action against any recruiter in federal court. A “safe harbor” for U.S. employers was also included, meaning an employer would not be liable if the employer hired workers referred by a registered recruiter (Costa 2013a).

As the U.N. agency responsible for protecting workers, the ILO has long been concerned about recruiters and migrant workers. The ILO calls on governments to operate no-fee labor exchanges so that employers can find workers and workers can find jobs, and discourages the practice of private recruiters charging workers for finding workers jobs. Recognizing that “unscrupulous employment agencies, informal labor intermediaries and other operators acting outside the legal and regulatory framework...prey especially on low-skilled workers,” the ILO issued “General principles and operational guidelines for fair recruitment” in 2016 (ILO 2016a), which were in part the culmination of the Fair Recruitment Initiative, an ILO-led multistakeholder process (ILO 2015a). According to the ILO, the general principles and operational guidelines “inform the current and future work of the ILO and of other organizations, national legislatures, and the social partners on promoting and ensuring fair recruitment” and “are derived from a number of sources, including international labour standards and ILO instruments among others” (ILO 2016a).

The four-pronged ILO Fair Recruitment Initiative focuses on enhancing knowledge of national and international recruitment practices, improving laws and enforcement to promote fair recruitment practices, encouraging fair business practices, and empowering and protecting workers. The ILO’s General Principle 2 states, “Recruitment should respond to established labor market needs, and not serve as a means to displace or diminish an existing workforce, to lower labor standards, wages, or working conditions, or to otherwise

undermine decent work,” and Principle 7 asserts, “No recruitment fees or related costs should be charged to, or otherwise borne by, workers or job seekers” (ILO 2016a).

The International Organization for Migration (IOM), an intergovernmental organization based in Switzerland, is in the process of creating a new voluntary certification system for employers, known as the International Recruitment Integrity System (IRIS). According to the IRIS website, IRIS “is a social compliance scheme that is designed to promote ethical international recruitment. It is comprised of an international standard, a voluntary certification scheme for labour recruiters, and a compliance and monitoring mechanism. For businesses and migrant workers, IRIS serves as a due diligence tool for the assessment of labour recruiters” (IRIS 2018). Participating recruiters must agree to be assessed by a rating agency before they are allowed to post job openings, and IRIS promises to help recruiters who want to post job offers but are not in compliance. While IRIS has been in development for a number of years and has listed on its website partners that include governments and employment agencies, as of early 2018 it had not yet fully launched.

Despite recent attempts by governments and international organizations to better regulate labor recruiters and the labor recruitment chain, anecdotal evidence and recent migration cost studies suggest these efforts are failing in reducing costs for workers because many migrants are still paying significant sums of their foreign earnings in migration costs (Martin 2017).

Prevailing wages, housing, and transportation

Labor market tests and expert commissions aim to determine whether migrant workers are needed to fill particular jobs. As noted above, employers who face difficulty finding workers to fill vacant jobs can be expected to raise wages, add benefits, and make other changes to attract and retain local workers. For this reason, government agencies that make decisions on employer applications for guestworkers sometimes require that employers seeking to hire guestworkers advertise and offer job openings to local workers at the legally defined “prevailing” or market wage to establish that employers cannot find local workers for the jobs. While some countries may only require that guestworkers be paid the legal minimum wage, some operate programs that require a higher prevailing or market wage, and may define that wage level in various ways, including the wage paid in a collective bargaining agreement for a similar job in the region, or the local average wage for the job according to employer or worker surveys. Employers are then required to pay the hired guestworkers the legally defined prevailing wage, which is intended to prevent wage suppression and depression of average wage rates for local, destination-country workers in the same or similar occupations or in a broader industry.

In the H-2A program for farm jobs in the United States, the required wage is the highest of either the “adverse effect wage rate” (determined by the U.S. Department of Agriculture’s annual Farm Labor Survey of nonsupervisory farm and ranch workers) or the “prevailing wage” as determined by a U.S. Department of Labor (DOL) methodology for certain H-2A jobs, or the agreed-upon collective bargaining rate if one applies, or the federal or state

statutory minimum wage (Farmworker Justice 2011). However, the H-2B program in the United States for nonagricultural low-wage jobs sets the prevailing wage employers must pay at the highest of the local average wage for the job, as determined by the Occupational Employment Statistics survey (a government survey of employers); or the federal, state, or local minimum wage; or a wage determined by the employer using a privately conducted wage survey that meets certain requirements from the DOL.

Countries such as Sweden and Norway—both of which have relatively high unionization rates—require that migrant workers be paid according to the wages paid in collective bargaining agreements. Employers that hire migrant workers in Sweden must pay a wage consistent with collective bargaining agreements in the profession or sector, and employers are encouraged to ask unions for an opinion on the appropriate wage levels for jobs outside of collective bargaining agreements (OECD 2011). The opinion expressed by the union is not binding, and therefore the Swedish Migration Board may still approve a permit in cases in which the union has not approved of the offered salary (OECD 2011).

Wages are the clearest and the most visible labor market indicator to determine if employers truly cannot find available local workers to fill job openings. Therefore, at their best, prevailing wage rules can be a valuable tool in determining a labor shortage in the TLMP context. Elementary economics suggests that, if employers are complaining of labor shortages but wages are stagnant, reducing the gap between labor demand and local supply requires wage increases. The challenges that arise are how to calculate prevailing wages and measure changes in wages to determine if employers are raising wages quickly enough to respond to market conditions, and how to determine if a certain prevailing wage level will not suppress wage rates for destination-country workers already in the local labor market. While the United States may have some of the most developed methodologies for determining a prevailing wage, there are serious critiques about the adequacy of U.S. prevailing wage rules in terms of meeting their goals (Costa 2016; Costa 2017b). In part this may arise because the question of how to set a prevailing wage can be contested and controversial (Ruhs 2013) and manipulated by employers. Countries that use applicable collectively bargained wages may offer the most protection from downward pressure on local average wage rates, since they are less likely to be artificially low as a result of loopholes in wage rules.

Other requirements on employers in some TLMPs attempt to level the playing field with local workers, for example by mandating that employers provide migrants with no- or low-cost housing and other benefits such as transportation. Such benefits for migrant workers are also a recognition of the difficulty guestworkers arriving in a new country are likely to face in terms of finding and affording adequate housing near their worksite, and in finding adequate transportation or affording a car, especially if the workers are to be employed in very-low-wage occupations such as agriculture and hospitality. The issue that may arise is whether the housing and transportation that some governments require employers to provide is adequate; quite often it is not (Arcury et al. 2012), and fear of employer retaliation or removal from the country may keep guestworkers from complaining to labor or housing authorities.

Enforcement and oversight

There are two main times in the labor migration cycle when governments enforce program rules and exercise oversight in temporary labor migration programs. First, enforcement may occur at the beginning of the process, before guestworkers arrive from abroad (pre-arrival enforcement) and during the time when employers apply for workers and go through bureaucratic processes such as labor market certification or attestation. Second, enforcement may occur after guestworkers arrive (post-arrival enforcement), for instance if there is a violation alleged by a worker or another witness or found through a government inspection or audit. Penalties for violators may include fines, debarment (prohibition) from using a TLMP in the future, and/or criminal penalties for severe abuses such as human trafficking.

Multiple federal agencies, including departments or ministries of labor, foreign affairs, migration, and interior enforcement are often involved in both pre- and post-arrival enforcement and oversight. In terms of pre-arrival, the agencies that process employer applications for guestworkers and/or approve or deny labor certification applications may review paperwork and search for irregularities or errors, or ask for additional evidence from applicants if agency officials don't believe enough information establishes the need for a guestworker. Agencies will also interview potential guestworkers before they receive their work visas permitting them to travel to the destination country, and possibly review the terms of their work visa at a point of entry before permitting the worker to enter the destination country.

For example, in the main TLMPs for low-wage jobs in the United States, the H-2A and H-2B, first the U.S. Department of Labor reviews and approves or denies employer applications for labor certification to establish whether the need for a guestworker is legitimate. Second, the U.S. Department of Homeland Security reviews, and then approves or denies, petitions for guestworkers that had an approved labor certification. The approved petitions for guestworkers then go to the Department of State, which reviews visa applications and interviews potential guestworkers at consulates in countries of origin. If the Department of State issues a visa to the worker, when he or she attempts to enter the United States at a port of entry, Customs and Border Protection (a Homeland Security subagency) reviews the visa and interviews the guestworker, and ultimately determines whether the guestworker is admissible into the United States.

The level of pre-arrival review and oversight exercised by government agencies varies. Attestation programs are likely to receive little oversight and review, and may amount to a government rubber stamp because the structure of the program assumes that most employers have a bona fide need for a guestworker. On the other hand, programs that use certification procedures will examine the validity of the employer's stated labor market need to some degree. In some countries the government's approval of the labor certification is final and cannot be challenged (e.g., in the United States), but in others it may be disputed through legal challenges brought by workers or their representatives (e.g., in Canada).

Post-arrival enforcement is geared toward ensuring that guestworkers are treated and

paid fairly by their employers according to program rules, and that employers and recruiters of guestworkers adhere to any other applicable program rules. Post-arrival enforcement may be triggered either through direct complaints to government agencies from guestworkers or their representatives, or via government-initiated inspections or audits.

Enforcement measures that require guestworkers to file complaints about employer violations such as wage theft and health and safety violations, or that depend as well on other forms of whistleblowing, can fail to achieve their goals because they require guestworkers who are in the country of destination on temporary visas to assume a significant amount of risk to file a complaint. The risks are high because the guestworker's visa can be revoked or invalidated by the government, often automatically if the worker is fired from the job that is tied to his or her visa. If a guestworker's employer discovers that the guestworker has filed a complaint, the employer could terminate the employment relationship with the worker, rendering the guestworker removable before having a chance to fully pursue and litigate the claim. This underscores the imperative of having strong whistleblower protections that afford migrants legal immigration status while they seek access to justice. Without such protections, the guestworker may also have a strong incentive to depart the country of destination immediately to avoid being detained and jailed, or to avoid any adverse immigration consequences that could prevent the guestworker from ever returning to work in the same country of destination.

The fear of losing employment and becoming subject to deportation or removal is exacerbated by the fact that guestworkers are likely to have paid significant sums to recruiters to obtain their temporary jobs and perhaps gone into debt; making guestworkers even less likely to complain than they already are based on the structure of the TLMP. Guestworkers may also be deterred from complaining to authorities if they believe their employer will be punished by having the work visas they sponsored get revoked, which could have uncertain consequences for the guestworker who filed the complaint.

Audits and other government-initiated oversight actions and inspections can be useful tools to determine if employers are complying with program rules and if guestworkers are sufficiently protected. However, enforcement that relies on audits and inspections can also be problematic because there are usually too few agents from labor agencies to adequately inspect the number of guestworkers in the country and the many worksites where they are employed. In the United States for example—one of the world's wealthiest countries—in 2012 only \$1.6 billion was spent on all labor standards enforcement, compared with \$18 billion spent on enforcing immigration laws (Costa 2013b). The U.S. Department of Labor's Wage and Hour Division (WHD), in particular, which is tasked with enforcing the main labor standards protections in the United States, has only approximately 1,700 total employees (not all of whom are investigators), but is responsible for enforcing the laws that "protect over 135 million workers in more than 7.3 million establishments throughout the United States and its territories" (U.S. DOL 2017a). This worker pool includes the approximately 1.4 million guestworkers that are employed in the United States (Costa and Rosenbaum 2017). While WHD is underfunded and understaffed for the task at hand, there is also evidence that labor inspectors do not penalize the

employers of guestworkers to the full extent of the law, allowing many employers that violate the law to continue employing new guestworkers (Bensinger, Garrison, and Singer-Vine 2016).

The dramatic underfunding of labor law enforcement in the U.S. and many other countries increases the importance of removing barriers to freedom of association and collective bargaining for migrant workers. Unions provide a mechanism for workers to monitor conditions in the workplace and to enforce standards through a collective bargaining agreement, which supplements governmental enforcement of labor standards and allows workers to privately remedy disputes through their union.

In Canada, while the Employment and Social Development agency committed to inspecting a quarter of all employers using the Temporary Foreign Worker Program, a 2017 audit by the Canadian auditor general found that only 13 of 173 inspections had been completed in 2016 (Levin 2017; Office of the Auditor General of Canada 2017). Good intentions and statements by agencies are not enough: staff, resources, follow-up, and political will are required.

Furthermore, some TLMPs do not have rules governing the program or protecting guestworkers after they arrive, especially when the program is not a dedicated guestworker program (meaning one of the programs created to fill labor shortages), but is instead a de facto guestworker program operating for a different purpose (see Table 1). For example, there are no post-entry rules that protect the more than 300,000 L-1 (intra-company transferee) guestworkers in the United States (Costa and Rosenbaum 2017) or the international student workers who make up 1 to 2 percent of the workforce in Australia (Tham, Campbell, and Boese 2016). Workers in these programs must rely on the regular labor, wage, and hour laws that protect all workers, which can mean few protections for guestworkers. Billions of dollars are stolen from workers every year in the form of unpaid or underpaid wages, even in developed countries such as the United States and Australia (Levine 2018; McNicholas, Mokhiber, and Chaikof 2017; Howe, Hardy, and Cooney 2013).

Other practical difficulties can arise in enforcement. Cooperation between federal agencies is often inadequate, with serious consequences. For example, Canada's capacity to enforce regulations governing the Temporary Foreign Worker Program is constrained, as a recent *New York Times* report explained, "because provinces and territories are responsible for enforcing health, labor and workplace safety standards for the workers, and protections are uneven," while the federal government possesses key information about the workers and who their employers are. Further, "most provinces...do not even know the names of the temporary foreign workers employed there, who they work for or where they are" (Levin 2017).

In Australia, the department that handles immigration is responsible for enforcing certain provisions in the 457 visa program for skilled temporary workers, while a separate agency, the Fair Work Ombudsman, has inspection but not enforcement authority when it comes to violations (Tham, Campbell, and Boese 2016). In the United States, the Department of Labor investigates prevailing wage violations in the H-visa programs for seasonal agricultural and nonagricultural workers and skilled workers, and can penalize employers

for wage violations. However, the Department of Homeland Security (DHS) is tasked with investigating and punishing employers who commit visa fraud and removing workers from the country if they overstay their visas. Employers who violate DOL laws are also prone to violate DHS laws, but inadequate coordination between DOL and DHS can result in impunity for employers and lost wages for workers. In the extreme, worker victims can lose their jobs and be removed from the United States.

Data and metrics

To facilitate an informed public debate about temporary labor migration programs, reliable data and metrics for measuring their impact and making comparisons is required. This includes adequately collecting and analyzing key data on the industries that hire guestworkers, the occupations guestworkers are employed in, and the wages employers pay guestworkers. Unfortunately, detailed and disaggregated data on TLMPs is notoriously hard to come by, which has helped spur calls for more and better data in the 2030 Agenda for Sustainable Development adopted by the United Nations in 2015 (U.N. 2015) and the United Nations General Assembly's 2016 New York Declaration for Refugees and Migrants (UNGA 2016).

The United States offers a noteworthy case study, although similar issues arise in other countries. Despite billions of dollars in annual government spending on immigration enforcement, little is known about TLMPs and their impact. In the United States, the government collects a substantial amount of information on nonimmigrant visa holders who are authorized to work (i.e., guestworkers) and the employers who hire them. Although this government-collected data set is the main source of information on TLMPs in the United States, it is inadequate, generally of poor quality, and recorded in an inconsistent manner across federal agencies (Costa and Rosenbaum 2017). Much of the data on TLMPs are collected on paper forms and, as the U.S. government's own auditor agency has noted, the U.S. government is not aware of basic facts, including the number of low-skilled guestworkers by occupation (GAO 2017). Congress and the federal agencies in charge of immigration have clearly not made it a priority to achieve a detailed understanding of the size, scope, and economic impact of TLMPs and the 1 percent of the total U.S. workforce that is made up of guestworkers.¹⁵

A lack of reliable data on TLMPs and guestworkers in a national labor force can also impede effective enforcement of protective labor and employment laws. The lack of information about how many guestworkers are in a particular program, where guestworkers are employed, and how much employers promised to pay them compounds an already difficult enforcement environment for government inspectors and migrant worker advocates. And without internationally standardized information about TLMPs across visa categories and program types, the public discourse about TLMPs and the debates among policymakers about whether to use TLMPs and how to structure them will continue to be ill-informed at both the national and global levels.

Migrant worker rights

The International Labour Organization, founded in 1919 and as such the oldest U.N. agency, has a constitutional mandate to protect the rights of all workers, including migrant workers. The ILO was founded after World War I to promote peace through social justice by assuring decent work for all workers, including those who find employment abroad. The ILO is unique among U.N. agencies in having a tripartite structure, with those closest to the workplace—employers’ and workers’ organizations—joining governments to approve conventions that promote decent work for all.¹⁶ The ILO’s almost 200 conventions apply to all workers, including migrants and guestworkers, unless migrant workers are specifically exempted.

Two conventions, Convention 97 (“C97,” approved in 1949) and Convention 143 (“C143,” approved in 1975), and their associated recommendations, apply specifically to migrant workers. The bedrock principle of C97 is to treat all workers equally with regard to wages and working conditions. The justification for this principle is straightforward: by protecting migrants, governments protect local workers from unfair competition. C97 was approved in the aftermath of WWII, after borders were redrawn in Europe and millions of people were resettled in new countries. One reason for C97 was to avoid allowing distinctions between workers in the workplace to lead to tensions that could fuel conflict.

C97 aimed to ensure that all workers were treated equally in rebuilding Europe and in the Americas to which some Europeans moved, regardless of where they were born or their status in the country where they worked. C97 also dealt with the recruitment of migrant workers, calling on “each Member...to maintain...an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information” (Article 2). Equal treatment in the workplace and a no-fee labor exchange or employment service, called for by Convention 181 (C181) in 1997, continue to be fundamental ILO principles.

After most European governments stopped recruiting guestworkers in Southern and Eastern Europe in the early 1970s in the wake of recessions induced by oil-price hikes, C143 called on governments to hold employers of irregular (i.e., unauthorized or undocumented) migrants accountable and to integrate settled migrants and their families.¹⁷ Many “guest” workers who arrived in the 1960s departed as expected, but the number of migrants was so large that, even if less than a quarter of all guestworkers settled, many European countries developed significant minority populations. Government assumptions that guestworkers would leave with their savings to achieve upward mobility at home were belied by policies that in fact gave most migrants the right to form or unify families after one year of work and to earn permanent residence status after five years.

C143 urged governments to crack down on employers and others who facilitated irregular or unauthorized migration, and to take steps to integrate settled migrants. This call to integrate migrants and their families was controversial at the time, since the German government asserted repeatedly that Germany was “not a country of immigration” (Martin, Abella, and Kuptsch 2006). First France and then Germany in the late 1970s and early

1980s offered jobless migrants and their families return bonuses to encourage them to give up their work and residence rights and return home.

The ILO's Multilateral Framework on Labour Migration contains principles and recommendations that embrace a rights-based approach to improve the governance of international labor migration, that is, it emphasizes the rights of all migrant workers (ILO 2006). The Multilateral Framework grew out of a General Discussion on Migrant Workers at the 92nd Session of the International Labour Conference (ILC) in June 2004 that led to a "Resolution concerning a fair deal for migrant workers in the global economy," including a plan of action covering seven migrant-related issues.

The Multilateral Framework, which is the keystone of the plan of action, lays out the minimum standards and equal treatment norms included in international labor and human rights conventions to protect migrant workers, but does not spell out how many migrants should be sent abroad or admitted into destination countries.¹⁸ The Multilateral Framework includes the following nine elements: decent work, international cooperation, global knowledge base, effective management of labor migration, protection of migrant workers, prevention of abusive migration practices, migration process, social integration, and migration and development. Each of these elements is followed by several guidelines that can be implemented globally, regionally, and in particular countries, but there are no priorities established among the nine elements or the more numerous guidelines.

In June 2014, the ILO's annual conference returned to migrant worker issues by discussing the role of private recruiters in moving workers over borders. The ILO noted:

substantial evidence of widespread abuse connected with the operation of these [recruitment] agencies. These [abuses] ranged from excessive rates and sometimes extortionate fees, to deliberate misinformation and deception concerning the nature and pay and conditions of work that is on offer. Migrants will often have little or no means of redress in the face of unscrupulous intermediaries once they get to their destinations and problems become apparent. This type of situation can give rise to extremes of exploitation, as in cases where workers acquire very high levels of debt to pay recruitment fees. (ILO 2014, 15–16).

To remedy recruiter abuses, the ILO called for "renewed efforts and cooperation with governments to ensure the adequate regulation of such agencies, and to offer workers who are victims of malpractices access to remedies" (ILO 2014, 22). The ILO's Fair Recruitment Initiative (mentioned in the Governance section) aims to increase knowledge about recruitment practices, strengthen national laws that regulate recruitment and their enforcement, and promote fair recruitment practices via social dialogue and partnerships. The ILO's overall goal is to develop a regulatory framework that respects "the principles enshrined in international labour standards," and its General Principles and Operational Guidelines for Fair Recruitment document (ILO 2016a) is the only global framework that has been developed through an authentic tripartite process. The initiative's concrete goals are to end the practice of recruiters charging migrant workers for foreign jobs and to have more workers move over national borders under the terms of bilateral agreements.

ILO core conventions promote universal international labor standards protections for all

workers and extend labor rights to all workers, regardless of immigration status. The ILO is not the only U.N. agency that aims to improve protections for migrants; other agencies with mandates related to migrants include the U.N. Office on Drugs and Crime, which is the lead U.N. agency on human trafficking, and the U.N. High Commissioner for Refugees (UNHCR), which is the lead U.N. agency on refugees and displaced migrants. The U.N. General Assembly on December 18, 1990, adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to reinforce the rights of legal migrants and to extend protections to irregular workers and migrant family members (OHCHR 2018).

Recruitment and worker-paid fees

Most of the world's migrant workers and guestworkers are not professionals and have little education (often referred to as “low-skilled” or “lesser-skilled”), and are employed as domestic workers, laborers, and other related occupations. Most lower-skilled guestworkers find jobs with the help of for-profit recruiters who often charge workers for job-matching services. Migrants, employers, and governments want low recruitment costs and good worker–job matches so that migrant workers are in the “right” jobs abroad, satisfying employers and enabling migrants to achieve savings targets without overstaying their visas or taking second jobs. However, recruiters may not have the same incentives to lower recruitment costs and ensure good worker–job matches.

As noted, ILO conventions call for employers to pay all of the recruitment costs of the migrant workers they hire and for governments to operate no-fee labor exchanges that match workers with jobs. However, C181 (1997) on private employment agencies allows governments to create exceptions to Article 7's statement that “private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers,” opening the door to worker-paid recruitment fees that are a share of foreign earnings, such as a month's foreign earnings, which is 4.2 percent of earnings under a two-year contract and 2.8 percent under a three-year contract.

Many migrants report paying far more than one month's earnings for recruitment. For example a Bangladeshi migrant worker reported paying \$2,000 in U.S. dollars to a recruiter for a contract job in Saudi Arabia paying \$200 a month or \$7,200 for the three-year term of the contract; the payment is thus more than a quarter of the worker's earnings abroad. Let's say the migrant remits \$5,000 of these earnings—it is not unusual to pay 10 percent of what is remitted in money transfer costs. In this case a policy that cuts remittance costs in half would save the migrant \$250, but cutting recruitment costs in half would save the migrant \$1,000—four times more (Martin 2017). It is important to reduce both remittances and recruitment costs, but the payoff from reducing recruitment costs is likely to be larger for many individual migrants.

While employers (including in the United States) do not always pay the recruitment costs of educated, high-skilled workers, some do. In contrast, most low-skilled workers pay for foreign jobs. The reason is supply and demand and lax enforcement of rules prohibiting worker-paid fees. The supply of high-skilled workers earning \$1,000 a month or more

around the world is relatively limited, so employers are more likely to pay recruitment costs. However, there are often 10 low-skilled workers competing for each job that pays \$200 or \$300 a month abroad, allowing profit-seeking recruiters to use willingness to pay as a means of allocating scarce jobs (Martin 2017).

Some studies have provided data on worker-paid costs in a few major migration corridors, and offer insights into the range of costs paid by migrant workers. For example, some South Asians moving to Gulf Cooperation Council destinations pay up to a third of what they expect to earn abroad, or a year's foreign earnings for a three-year contract (Martin, Abella, and Kuptsch 2006). Worker-paid migration costs in South Korea equaled one to one and a half months of typical earnings, and in Kuwait migrants paid an average of four months of Kuwaiti-earned wages (Martin 2017). Costs are further increased if low-skilled migrants borrow money at high interest rates, making them vulnerable abroad because they are reluctant to return with no easy way to pay mounting migration-related debts. For example, if an indebted migrant arrives abroad and learns that the wage will be lower than promised, or the job is different than was described, can she afford to return and face the migration-related debts that have already been incurred?

No one knows exactly how much workers pay to leave their countries for foreign jobs at the global level, however. As a thought experiment, let's assume that out of the total 150 million migrant workers around the world, 10 million a year leave one country to work in another. Most are low-skilled and legal, but many arrive abroad in debt because of the high costs they incur to obtain contracts for jobs abroad. If 10 million migrants pay an average of \$1,000 each to recruiters, moving workers over borders is a \$10 billion a year business; if worker-paid costs average \$2,000, labor migration is a \$20 billion a year business.

To put these recruitment costs in context, we can compare it with data on the migrant worker recruitment industry from the World Employment Confederation (WEC), formerly Ciett, the International Confederation of Private Employment Services. WEC is a global association of labor recruitment and employment agencies that calls itself "the voice of the employment industry at global level, representing labour market enablers in 50 countries and 7 of the largest international workforce solutions companies." WEC reported €450.4 billion (\$541.1 billion) in global revenue in 2015 (Ciett 2016). To put the recruitment industry's profits in perspective, the WEC's profits of \$541 billion were over \$100 billion more than the value of all remittance flows to developing countries in 2015, and nearly as much as all of global remittances combined, \$582.4 billion (KNOMAD 2017). The WEC's members represent recruitment and employment agencies that are officially registered as businesses, and thus their reported profit figures do not include the additional billions in worker-paid recruitment fees that go to unregistered and informal recruiters in countries of origin and destination.

The impact of the recruitment industry's profits on the rights of guestworkers is clear and well documented in numerous reports and government audits: many guestworkers arrive in debt to recruiters and employers after paying hundreds to thousands of dollars in recruitment fees, and borrow at high interest rates to pay recruiters, including mortgaging their homes and land as collateral.¹⁹ The fees contribute to the precarious nature of their

work and leave guestworkers less able to access basic labor and employment law protections in countries of destination. The fact that guestworkers attempt to repay these fees and loans while earning low wages and under exploitative conditions resulting from the legal frameworks of TLMPs (e.g., being tied to one employer, becoming deportable if fired, etc.), discourages guestworkers from complaining to authorities when they become victims of employer abuses, exploitation, and even human trafficking. If workers are fired and become removable, they will lose the ability to legally earn back their investment. They may also be blacklisted by recruiters from being eligible for any job opportunities in future years.

Other fees are routinely paid by guestworkers to recruiters and employers even when prohibited by law; they may include visa processing fees and travel costs, and above-market costs for rent and food (CDM 2013; Luban 2015). Such costs cut further into the slim earnings of guestworkers and exacerbate the difficulties they already face in repaying accumulated debts.

Contract-tied workers versus free agents

Most guestworkers are tied to employers who in practice own and control the visas and to contracts that spell out wages, working conditions, and work-related benefits. One major vulnerability of migrant workers in this situation is that, if they lose their jobs, they normally lose their right to lawfully remain in the country. Worker and human rights activists regularly decry the vulnerability of guestworkers, emphasizing that workers cannot effectively protect themselves if complaining means they risk firing and removal from the country.

Guestworkers might be able to more effectively protect their rights in host countries if they had freedom of movement, meaning they could move from one employer to another within a sector or area or throughout the labor market. Many unions and nongovernmental organizations (NGOs) dedicated to protecting migrant workers believe that allowing guestworkers to change employers would empower them to leave abusive employers, and raise their wages by allowing them to find better opportunities. When considering the vast power imbalances between employers and guestworkers that arise when programs tie workers to a single employer—and the resulting exploitation and even human trafficking—it's no wonder that visa or job portability is an appealing concept. It is almost certain that allowing migrant workers to switch employers would be an improvement on the status quo, but history suggests it would have to be implemented carefully to truly provide more protections for guestworkers, and little research exists on the nexus between job portability and migrant worker rights.

While they are not guestworkers, EU citizens benefit from EU regulations that represent the freedom-of-movement end of the contract-tied vs. free-agent spectrum, since EU nationals may move and seek jobs on an equal basis with local workers (except for jobs requiring citizenship of the host country). Therefore, EU citizens can change employers without risking expulsion from the country.²⁰ Unauthorized migrants can also have freedom of movement in the labor market if they can find an employer willing to pay them

“off the books” or hire them by accepting fraudulent documents, although they run the risk of detection and removal at any time. However, some migrant advocates say that unauthorized workers may have more protections from abusive employers than guestworkers who are tied to a particular employer, a belief reinforced by findings that H-2A and H-2B guestworkers in the United States earn similar salaries, on average, as unauthorized workers (Apgar 2015).

One historical example of a free-agent guestworker program in the United States that was never implemented sheds light on the current debate over job portability in guestworker programs. Over 30 years ago, U.S. farm employers once proposed a free-agent TLMP, as a concession that would allow them to avoid the requirement to provide housing to employer-tied guestworkers in agricultural occupations. Employers successfully lobbied Congress to include two TLMPs in the Immigration Reform and Control Act (IRCA) of 1986: (1) the current H-2A contractual farm guestworker program that ties guestworkers to a particular employer and (2) a four-year replenishment agricultural worker (RAW) pilot program to admit a specific number of free-agent guestworkers needed according to labor-shortage calculations. IRCA gave farmers a choice: invest in housing and be guaranteed H-2A guestworkers, or invest in lobbying to ensure that a sufficient number of RAW workers were admitted so that all farmers had enough workers.

A large new wave of unauthorized migrants from Mexico entered the United States after IRCA (Krogstad, Passel, and Cohn 2017). As a result, there were no farm labor shortages in the early 1990s, leading to the RAW program’s expiration without it ever being implemented. A government commission was charged with evaluating the planned implementation of the RAW program. Several days of hearings led to skepticism among members of the commission who favored more worker protections than the visa or job portability available to RAW workers would actually improve conditions for agricultural workers (Martin 1990).

Martin (1990) relates the history of the proposed RAW program. The RAW program would have been launched if complex calculations found a farm labor shortage. Workers (including unauthorized farmworkers within the United States) would have paid fees to obtain work visas that (1) confined them to U.S. farm work and (2) made them unauthorized if they failed to perform sufficient qualifying farm work each year. RAW workers would have had to find one or more U.S. employers on their own, arranged their own housing and transportation, and been “at will” employees covered by basic labor laws such as minimum wages, but not guaranteed the higher minimum Adverse Effect Wage Rate (AEWR) wage paid to H-2A workers. RAW workers would have had unique Social Security numbers, and U.S. employers would have reported their employment to the government so it knew the location and days worked of each RAW worker. After three years of qualifying farm work, RAW workers could have applied for permanent immigrant visas.

Worker advocates at the time had mixed views of the RAW program. On the one hand, the prospect of an immigrant visa after three years of farm work was attractive, and likely a trade-off many migrant workers would have been willing to make. On the other hand, many feared that new low-skilled workers would have had difficulty finding jobs and affordable housing, especially because the typical immigrant farmworker at the time was a

25-year-old from rural Mexico with less than six years of schooling. Instead of farmers providing free housing, RAW workers aiming to maximize their earnings would have paid rent to owners likely to house workers in poor conditions.

A more-recently proposed TLMP in S. 744, the 2013 comprehensive immigration reform bill that passed in the U.S. Senate but never became law, would have provided job portability between registered employers and a chance for workers to eventually earn permanent immigrant status (Costa 2013b). A program such as the one proposed in S. 744, combined with modern innovations like electronic job registries and government-managed international labor recruitment, could tip the power balance between guestworkers and employers slightly more toward empowering workers to leave abusive employers. Nevertheless, it is highly likely that free-agent guestworkers would still face daunting challenges to arrange a series of jobs, to find housing and transportation to work, and to cope with the other elements of living and working abroad—in addition to still facing exploitation.

There is also some evidence that job portability on its own is insufficient to ending exploitation in current guestworker programs. For instance, college-educated H-1B workers who can switch employers if they can find an employer willing to apply for a new visa, and even workers who enter the United States as permanent immigrants with job portability and have the option of eventually applying for citizenship, have found themselves subject to exploitation at the hands of employers and recruiters who know how to take advantage of U.S. laws and regulations (Stockman 2013; Grabell 2017).

Foreign students, exchange visitors, Working Holiday Makers, and other migrants who are primarily in the host country for another purpose, but who are also allowed to work, are generally free agents in the labor market, but still face abuses as workers. The employers who hire these (usually younger) migrants through TLMPs face no or minimal requirements to search for local workers before hiring migrants and are usually required to pay migrant workers only the minimum wage, not a higher legally mandated wage. Working Holiday Makers in Australia who are not tied to one employer have reported a wide range of abuses, from wage theft to sexual harassment (Mortimer 2016), and even “modern-day slavery” (Robertson 2017). And in the United States, exchange visitor guestworkers in the J-1 program have job portability but must be sponsored by U.S. organizations that charge fees for their services. These sponsors link the young migrants with a U.S. employer and monitor the exchange visitor’s compliance with program rules, and they must also approve requests to change employers. Most sponsors have little experience with wage and hour laws in the United States, and some are allied with abusive employers, resulting in cases of wage theft and human trafficking (Preston 2012).

Other concerns should be taken into account. First, governments may have a hard time convincing the public that allowing a certain number of migrant workers to “float” in the labor market is optimal, since this could result in employers hiring migrants even when local workers are available if migrants are able to legally be paid less than local average wages. And second, governments conceivably should admit new migrant workers as permanent immigrants rather than in a status with restrictions on their rights. Permanent immigrants are free to move and change employers, and can usually work in any job that

does not require citizenship. Admitting workers with restricted rights for a period of time, even if they can change employers, is more likely to be a recipe for worker exploitation than for worker protection, and allows employers to carve out a de facto rights-free zone in the labor market.

Nevertheless, the potential of visa or job portability to improve outcomes for guestworkers is significant, therefore how it functions in the context of a modern and improved TLMP requires further research, analysis, experimentation, and discussion between worker advocates and policymakers.

Pathways to permanent immigrant status and family reunification

According to an analysis of modern TLMPs around the world, the vast majority of TLMPs do not lead automatically to a permanent immigrant status for workers that would allow them to remain in the country of destination (Ruhs 2013). However, there is a spectrum: TLMPs for low-skilled workers almost never offer a path to permanence, while TLMPs for educated and higher-skilled workers sometimes offer either an immediate permanent status or an earned permanent status after a certain number of years.

This global reality is reflected in the United States. Lesser-skilled temporary migrant workers in the H-2A and H-2B programs have no clear path to permanent residence and citizenship, and only a small share of permanent employment-based immigrant visas—10,000 out of 140,000—are available for migrants in nonprofessional jobs every year. College-educated migrant workers in the H-1B program, however, are eligible to be put on a path to permanent residence if their employer decides to start the process for them and files a permanent labor certification on their behalf.²¹ Workers in the L-1A program, for managers and executives, are also eligible to obtain a permanent immigrant visa if an employer sponsors them, but employers are not required to file a permanent labor certification on their behalf. The United States, however, is an outlier among high-income countries that offer a path to permanent residence, in that workers must be sponsored by an employer for permanent residence. In Australia, Canada, and the U.K. for example, migrants do not need to rely on employers to sponsor them for permanent immigrant status (Papademetriou et al. 2009).

Restricting pathways to permanent immigrant status for most low-skilled guestworkers can contribute to the depression of wages in the occupations they work in and is detrimental to the labor market for two obvious reasons. First, as discussed in the preceding section, keeping workers in a “permanently temporary” status that is tied to a single employer does not allow guestworkers to effectively protect themselves in the face of workplace abuses and legal violations by employers, if complaining to authorities means risking termination and removal from the country, and with termination and removal the ability to earn back the investments made to obtain the job. Numerous migrant rights advocates and organizations have pointed this out (see for example Bauer and Stewart 2013; Marshall 2009). But, in addition, some low-skilled guestworkers may spend nine months out of every year, for many years, temporarily employed in a destination country; if those

guestworkers cannot become permanent immigrants in the country where they work and spend most of their time, they will be prevented from fully integrating into the countries to which they contribute economically. They may also end up excluded from social insurance programs in both the country of origin and destination, effectively denying them access to medical care and other necessities when they reach old age. Allowing guestworkers to become permanent immigrants after a set period of time would allow them to eventually have equal rights and freedom in the labor market, on par with local, destination-country workers, and give them a degree of certainty that would allow them to make long-term investments in education and training, or to start a business or purchase a home; all of which could benefit the destination country economically.

Second, not allowing guestworkers to earn permanent immigrant status can deny employers who have come to rely on migrant workers from having a stable workforce. If employers comply with the bureaucratic requirement necessary and pay the costs to recruit and hire a migrant worker—and then train the worker after they arrive—it is reasonable to expect that the employer may wish to keep the worker as a permanent employee. Prohibiting guestworkers from becoming permanent immigrants may end up requiring an employer to hire new workers for jobs that are already filled by migrant workers whom the employer trusts and wishes to retain.

The models for allowing pathways to permanent immigrant status for educated, higher-skilled workers that have existed for decades could be used for migrant workers of all skill levels. These include allowing the migrant workers to immediately be eligible for permanent immigrant status, or to earn permanent immigrant status after a specified number of years. For example, in 2009 the Migration Policy Institute proposed a “provisional” work visa that would authorize migrant workers to be employed for up to three years, be renewable once for a total of six years, and become portable after one year, allowing the migrant to work for any employer. MPI’s provisional visa would also allow migrants to eventually petition for permanent immigrant status without relying on employer sponsorship (Papademetriou et al. 2009).

Another program was proposed in S. 744, a piece of legislation that passed in the U.S. Senate in 2013 but never became law (and discussed in the previous section). The “W-visa” program as it was called, was the product of a compromise between the AFL-CIO, the largest federation of trade unions in the United States, and the Chamber of Commerce, the largest corporate lobby group in the United States (Easley 2013; Center for Responsive Politics 2018). The W-visa would have allowed migrant workers to have indefinitely renewable visas that could be used to work for any employer that registered in the program with the U.S. government and had a certified need for workers. Workers with W-visas would have been able to acquire points for each year they worked in the United States, which could be used toward eventually applying for permanent immigrant visas through a points-based system without employer sponsorship in a “merit-based” track that would have been newly created by S. 744 (Costa 2013b; Matthews 2013).

For migrant workers in TLMPs, another related aspect of residing in destination countries is whether spouses and minor children can accompany workers or join them after arrival in the destination country. According to the Universal Declaration of Human Rights,

protecting the family unit is a human right, and numerous other human rights and humanitarian law instruments address the right to family unity and reunification, and some scholars have explored how the right specifically applies in the migration context (see e.g., Jastram and Newland 2003). Refugees and permanent immigrants in most countries face few restrictions in terms of reuniting with their spouse and minor children in destination countries, but when it comes to TLMPs, the rules for family members joining guestworkers vary widely by country. Many TLMPs permit educated guestworkers in higher-skilled jobs to bring their spouses and children with them. For instance, in the United States, educated guestworkers in the H-1B and L-1 visa programs may bring their spouses and children with them, and the spouses are allowed to work in the United States. In Canada, guestworkers in the Temporary Foreign Worker Program may bring spouses and close family members if the guestworkers are able to financially support their family members while in Canada.

The rules are much more restrictive in TLMPs for lesser-skilled, low-wage jobs. In the United States, workers in the H-2A and H-2B programs may bring their spouses and minor children with H-4 visas, but because H-4 spouses of H-2A or H-2B workers may not be employed while in the United States, in practice H-2A and H-2B guestworkers are unlikely to be able to afford to bring their qualifying family members because their salaries are generally too low to support family life in the United States. In Canada, as with high-skilled workers, low-skilled guestworkers in the Temporary Foreign Worker Program may bring their spouses—but because of the requirement that they financially support them while they are in Canada—low-skilled guestworkers “may not be able to meet this requirement,” according to a report by the Canadian government.²² Low-skilled guestworkers in Australia’s Pacific Seasonal Workers program are not allowed to bring their family members, and the Australian government was explicit about the fact that this restriction was used as a deterrent to keep guestworkers from remaining in Australia beyond the term of their employment (Ruhs 2013).

Freedom of association and collective bargaining

The right to freely associate and join and form trade unions is protected in major international human rights instruments, including the Universal Declaration of Human Rights (Article 23.4), the International Covenant on Civil and Political Rights (Article 22), and the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(d)(ix) and (e)(ii)). The freedom of workers to choose to join a union and bargain collectively with their employers is one of the key pillars of the ILO’s Fundamental Principles and Rights at Work adopted in 1998; the other pillars are the abolition of forced and child labor and the prohibition of discrimination between workers in the workplace. Guestworkers may not always be able to enjoy these fundamental rights in practice.

Unions are especially important to low-skilled workers, who may have little power acting individually to improve their wages and working conditions. The benefits of union membership are clear when it comes to wages and salaries. In the United States, the data show that “among full-time wage and salary workers, union members had median usual

weekly earnings of \$1,041 [U.S. dollars] in 2017” compared with median weekly earnings of \$829 for those who were not union members (BLS 2018); a difference of \$212 per week. Even after controlling for observable characteristics such as education, gender, age, and location, workers covered by a union contract earned 13.2 percent more than similar workers who are not in unions (Bivens et al. 2017). In addition to earning lower salaries, workers in the United States who are not union members and not covered by a union contract are also more vulnerable in the workplace—they are nearly twice as likely to experience minimum wage violations as workers in a union or covered by a union contract (Cooper and Kroeger 2017).

Despite the demonstrable economic benefits and other positive impacts on labor standards, union membership—and the corresponding share of workers who are covered by work contracts—has been on the decline in major industrial countries of destination for migrant workers. In Organization for Economic Cooperation and Development (OECD) countries, union membership declined from 30 percent in 1985 to 17 percent in 2015 (Cazes, Garnero, and Martin 2017). In the United States, as union density declined, economic inequality increased (Gordon and Eisenbrey 2012). The decline in union density has also “contributed to substantial wage losses among workers who do not belong to a union” (Rosenfeld, Denice, and Laird 2016). The efforts to reduce union density have been led by the corporate sector, but have been aided by courts and legislatures, eroding the practical ability of workers to organize and exercise their freedom of association.²³

As some of the most vulnerable and precarious workers in labor markets, guestworkers—especially those working in jobs requiring few skills and earning low wages—would stand to benefit if they were able to easily and freely join labor unions. However, guestworkers are at a disadvantage when attempting to act collectively to improve their wages and working conditions for several reasons. First, guestworkers often lack knowledge of their rights in the workplace, and may have little or no experience with taking collective action to improve their wages and working conditions. Second, guestworkers may not be able to effectively communicate with unions and other worker organizations based on the geographic location where they work; some may be isolated in rural areas or working alone. Third, many guestworkers are employed by a labor contractor or staffing agency, which assigns them to different employers. As a result, even if they join a union drive with one employer, the next week they may be working with an employer across town or in another city. And fourth, because guestworkers only have a temporary immigration status, they may be reluctant to join a union if they believe their employer will retaliate by firing them, causing them to lose the right to remain in the country and earn back the investment made to obtain the temporary job.

Despite these significant obstacles to guestworkers joining unions, there are some examples of unions that have guestworkers in their ranks and represent their interests, as well as worker organizations that have taken collective actions that included guestworkers. The Farm Labor Organizing Committee (FLOC) based in Toledo, Ohio, is one example. FLOC used secondary boycotts of pickle-producing companies Campbell’s and Heinz to win three-way contracts between FLOC, processors Campbell’s and Heinz, and the growers from whom the processors bought cucumbers. FLOC negotiated wages with the two major food processing companies and these firms required growers to abide

by the terms of the FLOC agreement when hiring workers in order to obtain contracts to grow cucumbers for them.

FLOC used the same secondary boycott strategy to win an agreement in North Carolina with Mount Olive Pickle Company and the North Carolina Growers Association (NCGA) (Greenhouse 2004). The NCGA recruits H-2A guestworkers for its 700 employer-members, and sends them to farmers who produce cucumbers for Mount Olive; guestworkers are also employed on farms that produce tobacco, sweet potatoes, and other crops. Since 2003, FLOC has had a collective bargaining agreement with the NCGA covering the 10,000 H-2A guestworkers that NCGA brings into the state each year. However, not all of these guestworkers belong to FLOC and agree to pay 2.5 percent of their wages in union dues, since North Carolina is a right-to-work state.²⁴

FLOC maintains an office in Monterrey, Mexico, to assist and educate guestworkers while they obtain H-2A visas in Mexico. In 2007, a FLOC organizer in the Monterrey office was killed, allegedly for trying to stamp out the practice of guestworkers paying fees to Mexican recruiters (Botz 2007), revealing the dangers workers face when organizing and trying to defend their rights.

The National Guestworker Alliance (NGA), a membership organization in New Orleans, Louisiana, is a project of the New Orleans Workers' Center for Racial Justice that advocates for the rights of guestworkers. The NGA was formed in 2006 "after Hurricane Katrina, when thousands of guestworkers were brought to the U.S. and subjected to forced labor" (NGA 2018).

The NGA's efforts to reform TLMPs in the United States have received major national media attention and achieved some significant victories. In 2012, NGA revealed that C.J.'s Seafood, a crawfish company in Breaux Bridge, Louisiana, that was a major supplier to Walmart, was forcing guestworkers on H-2B visas to work 16 to 24 hours consecutively and in slave-like conditions, sometimes locking workers inside the plant (Greenhouse 2012). Walmart Inc. suspended the company as a supplier, and the *New York Times* published an editorial highlighting the problem of forced labor in the United States (*The New York Times* Editorial Board 2012).

In 2011, NGA members who were in the United States on J-1 Exchange Visitor Program visas went on strike in Pennsylvania against Hershey's in Palmyra, Pennsylvania (Preston 2011), and in 2013 against McDonalds restaurants in Harrisburg, Pennsylvania (Jordan, Maher, and Jargon 2013). Both strikes were responses to exploitative conditions and unpaid wages. Major media outlets emphasized that the J-1 program had few rules and was being abused by employers who could easily take advantage of workers—forcing them to live in substandard housing arrangements and making illegal deductions from their wages—while using layers of subcontractors to evade accountability. The Hershey's strike spurred significant regulatory reforms of the J-1 program (Costa and Eisenbrey 2012), and J-1 workers in both cases received back wages from the U.S. Department of Labor (Jackson 2012; NGA 2014).

As these examples show, facilitating the ability of guestworkers to join and form unions and worker organizations, and to engage in protected concerted activities like organizing,

has the potential to improve wages and working conditions for guestworkers. Comparing the wages of guestworkers and unionized workers in the U.S. construction industry provides one illustrative example. Workers in U.S. construction and extraction occupations who are union members earned \$28.83 U.S. dollars per hour in 2016 (BLS 2018), while construction laborers in the H-2B program (the United States' main seasonal nonagricultural TLMP) earned \$18.22 per hour (Costa 2017a). The nearly \$10 per hour difference helps explain both corporate attacks on unions and corporate lobbying to expand the H-2B program (Meckler 2018a).

Unionization raises wages by changing power dynamics in the workplace, leveling the playing field between workers and employers. There are examples of significant benefits for workers who organize and take collective action, but guestworkers face major challenges to joining unions and worker organizations. Without significant legal and policy changes that protect freedom of association, most guestworkers will continue to find it difficult to freely associate and strengthen workplace protections because the structures of TLMPs and the nature of the employment relationships in TLMPs make guestworkers inherently vulnerable.

Access to justice

The structures of TLMPs and the temporary visa statuses that guestworkers have when employed through TLMPs can make it difficult or practically impossible for them to access legal services or avail themselves of the protections that labor standards enforcement agencies can provide.

Firewalls between labor standards and enforcement agencies are needed so that guestworkers can access justice

Numerous scholars, migrant rights advocates, and humanitarian organizations have highlighted how the lack of adequate firewalls between labor standards enforcement agencies and immigration enforcement agencies (which may include interior or security ministries) is a challenge for unauthorized migrants and may prevent them from accessing justice (Crépeau and Hastie 2015; PICUM 2018; Oberoi 2017; EU Red Cross 2016; Smith, Avendaño, and Ortega 2009); the same challenge exists in the TLMP context. When a labor or employment law violation occurs in a workplace where guestworkers are employed—for instance wage theft or thwarting of legally protected concerted activities—it is essential that the affected guestworkers be available to assist investigators from labor standards enforcement agencies. But if an immigration enforcement agency becomes aware of the investigation because migrant workers are involved, and the immigration enforcement agency begins its own investigation, or begins an investigation simultaneously with the labor standards enforcement investigation, guestworkers will be at a higher risk of being removed before the investigation has concluded because of their temporary visa status. This may occur, for example, if the employer decides to fire guestworker employees because an investigation is ongoing, or if immigration

enforcement agents discover that the employer engaged in any type of fraud. This could leave guestworkers vulnerable to removal because their visa status may be terminated, and immigration enforcement agents may be required by law to remove them from the country when that occurs.

If guestworkers are not allowed to remain until the end of an investigation they will not be able to recover stolen wages or benefit from any other remedy they are entitled to. To ensure that guestworkers are made whole and can access justice in the midst of government investigations, governments should have strict protocols and agreements in place outlining the responsibilities of labor standards and immigration enforcement agencies. In particular, labor standards investigations should be allowed to conclude first, to ensure that lawbreaking employers are held accountable, and well before any guestworkers who were victims are removed from the country because of their visa status. If firewalls are not in place between labor standard and immigration enforcement agencies, guestworkers will be discouraged from reporting legal violations to the government.

Deferring removal proceedings is critical to providing guestworkers with access to justice

Unauthorized migrants fear reporting workplace violations to national authorities because they fear removal or deportation. Guestworkers also fear reporting workplace violations because doing so could lead to a retaliatory firing by their employer for lodging a complaint. Being fired from a job while on a temporary visa will normally mean losing visa status and the right to remain employed in the destination country, and ultimately could lead to the guestworker's removal. In addition, legal proceedings and government investigations in the destination country may last longer than the temporary visa the guestworker possesses, which means the worker will not be able to remain long enough to hold the lawbreaking employer accountable in court or in an administrative proceeding. And as discussed in the preceding section, guestworkers may also lose their visa status if immigration enforcement agencies have found their employer committed fraud. Guestworkers are therefore discouraged from reporting legal violations to the destination-country government when they believe they may become removable as a result.

To ensure that guestworkers have access to justice in practice (i.e., they have the ability to file lawsuits against employers who have victimized them in the workplace or to report wrongdoing to labor standards enforcement agencies without fear of removal), governments must provide guestworkers with deferrals from removal that last at least as long as it takes to pursue their claims or for all government investigations to conclude. Since TLMPs generally do not permit guestworkers to work for any employer other than the one that sponsored the visa, it is also important that any deferral of removal, or visa extension, be accompanied by a new work authorization that lasts as long as the guestworker remains in the country. Without it, migrant workers pursuing justice who originally came through a TLMP will not be able to support themselves and pay for basic necessities like food and housing.

One example of how to administer a program that could ensure this ability to pursue justice is the proposed POWER Act in the United States.²⁵ The POWER Act—if it became law—would provide qualifying workers with a deferral from removal and allow them to receive work authorization if they are pursuing a workplace claim with a local, state, or federal labor standards enforcement agency or in court, and assist government officials in the investigation of their employer (NILC 2015). The POWER Act would also require that the United States’ immigration enforcement agency, the Department of Homeland Security, not remove any worker who was detained as part of a worksite enforcement action until the appropriate labor standards enforcement agency has had a chance to interview the worker (NILC 2015).

Free or affordable legal services are necessary in order for guestworkers to be able to access justice

Even when firewalls are in place and guestworkers are able to remain in the destination country long enough to pursue legal claims in disputes with employers or assist labor standards investigations by government agencies, affordability poses another potential obstacle to accessing justice. Guestworkers—especially those employed in low-wage jobs—may not be able to afford legal representation when they have been victims of workplace abuses, or they may be legally prohibited from accessing low-cost legal services. In these respects, unaffordability prevents them from accessing justice. In the United States, for example, available wage data suggests that many guestworkers employed in low-wage jobs through H-2A and H-2B programs earn wages that are at or near the federal poverty threshold in the United States.²⁶ Guestworkers earning poverty-level wages earn barely enough to survive and are unlikely to be able to afford legal representation in a lawsuit against an employer, given that the employer is much more likely to be able to afford legal representation and may even have its own in-house legal team.

An additional barrier in the United States is that federal law bars legal aid organizations that provide low-cost legal services to people who cannot afford them from providing legal services to noncitizens if the organization receives funding from the Legal Services Corporation (the largest funder of legal aid organizations), except in limited circumstances. Legal aid organizations can only provide services to noncitizens if they are “lawful permanent residents, H-2A agricultural workers, H-2B forestry workers, and victims of battering, extreme cruelty, sexual assault or trafficking.”²⁷ This means that the vast majority of H-2B workers cannot be represented by most legal aid organizations, nor can the more than 100,000 low-wage workers in the J-1 visa program, and the 800,000 guestworkers in the H-1B and L-1 skilled visa programs. Restrictions such as these can greatly impact the ability of guestworkers to access justice and hold lawbreaking employers accountable for their actions.

Distortion and dependence, and other pitfalls of TLMPs: the need for a new

path forward

Temporary labor migration programs almost always grow larger and last longer than anticipated, and the reasons for this are rooted in employer and worker behavior. Some employers assume that guestworkers will continue to be available and make investment decisions that reflect the fact that migrant workers can be hired at predictable labor costs, leading to a phenomenon that we call *distortion*. Distortion is exemplified by farmers who plant orchards in areas with few local workers and then logically oppose efforts to reduce guestworker admissions or other policy changes that would raise their labor costs. Since guestworkers are likely to be more compliant than destination-country workers by virtue of their visa status and TLMP structures, employers in major occupations employing guestworkers are able to avoid raising wages and improving working conditions. If the job conditions of major occupations in destination countries do not improve, then local destination-country workers will not seek jobs in those occupations, resulting in a permanent, structural labor shortage that can only be filled by guestworkers.

Many guestworkers are young, flexible, and adaptable. Many send earnings to their families as remittances, and both they and their families soon become accustomed to higher-wage jobs abroad. Remittances reduce poverty in migrant households, and their spending has multiplier effects in the local economy, so that workers, families, regions, and nations can become dependent on higher-wage foreign jobs, leading to a phenomenon that we call *dependence*.

Hiring workers to fill low-skill jobs without increasing wages and improving working conditions can be difficult (Waldinger and Lichter 2003). Local workers in jobs that do not require formal education or professional licenses, such as seasonal jobs in agriculture or year-round jobs in meatpacking or hotels and restaurants, often quit for better-paying jobs or to work with friends and relatives elsewhere, necessitating constant recruitment and training by employers. Guestworkers are different. Recruiters can find new workers abroad who have few other options and cannot easily depart for better-paying opportunities. And currently employed migrant workers can help employers recruit qualified friends and relatives, and such network hiring means that only new workers who can do the job are brought into the workplace, with the current worker who referred them often taking responsibility for training and orienting the new hires. Migrant networks can reduce turnover and free managers for other tasks (Marshall 2007).

Some of the employers who hire guestworkers assume that migrants will continue to be available and make investment decisions that reflect this assumption. Such investments encourage employers to resist efforts to reduce the availability of guestworkers because doing so would reduce the value of their investments, since paying higher wages or buying labor-saving machinery would raise costs and reduce profits. And having some but not all employers hire guestworkers leads to economic distortion in the sense that some employers have different labor supplies than others. The employers who rely on guestworkers may not have to raise wages as local workers move up in the labor market because they can access guestworkers, while other employers have to adjust to changing local labor conditions (Martin 2009).

As noted above, *dependence* is the other half of the migration equation that explains why TLMPs grow larger and last longer. When some guestworkers and their families as well as regions in destination countries develop economic structures that assume foreign jobs, earnings, and remittances will continue, curbs to legal opportunities to work abroad may lead migrants to continue to seek jobs abroad outside legal channels to avoid reductions in their incomes.

Most researchers conclude that the Bracero programs for seasonal agricultural workers in the United States between 1942 and 1964 sowed the seeds of subsequent unauthorized Mexico–U.S. migration, via distortion in rural America, as exemplified by the expansion of labor-intensive agriculture in California, and dependence in rural Mexico, where there was rapid population and labor force growth without economic development (Martin 2003). Migrant-dependent regions are evolving in labor-sending countries around the world, from Albania to Zimbabwe. Some residents in countries of origin may live better because remittances reduce poverty, but the spending of remittances may not lead to the investment that sets in motion the kind of development that slows migration by making it possible for workers to remain in their home countries instead of seeking work abroad (Martin 2010). Indeed, in some countries remittances can raise the value of the currency, choke off exports, and increase dependence on foreign jobs and wages over time.

Distortion and dependence appear inevitable, but their effects can be countered by measures that aim to reduce employer distortion in the labor market and the creation of structural labor shortages. Charging employers more to hire or use guestworkers over long periods could encourage employers to consider alternatives and could equalize labor standards between guestworkers and local workers. Refunding migrant payroll taxes to guestworkers when their contracts end could provide funds that could be matched to promote development. But are these options feasible in light of the original rationales for guestworker programs and the ultimate outcomes that result? The “path dependence” (i.e., the difficulty of veering from the current trajectory) emanating from employer distortion and worker dependence can make it difficult for governments to regulate labor migration as originally intended and the rules governing temporary labor migration programs make it difficult to protect migrant workers from exploitation, thus raising legitimate questions about whether TLMPs can ever be brought into compliance with international human and labor rights standards.

Temporary labor migration programs have not achieved the goal of remedying labor shortages

If the main rationale for temporary labor migration programs is to fill labor shortages when employers cannot recruit sufficient local workers, have there been any successes? Are TLMPs a reasonable and viable solution for employers who say they need workers, and do they fill this need while respecting the basic human rights of migrant workers?

From the perspective of employers in developed countries, TLMPs have been successful in getting productive and reliable migrant workers to their workplaces. Employers may complain about bureaucracy and processing times, and annual caps on the number of

workers, but cannot deny their persistent demand for guestworkers and the fact that they willingly request and employ millions of guestworkers in both high- and low-wage occupations every year.

But in terms of remedying temporary labor shortages in developed countries, TLMPs have failed. We cannot point to one historical example in which a temporary labor shortage has been remedied with a TLMP, and then employers returned to hiring local workers. We also cannot point to one example in which a temporary labor shortage was remedied with a TLMP, and led to improved wages and working conditions for either guestworkers or local destination-country workers. Instead, in nearly all cases in the developed world that we know of, TLMPs permit employers to abstain from improving wages and working conditions because it provides them with access to a captive workforce of guestworkers who arrive in debt and quasi-indentured to their bosses and labor recruiters.

Most TLMPs, except perhaps for a few programs in Scandinavian countries, fail to facilitate a social dialogue between employers, unions and other worker representatives, and governments. Absent this social dialogue, employers that exert substantial influence on governments largely shape the terms of conditions of TLMPs, which explains why the terms of the programs have been so favorable to employers and given them an extraordinary amount of power vis-à-vis their guestworker employees.

This paper has cited some of the numerous reports of worker abuse, exploitation, and even human trafficking that have been documented for decades by advocates and in media and government reports. These abuses have been carried out by employers and recruiters and facilitated by the structural aspects of TLMPs, particularly their lack of worker protections. These reports reveal that TLMPs have failed to offer many guestworkers a chance at decent work abroad. While there are of course some success stories and not all guestworkers suffer abuses, the considerable risks guestworkers must accept and the power imbalances they face as a result of the way TLMPs are structured result in too few having a genuine opportunity to earn a fair wage that can improve their lives and the well-being of the families they leave behind in their countries of origin.

Local workers in destination countries have witnessed many examples of employers choosing guestworkers to fill both low- and high-wage jobs because of the power and control the employers can exert over guestworkers. The result is a self-fulfilling prophecy: jobs that local workers shun are made even worse, ensuring that they eventually become jobs that can only be filled by guestworkers willing to earn low pay and endure difficult working conditions (Lee 2017).

Considering these factors and a lack of evidence that the creation of temporary labor migration programs is a successful policy option for governments seeking to remedy labor shortages while protecting the human rights of migrant workers, governments should consider alternative models for labor migration that are rights-based and minimize the duration of temporary migration statuses. Pending the adoption of these alternative models, governments should take immediate steps to improve temporary labor migration programs as laid out in the concluding recommendations in this report.

Temporary labor migration programs should be replaced with improved models but governments can take immediate steps to improve governance and protections for guestworkers

Admitting and hiring guestworkers are economic decisions taken by employers after a determination that guestworkers are preferred to the alternatives. Most governments develop regulations to govern the behavior of employers and migrants, with punishment for violations, but most are inadequate. While we urge governments to consider labor migration options that are *not* modeled after temporary and circular labor migration programs, there are some actions governments may take immediately to improve the governance of existing TLMPs and protections for guestworkers.

For example, governments can do a better job of determining whether guestworkers are truly needed in the labor market—rather than relying solely on employer demands—by establishing commissions to weigh the trade-offs inherent in deciding whether to admit guestworkers. The U.K.'s Migration Advisory Committee has improved the quality of the debate by, in essence, asking, “If a labor shortage exists, is it sensible to use migrant workers to fill vacant jobs, or should other options be considered?”

Governments can empower guestworkers by allowing them to change employers and settle permanently after a provisional period. Governments should also provide workers with information about their rights in the labor market and have effective complaint resolution mechanisms in place. Making it easier for guestworkers to organize and join unions and other worker associations, and protecting them from retaliation for complaints, will make it easier for migrants to protect themselves. Firewalls between labor and migration enforcement ministries can encourage guestworkers to report labor violations.

ILO conventions and recommendations establish a core set of rights for migrant workers and encourage the development and sharing of best practices developed via social dialogue between unions, employers, and governments. Governments should keep this in mind when developing policies on TLMPs and integrate tripartite social dialogue and provisions in ILO conventions and recommendations into all aspects of their TLMPs.

International labor migration is normally a journey of hope and fear, hope for economic betterment to higher wages and improved opportunities abroad, and fear of complex and costly migration processes at home and unknown jobs abroad. Protecting guestworkers—especially lesser-skilled guestworkers in low-wage jobs—as they move from poorer to richer countries to work defies easy solutions. The best protection is obvious—empowering workers to say no to abuses abroad—but this leaves the question of how to regulate international labor migration effectively until decent work in all countries is achieved. Rethinking the entire chain between employers requesting migrant workers and guestworkers being employed abroad in ways that empower workers can reap dividends for employers, migrants, and both countries of origin and destination.

Conclusion: Recommendations for improving governance and labor standards in temporary labor migration programs

Given the significant pitfalls of temporary labor migration programs, governments seeking to facilitate labor migration while fostering economic development and protecting the human rights of migrant workers should adopt labor migration models that provide migrant workers with pathways to becoming permanent immigrants and drastically improve workplace protections. But pending the adoption of these alternative models, governments can take immediate steps to improve temporary labor migration programs.

We urge governments to adopt the following recommendations to reduce dependence on temporary labor migration programs and to improve program governance in ways that elevate conditions for both guestworkers and destination-country workers in affected industries.

1) Replace temporary labor migration programs with programs that, after a short provisional period, allow migrant workers to petition for permanent immigrant status, and allow family members to join guestworkers.

Rationale: Temporary labor migration programs that provide pathways to permanent immigrant status are generally only available for educated workers in skilled occupations, while guestworkers in lesser-skilled, low-wage jobs are usually unable to acquire permanent immigrant status. Even the current TLMPs that allow a path to permanent immigrant status for skilled workers sometimes require that employers first sponsor their guestworkers, which makes workers reluctant to report workplace violations because they fear retaliation will jeopardize their path to permanent immigrant status and naturalization. Allowing guestworkers in high- and low-skilled jobs who meet basic requirements to petition for permanent immigrant visas after one or two years working in the host country—without regard to employer sponsorship—would help address this problem. Once guestworkers have transitioned to permanent immigrant status, they would be able to enforce their rights without fear of losing their immigration status. In addition, they would provide a more stable workforce for employers in sectors facing shortages. In addition, allowing family members to join guestworkers after a short period and permitting their employment in countries of destination can promote family unity, help facilitate integration in the destination country, and increase household earnings. Many TLMPs prohibit family unity despite extended duration of work in the same destination country, which is inconsistent with human rights standards enshrined in the Universal Declaration of Human Rights and other instruments.

2) Establish expert groups or commissions to determine whether migrant workers are truly needed by analyzing labor market data and weighing the trade-offs that are inevitable in labor migration.

Rationale: Restricting labor migration programs to sectors with actual labor shortages will better align the skills of migrant workers with labor market needs in destination countries and prevent the misuse of the programs by employers seeking to erode labor standards. The United Kingdom’s Migration Advisory Committee is a good model of this. The committee has improved the quality of the debate over the need for migrant workers by implementing a methodology for assessing employer labor shortage claims and by posing questions about the sensibility of proposed solutions. For example, if a shortage exists in an occupation, the committee will ask, “Is it sensible to recruit new migrant workers to fill such jobs, or should the government examine whether wages are high enough in the industry, or if local workers can be adequately trained to fill available jobs?” After a thorough analysis, occupations experiencing shortages are placed on a shortage occupation list, and employers seeking workers in those occupations are permitted to recruit migrant workers.

3) Experiment with job or visa portability, allowing guestworkers to at least change employers within an industry or when labor disputes arise.

Rationale: Nearly all temporary labor migration programs tie guestworkers to one employer, which has led to widespread abuse of workers who are afraid to report even the most serious violations of their rights for fear of retaliation and removal from the country. Allowing guestworkers to change employers—at the very least, within the same industry or when involved in a labor dispute with their employer—could improve conditions and labor standards for guestworkers by giving them the freedom to earn higher wages and escape abusive workplace situations. The fact that guestworkers cannot seek higher wages from competing employers stifles economic efficiency and artificially depresses wages, preventing guestworkers from earning the true value of their labor in a market economy. However, job or visa portability is not a panacea for workers, since poorly designed programs can provide hollow protections if few migrants are able to change employers in practice because of bureaucracy or fear of being blacklisted.

4) Take actions that allow workers in temporary labor migration programs to exercise their freedom of association without fear of retaliation and removal.

Rationale: Governments should implement policies that make it easier for guestworkers and all migrant workers to organize with other workers, and to join unions and other worker organizations that can collectively bargain with employers. Collective bargaining is one of the most effective ways that workers can improve labor standards and raise wages,

and the opportunity to engage in collective bargaining is therefore particularly important for migrant workers who might otherwise be vulnerable to exploitation. However, guestworkers face particular challenges in exercising their freedom of association because their visa status is temporary and usually controlled by a single employer. While the freedom of association is a fundamental human right enshrined in international instruments, employers can easily retaliate against guestworkers who try to join or form a union by firing them, which can deprive guestworkers of the right to remain in the destination country, and ultimately lead to their removal. One simple policy governments could adopt to protect the right of guestworkers to freely associate with other workers without fear of retaliation would be to provide a deferral or a permanent postponement of removal for guestworkers who are fired for engaging in protected concerted activities in the workplace, such as organizing to form a union.

5) Implement clearly defined and strictly enforced “firewalls” between labor standards enforcement agencies and immigration enforcement agencies.

Rationale: Guestworkers have a temporary immigration status which they can lose if they are fired or if their employer engaged in any type of fraud. Because of this, guestworkers are at a higher risk of being deported if they speak out about workplace abuses or infringements of their collective bargaining rights and this triggers a labor standards investigation that reaches the attention of an immigration enforcement agency. Consider this hypothetical but common scenario. Guestworkers report wage violations and the country’s labor department investigates. The employer decides to fire the guestworkers, causing them to lose their visa status, and immigration enforcement agents become aware of their lack of status and remove them from the country. Or guestworkers alleging wage violations are not fired but immigration officials hear about the labor investigation, launch their own investigation, and discover that the employer engaged in fraud when applying for guestworkers, rendering the visas invalid. In both cases guestworkers with legitimate allegations of abuse are removed from the country before they can pursue their claims. Keeping immigration enforcement agencies out of workplaces until ongoing labor disputes are resolved can encourage guestworkers to report violations without fear of retaliation and removal. Without clear policies that prohibit immigration enforcement from usurping labor standards enforcement, guestworkers may be reluctant to report lawbreaking employers, allowing employers to exploit and steal wages from workers with impunity—and degrading labor standards for all workers as a result.

6) Help guestworkers access justice by providing legal services and postponing removal and other immigration enforcement actions for guestworkers involved in labor disputes.

Rationale: Many guestworkers, especially those without union representation who are employed in low-wage jobs, are unable to afford legal representation when they have been victims of workplace abuses. Some guestworkers are legally prohibited from

accessing low-cost legal services, which prevents them from accessing justice and holding lawbreaking employers accountable. When guestworkers who are victims of workplace abuse do come forward to submit a complaint to labor standards enforcement authorities, employers sometimes retaliate by firing those workers, causing them to lose their visa status, and the right to remain in the destination country. A guestworker who is removed before resolving a legitimate complaint loses both access to labor standards protections and the opportunity to recover any lost wages or receive other forms of restitution. Allowing for a deferral or postponement of removal gives guestworkers time to pursue their claims and gives enforcement agencies time to conclude investigations and hold lawbreaking employers accountable. Providing work authorization that is not tied to a particular employer while guestworkers resolve labor disputes allows guestworkers to support themselves during this period.

7) Implement mandatory registration systems to better regulate labor recruiters, ensure transparency in the migrant worker recruitment process, and prevent worker-paid fees.

Rationale: Despite efforts by some origin- and destination-country governments to regulate the recruitment of workers employed through labor migration programs, the vast majority of guestworkers in TLMPs are paying significant sums to labor recruiters, as well as other costs, which reduce workers' net earnings. Even though many of the fees and costs are prohibited under international and domestic laws, there is little to no enforcement of these rules around the world, and destination-country governments know little about the recruiters sending workers to their labor markets and the amounts recruiters charge workers in fees. New registration systems for labor recruiters and recruitment agencies could promote transparency and help provide guestworkers with information about potential new employers abroad and the terms and conditions of their employment.

8) Cooperate with governments in countries of origin by publicly sharing information about labor recruiters and employers, and take measures to hold recruiters and employers jointly liable for legal violations.

Rationale: To pay (often-illegal) fees that labor recruiters charge to connect them to temporary jobs in destination countries, many guestworkers take out loans from recruiters or family members. The need to repay their loans leaves guestworkers indebted and vulnerable to exploitation and human trafficking. Governments in destination countries can work with governments in countries of origin to combat such fees and exploitation by sharing information with each other about individual recruiters, recruitment agencies, and employers; and by identifying those that have violated labor or immigration laws or that are involved in active labor disputes. In addition, since governments in destination countries may face difficulties holding persons or agencies accountable when abuses

occur abroad (e.g., abuses perpetrated by recruiters in countries of origin), these governments should enact joint liability laws that engage employers in monitoring and guarding against abuses committed by the recruiters they use. Specifically, laws that hold recruiters and destination-country employers *jointly* liable for unpaid wages, withheld benefits, and illegal fees or other legal violations will encourage employers to demand that the recruiters they contract with obey the law and refrain from exploiting workers.

9) Integrate unions and worker organizations into the governance processes of temporary labor migration programs.

Rationale: Unions and worker organizations can improve labor migration governance processes by providing critical insights on the workforce needs and realities in various industries and occupations. For example, unions and worker organizations can help governments determine whether labor shortages are real and identify any local workers that may be available for open positions. Examples of this exist in Sweden, Canada, and the United States. In Sweden, an employer must send its application for new migrant workers to the relevant union, which can comment on the employer’s application to the Swedish Migration Agency. When the Canadian government issues labor market opinions that permit employers to hire guestworkers, Canadian unions can challenge those opinions in court. The H-2B program in the United States requires state workforce agencies to circulate job vacancy notices issued by employers to the appropriate union if an occupation or industry is customarily unionized. In addition, governments that engage regularly in social dialogue with unions and worker organizations through formal or informal working groups and regular meetings will be better informed about migration governance issues.

10) Collect and publish more data on temporary labor migration programs and cooperate with other governments to develop new international standards for measuring program impacts and effectiveness.

Rationale: Governments need more and better data on all labor migration programs—including programs that are temporary—to facilitate a well-informed global debate about the impacts of temporary labor migration programs and their effectiveness. Data should provide critical insights on whether programs are successful in protecting workers’ rights, elevating labor standards, addressing labor shortages, promoting development, and improving economic outcomes. Governments can improve their record-keeping practices by collecting TLMP data electronically and by using consistent categories and classification codes across visa classifications for reporting on major occupations in which guestworkers are employed, and by standardizing these data at the international level. Governments should publish data on TLMPs by visa classification and/or program and include population estimates in the data. Governments should also publish data on the employers that hire guestworkers and, for each guestworker they hire, reveal the occupation, work location, level of education, and salary.

About the authors

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Endnotes

1. The ILO migrant worker report classified 58 of the 176 countries as high-income, including Argentina, Chile, Uruguay, and Venezuela in South America; Eastern European countries including Russia; Hong Kong and Singapore; and the Gulf oil exporters. Many of these high-income countries are the *sources* of significant numbers of migrants.
2. Our figures for “lower-income” countries here are derived by combining ILO’s data for “low income,” “lower-middle income,” and “upper-middle income” countries in the ILOSTAT database (ILO 2017).
3. See also the *Guardian*’s article on the ILO’s world employment report (Allen 2015).
4. Many developing countries have comprehensive work-related benefits programs ostensibly modeled after programs in industrial countries but resulting in high payroll taxes and poor benefits, giving both employers and employees incentives to avoid making contributions.
5. See the WageIndicator Foundation’s “Minimum Wages” page at www.wageindicator.org/main/salary/minimum-wage for information on minimum wages by country.
6. For the most part, these terms are interchangeable. See, for example, Foulkes 2015.
7. As with in-home caregivers in the United Kingdom, see Ruhs and Anderson 2010.
8. Polish workers had been employed in the former East Germany, and the Polish government raised the issue of giving Polish workers access to the unified German labor market in reunification discussions (Kuptsch and Oishi 1995).
9. For a brief description of the E-2 visa for treaty investors and their employees and what it requires,

see the USCIS web page for “E-2 Treaty Investors” at <https://www.uscis.gov/working-united-states/temporary-workers/e-2-treaty-investors>.

10. See, for example, Costa and Rosenbaum 2017 on the lack of useful data on temporary migrant workers in the United States.
11. Examples of such disputes, and the litigation they spawn in U.S. agriculture, are documented in the Commission on Agricultural Workers 1992.
12. See for example, Preston 2015.
13. Clemens proposed that the German hospitals also finance half of the cost of training a Moldovan nurse who commits to staying in Moldova, so that both Germany and Moldova gain a nurse. However, the starting point is that there are two potential nurses with no funds for training, and no explanation of how the stay-at-home nurse would finance the unpaid half of her training, nor what to do if she decided to emigrate.
14. The discussion in this section on regulating labor recruitment in the Philippines comes from Martin 2017.
15. Costa and Rosenbaum (2017) estimated that there were 1.42 million temporary foreign workers employed in the United States with nonimmigrant visas in fiscal 2013.
16. The ILO has a web page outlining its Decent Work agenda (ILO n.d.)
17. Conventions 97 and 143 define a migrant worker as “a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment.” The 1990 U.N. Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has a broader definition, calling a migrant worker “a person who is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.”
18. The Multilateral Framework was noted by the ILO’s Governing Body during its 295th session in March 2006.
19. See for example, GAO 2017; ILRWG 2013; Garrison, Bensinger, and Singer-Vine 2015b; Bensinger, Garrison, and Singer-Vine 2015a; CDM 2013; Levin 2017; Luban 2015; UNODC 2015; and Oxfam America and FLOC 2011.
20. Migrants moving within the EU can have prearranged jobs, as with Portuguese workers who move to the U.K., or move as free agents and change jobs.
21. The purpose of the permanent labor certification in the context of the H-1B program is to determine whether there are any U.S. workers who are available to fill the job held by the H-1B worker. If the government approves the labor certification, the H-1B worker can move on to the next step in the process of acquiring permanent residence.
22. See Ruhs 2013 at 116, citing Thomas 2010.
23. See, for example Von Wilpert 2017; Kopytoff 2014; Millhiser 2017; and Greenhouse 2015.
24. Right-to-work (RTW) states are states that have laws preventing unions from requiring that workers who benefit from union representation pay their fair share of that representation. By prohibiting mandatory collection of “fair share fees,” RTW laws aim to restrict union resources and to thereby impede unions’ ability to negotiate better wages, benefits, and working conditions for

workers. See Jones and Shierholz 2018.

25. See, H.R.4008 — 114th Congress (2015-2016), <https://www.congress.gov/bill/114th-congress/house-bill/4008/text>. The POWER Act was reintroduced in 2018 (Constante 2018).
26. Compare for example, the wages paid to guestworkers in the major occupations of the H-2B program (Costa 2016) and the H-2A program (U.S. DOL 2017b) with the federal poverty thresholds provided by the U.S. Census (U.S. Census Bureau 2018).
27. See “About Statutory Restrictions on LSC-funded Programs” (Legal Services Corporation n.d.).

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