

# UNPACKING THE MIGRANT WAGE GAP

## A THREE COUNTRY CASE STUDY

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This Report was researched and authored by students, faculty and staff of the Global Human Rights Clinic at the University of Chicago Law School and Allard K. Lowenstein International Human Rights Clinic at Yale Law School. This Report represents the views and perspectives of the authors. It does not represent an institutional position of the University of Chicago Law School or Yale Law School.

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## INTRODUCTION AND METHODOLOGY

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This Report<sup>1</sup>, *Unpacking the Migrant Wage Gap: A Three Country Case Study* (“Report”), is intended to supplement and develop the empirical findings from a 2020 Report published by the International Labour Organization (ILO) entitled *The migrant pay gap: Understanding wage differences between migrants and nationals* (“ILO Report”).<sup>2</sup> Together, both Reports find that migrant workers (as opposed to nationals) are disproportionately represented in low-wage, low-skilled sectors; face differential treatment under the laws and policies of the countries in which they work; and are often subject to societal barriers that negatively impact their employment and income. As a result, migrant workers, in comparison to national workers, are often subjected to adverse wage differentials solely because of their status as migrants.

Using pre-COVID-19 data from 49 countries, the ILO Report compares the labor market characteristics of migrants and nationals in 33 high-income countries (HICs) and 16 low- and middle-income countries (LMICs), a set of countries that host about a third of the migrant workers worldwide. The ILO Report analyzes the differences in wages (“wage gap”) between migrants and nationals across ten wage categories.<sup>3</sup> The ILO Report finds that there is a wage gap in favor of nationals in 31 out of 49 countries covered in the study (ranging from less than 1 percent to 42 percent wage gaps); in 19 out of these 31, the wage gap is 15 percent or wider and, in 12 of these 31, the wage gap is wider than 20 percent.<sup>4</sup>

In high income countries, migrant workers have higher labor market participation than nationals<sup>5</sup> and are disproportionately represented in low-skill and low-paid positions in the “primary sector” (agriculture, fishing, and forestry) and “secondary sector” (mining, manufacturing, and construction).<sup>6</sup> In these countries, migrants earn on average 12.6 percent less per hour than nationals, though some countries have wage categories with a differential as high as 71 percent.<sup>7</sup> These estimates represent a wider wage gap in comparison to previous studies.<sup>8</sup>

In the low- and middle-income countries covered by the ILO Report, migrant workers have lower labor market participation than nationals<sup>9</sup> and are more likely than nationals to work in high-income positions.<sup>10</sup> Migrant workers earn on average 17.3 percent more than their national counterparts. However, the migrant wage gap in these countries fluctuates widely, often widening, narrowing, and reversing in favor of migrants or nationals throughout the wage categories.<sup>11</sup> The favorable gap overall can most likely be attributed to the disproportionately high wages of a limited population of highly skilled and educated migrant workers, often termed “expatriate” workers.<sup>12</sup>

The ILO Report identifies several groups of migrant workers for whom labor market differences are especially significant. For example, in HICs where data is available, female migrant workers face a “double wage penalty,” earning 20.9 percent less than their male national counterparts while female nationals face an aggregate 16.2 percent wage difference.<sup>13</sup> Additionally, migrant workers in the care economy – most of whom are women – face an even wider wage gap than average.<sup>14</sup> Overall, migrant workers, especially female migrant workers, are more likely to be employed in the informal economy.<sup>15</sup> Migrant workers in high-, low- and middle-income countries are also more likely than nationals to work under temporary contracts.<sup>16</sup>

The ILO Report further finds that labor market characteristics, such as a worker’s education, experience, age, or location, account for very little of the observed wage gap.<sup>17</sup> Instead, the ILO Report attributes the majority of the wage gap to so-called “unexplained factors,” which are significant in both high-



income countries<sup>18</sup> and low- and middle-income countries.<sup>19</sup> This “unexplained part,” as noted in the ILO Report, indicates the possibility of discrimination or consideration of other in-country characteristics or dynamics that “should in principle have no effect on wages.”<sup>20</sup> In other words, the majority of the wage gap in most countries where such a gap exists to the detriment of migrants is not justified by legitimate labor market considerations. For example, despite similar, or greater, levels of education within a given occupation, migrant workers in high-income countries often earn significantly less than nationals.<sup>21</sup> The ILO Report suggests that this may be due to inadequate recognition of migrants’ skills in these countries or “horizontal segregation” of the labor market, whereby migrants and nationals at the same occupational level are given different job tasks.<sup>22</sup>

The ILO Report offers several other possible explanations for the “unexplained” portions of the wage gap, some of which are specific to the wage categories concerned. For example, countries with large wage gaps in low-income sectors may exclude migrant workers from minimum wage legislation or otherwise fail to enforce compliance with minimum wage requirements.<sup>23</sup> Non-inclusion can occur for a variety of reasons, including explicit exemption of migrant workers by law, a failure to establish a minimum wage in sectors that primarily employ migrants, or the exclusion of migrants from collective agreements that set minimum wages.<sup>24</sup> Meanwhile, countries with large wage gaps in middle-income sectors could indicate underrepresentation of migrant workers in collective bargaining agreements or union representation more generally.<sup>25</sup> Lastly, a large wage gap in high-income sectors, which is primarily seen in low- and middle-income countries in the form of a wage gap favorable towards migrants, likely reflects the disproportionately high wages of a few high migrant workers, whose foreign-acquired education and experience may attract higher returns relative to that of nationals.<sup>26</sup>

These unexplained factors have a major effect on the migrant wage gap. In fact, the ILO estimates that the wage gap would nearly disappear<sup>27</sup> or even reverse to favor migrant workers<sup>28</sup> in some countries if unexplained factors were eliminated.<sup>29</sup> For example, in most high-income countries, elimination of unexplained factors would reduce the wage gap from 12.6 percent to 0.2 percent.<sup>30</sup> In the European Union, the migrant pay gap reverses from 8.6 percent in favor of nationals to 7.9 percent in favor of migrants, on average.<sup>31</sup> Similarly, in seven low- and middle-income countries, the wage gap would reverse if unexplained factors were eliminated.<sup>32</sup>

This Report seeks to shed light on many of the findings presented and questions posed by the ILO Report, especially as such findings and questions adversely impact low-wage workers in high-income countries (HICs). The Report does so by examining and analyzing the wage gap in three HIC case studies – Spain, the United States and Belgium – with the intention of identifying and clarifying factors that may influence the wage gap, particularly the portion that is not explainable by market labor characteristics. While each country context is undoubtedly unique and causal links incredibly difficult to establish, analysis of these three country case studies reveals patterns and commonalities, the consideration of which may be useful in addressing the wage gap between migrants and nationals in HICs more broadly.

To gain an understanding of the particular dynamics present in Belgium, Spain and the U.S. impacting the migrant wage gap, authors analyzed the legal and policy framework on immigration and labor, enforcement mechanisms, and social conditions bearing on migrant labor in each context.<sup>33</sup> For these case studies, authors conducted desk research and virtual interviews during the 2020-2022 academic years with relevant stakeholders, including government agencies, migrant worker organizations, academics, union representatives, and non-governmental organizations working on labor, migration, and gender equality. The list of individuals interviewed may be found in Appendix A.

The three case studies were selected as representative of HICs that enjoy relative economic wealth and have variable wage gaps to the detriment of migrants. Following this case study research, authors considered

the case studies together to highlight possible trends that might commonly contribute to the observed wage gaps. The research conducted for this Report revealed certain overarching themes, presented in the final section of the report. Here, however, they are briefly summarized.

**First, immigration laws and policies play a significant role in facilitating employment discrimination against migrants.** For example, law and policies that bind workers' visa status to a specific employer prohibit labor market mobility, thus limiting labor market participation; confining workers to certain low-wage, low-skilled occupations; and creating sharply skewed power imbalances between workers and their employers.

**Second, migrant workers tend to be excluded, de jure or de facto, from laws and policies regulating workplace protections and benefits, thereby exposing them to worse labor conditions, including lower wages and compensation.** Such exclusions may take the form of direct or indirect discrimination. In some instances, laws and policies may discriminate against migrants directly, such as by excluding migrant workers with short-term contracts<sup>34</sup> and those without formal contracts<sup>35</sup> from standard workplace protections. In others, some laws and policies discriminate against migrants indirectly, such as by leaving certain industries and sectors which are heavily populated with migrant workers (e.g., domestic work and agriculture) outside the scope of certain legal protections. Irregular-status workers are also frequently excluded or disfavored by social benefits such as social security and healthcare solely because of their immigration status.<sup>36</sup> Furthermore, migrant workers face unique forms of discrimination as a consequence of their migrant status – both in the form of overt racism in hiring and career advancement, and through more nuanced policies and practices such as the under-recognition of foreign degrees and qualifications.

**Third, even where adequate protections for migrant workers are enshrined in law and policy, there is a persistent lack of enforcement or under-enforcement of those protections.** For example, while a legal framework may include protections for equal pay for work of equal value, specialized oversight and enforcement bodies such as labor inspectorates are often inadequate or severely under-resourced,<sup>37</sup> making the implementation of those protections unreliable at best. Relatedly, migrant workers tend to lack access to effective remedies when their labor rights are violated. Migrants often lack reasonable access to courts and speedy adjudication of their claims, especially in countries without specialized labor courts<sup>38</sup> or with costly and lengthy prerequisites to bringing a claim.<sup>39</sup> This is exacerbated by the requirement that individuals adjudicate their own labor rights, as many migrant workers are unaware of the processes available to them.

**Fourth, there are common practical barriers that prevent migrant workers from exercising any formally protected labor rights.** Migrant workers, who are frequently overrepresented in low-wage sectors, often lack the bargaining power, union representation, and knowledge of their rights to negotiate better wages. In addition, workers in certain industries, such as migrant domestic workers, also work in isolated environments. Thus, they are further cut off from civil society actors who often help protect labor rights and excluded from collective bargaining efforts. Additionally, migrant workers are regularly discouraged from pursuing complaints through formal mechanisms when they have reason to fear deportation and other reprisals from employers. These factors render migrants unlikely to instigate pursuit of remedies for unequal and unfair employment conditions.

The Report proceeds as follows: Part II contains an analysis of the three case studies – Belgium, Spain, and the United States. Part III provides a comparative analysis and identifies factors that could impact the wage gap in each country. Finally, Part IV offers concluding observations and a distillation of best practices informed by the study. In the interest of brevity, a list of the international legal frameworks relevant to migrant work, including relevant international treaties and ILO Conventions and Recommendations, is contained in Appendix B.

## DEFINITION OF MIGRANT WORKER

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The ILO Report defines “international migrant” as “a person of working age present in a country of measurement who is not a citizen of that country.”<sup>40</sup> This Report will define “migrant worker” in a manner consistent with the ILO Report. Thus, a migrant worker, for the purposes of this and the ILO Report, is any person working in a country in which the person is not a national according to their designated immigration status, regardless of whether their presence is permanent, temporary, or irregular. The breadth of this definition allows this Report to examine non-national foreign worker conditions and dynamics in a variety of contexts.<sup>41</sup> The definition includes workers who may permanently reside in a country but do not hold citizenship of the country in which they work. It also includes temporary and seasonal workers, individuals who work while on non-work-related visas, as well as unauthorized or irregular-status workers. These categories of workers often enjoy distinct sets of legal rights and face variable challenges.<sup>42</sup> Thus, this Report will explore those distinctions in each case study country context and highlight contextual nuances that help explain varying levels of vulnerability that different categories of migrants experience.

While this broad definition allows for the greatest inclusivity of non-national labor, it may not reflect the distinctions between migrant and non-migrant labor that are relevant within each State. In the United States, for example, legal permanent residents generally benefit from the same workplace and labor protections as nationals. In this Report, however, they would be considered migrant workers because they do not have U.S. citizenship. Similarly, in Belgium and Spain, workers who are European Union (EU) nationals may enjoy certain benefits due to the relationships among countries in the EU. The ILO Report and this Report recognize these distinctions but still consider both EU nationals and nationals of countries outside the EU to be non-nationals of a country unless they hold citizenship to that country. In other words, the concept of “migrant worker” may contain within it more nuanced and country-specific determinations in national legislation and practice.<sup>43</sup> This Report will endeavor to capture these nuances as they relate to the wage gap while also working broadly with the categories of migrant and national workers.

## MIGRANT WAGE GAP IN CONTEXT: SPAIN, UNITED STATES AND BELGIUM CASE STUDIES

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The following section describes the laws, policies and practices of the three case-study countries – Spain, the United States, and Belgium. All three case studies are high-income countries included in the ILO’s Report, and all three exhibit a wage gap to the detriment of migrants. As noted above, this analysis was drawn from a combination of desk research and virtual in-country interviews with relevant stakeholders, including the government, civil society, unions, and academics.<sup>44</sup> Interviews conducted are detailed in Appendix A.

### SPAIN

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Spain has the second largest overall wage gap in the ILO’s 2015 data set: a 28.3 percent gap to the detriment of migrants.<sup>45</sup> The mean wage gap varied widely across wage groups, however, and was most pronounced in low-wage sectors.<sup>46</sup> In low-wage sectors, migrants were paid almost 60 percent less than nationals.<sup>47</sup> This gap narrowed in high-wage sectors, though migrants were still paid 18 percent less.<sup>48</sup> The majority of migrant workers worked in low-skilled or unskilled sectors.<sup>49</sup> The estimated pay gap between



national and migrant women was 26.3 percent, a 7.3 percentage point increase in the estimated gap since 2006.<sup>50</sup> The pay gap between national and migrant men was 30.4 percent.<sup>51</sup> Even when accounting for labor market characteristics such as education and skills, most of Spain’s wage gap is unexplained.<sup>52</sup>

In this Report, authors have identified the following conditions that could help explain Spain’s significant wage gap.<sup>53</sup> These explanations are detailed further in this section.

#### Visa Insecurity

⇒ In Spain, **migrants’ immigration status is often tied to their employment**, making these workers more dependent on a relationship with a particular employer and reducing their bargaining power.

#### Inadequate Skills Recognition

⇒ **Non-recognition or under-recognition of foreign qualifications** and skills-enhancing training drives over-qualified migrants towards low-skilled work, resulting in lower pay and fewer protections for migrant workers.

#### Relegation to Temporary or Informal Sector

⇒ Migrant workers are more likely to occupy **temporary, informal and less secure** positions in the Spanish labor market than nationals, which renders them more vulnerable to employment-related abuse.

#### Barriers to Collective Bargaining

⇒ **Collective bargaining of Spanish workers tends to benefit nationals** more than migrant workers (especially temporary workers), which may explain higher wages in national-dominated sectors.

#### Under-enforcement of Labor Protections

⇒ **Insufficient and ineffective enforcement mechanisms for labor protections** allow employers to pay migrant workers less, especially those in temporary positions, without fear of government intervention.

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## MIGRATION AND LABOR CONTEXT

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Over the last few decades, Spain has evolved from a country of emigration to a country of immigration.<sup>54</sup> This shift has wrought profound social, political, legal, economic, and cultural consequences.<sup>55</sup> In Spain, consistent with the definitions used in this Report, anyone without Spanish citizenship is considered a “migrant.” Under the Spanish legal and policy framework, the category of “migrant” is further divided into foreigners from the European Union (“EU”) and foreigners from “third States” outside of the EU.<sup>56</sup>

As of 2023, migrants in Spain account for about 12 percent of both the overall population and the population of wage workers.<sup>57</sup> This represents a significant increase — in 2015, migrants represented about 9 percent of total and worker population.<sup>58</sup> While national origin of migrants vary, the largest groups of migrants were from Romania, Morocco, the United Kingdom, Italy, and China, accounting for 49 percent of Spain’s migrant population as of 2020.<sup>59</sup> The most significant increases in migration between 2018 and 2020, before the COVID-19 pandemic, were from Colombia, Venezuela and Morocco.<sup>60</sup>

People migrate to Spain for a number of reasons. A 2019 IOM study based on 1,341 interviews with migrants in Spain found that 41 percent migrated for economic reasons while 32 percent left their home States due to personal violence, including “gender violence, family abuse, genital mutilation, family opposition to inter-religious marriages, conflicts over inheritances or persecution because of sexual orientation or gender identity.”<sup>61</sup> Another 15 percent migrated due to violent conflicts and war. These statistics varied by gender: 44 percent of men came to Spain for economic reasons, whereas 58 percent of women were escaping personal violence.<sup>62</sup>

As of 2020, approximately 20 percent of migrant workers in Spain were temporary, “circular,” or seasonal workers.<sup>63</sup> To regulate this form of migration, Spain has standing agreements with countries in Eastern Europe, Sub-Saharan Africa, and South America that establish common recruitment procedures for seasonal workers.<sup>64</sup> Some of these agreements enable “circular” migration, a form of migration that allows a degree of legal mobility back and forth between sending and receiving countries, as well as seasonal worker programs, which involve the return of the same workers each year and sometimes qualify as circular migration programs.<sup>65</sup> Spanish legislation has provided some incentives for both circular migration and seasonal worker programs.<sup>66</sup> Some of these programs have been sector specific, such as a temporary worker program that employs Moroccan workers – mostly women between 18 and 45 years old – in the strawberry-growing Province of Huelva, Spain.<sup>67</sup>

In addition, Spain has a sizable population of irregular-status migrants or migrants working without visa authorization.<sup>68</sup> The majority of irregular-status migrants entered Spain through regular channels – typically as tourists – but overstayed the terms of their visas.<sup>69</sup> Others entered Spanish territory through irregular migration channels, such as the Western Mediterranean route.<sup>70</sup> Migrants may also end up with status irregularity for other reasons, such as an inability to renew their residence permit. Spain’s significant irregular-status migrant population correlates with the existence of a prominent informal economy in mostly low- and semi-skilled sectors, which accounted for an estimated 25 percent of Spain’s GDP in 2018.<sup>71</sup>

According to data from the ILO Report, 79.8 percent of migrants in Spain participated in the workforce in 2015, while 70.1 percent of Spanish nationals participated.<sup>72</sup> Approximately 50 percent of all migrant wage workers were women, which was slightly higher than the percentage of women in the national workforce.<sup>73</sup> Migrant and national workers also had similar levels of secondary education. Just over 60 percent of migrant wage workers in Spain had secondary education, compared to around 70 percent of national wage workers. The education gap widened at the university level, however: about 25 percent of migrant wage workers had a university education, compared to about 45 percent of national wage workers.<sup>74</sup>

Disparities exist between national and migrant workers in occupational categories, especially at the top (highly-skilled labor) and bottom end (unskilled labor). As of 2015, far more national workers in Spain worked in high-skill occupations (around 35 percent)<sup>75</sup> than migrant workers (10.8 percent).<sup>76</sup> While the share of migrant wage workers with semi-skilled jobs in high-income countries is typically lower than the corresponding share of national workers,<sup>77</sup> Spain’s populations are comparable in semi-skilled labor. In 2015, around 38 percent of migrant wage workers had semi-skilled jobs<sup>78</sup>, compared to around 35 percent of national wage workers.<sup>79</sup> Low-skilled labor rates were also comparable, with 14 percent of migrants and 18 percent of nationals performing low-skilled jobs<sup>80</sup>. However, about 37 percent of migrant workers performed unskilled jobs,<sup>81</sup> a significantly higher percentage than the 12 percent of national workers who were unskilled laborers in 2015.<sup>82</sup>

In 2015, approximately 47 percent of migrant women worked in unskilled jobs, compared to only 27 percent of migrant men.<sup>83</sup> Conversely, while 30 percent of migrant men worked in low-skilled positions, just 3 percent of migrant women held low-skilled jobs. In 2015, around 43 percent of migrant women worked in

semi-skilled sectors, compared with 35 percent of migrant men. About 10 percent of migrant men and 8 percent of migrant women performed high-skilled jobs.<sup>84</sup>

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## RELEVANT LAWS AND POLICIES

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### CONSTITUTIONAL GUARANTEES AND INTERNATIONAL COMMITMENTS

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The rights provided in the Spanish Constitution of 1978, which apply to both citizens and non-citizens, include: the right to life, physical and moral integrity, religious freedom, security, honor and personal privacy, movement, expression, meeting, association, participation, education, unionization, strike, and petition.<sup>85</sup> Article 7 of the Constitution allows for trade unions and employers' associations to promote economic and social interests.<sup>86</sup> Additionally, workers and employers may negotiate collective bargaining agreements, which are considered binding.<sup>87</sup> Article 9 makes it "incumbent" upon the government to "promote conditions which ensure that the freedom and equality of individuals and of the groups to which they belong may be real and effective, to remove the obstacles which prevent or hinder their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life."<sup>88</sup> Article 35 regulates work and the right to remuneration "sufficient to satisfy the needs of one and his family members" without discrimination based on gender.<sup>89</sup> Furthermore, the Constitution states that all people in Spain have the right to seek judicial remedies to obtain effective protection of their rights.

Spain has ratified all ten ILO fundamental Conventions and currently has 87 other ILO Conventions in force.<sup>90</sup> Especially relevant to migrant workers, Spain has also ratified the Migration for Employment Convention, 1949 (No. 97); the Labour Inspection Convention, 1947 (No. 81); the Labour Inspection (Agriculture) Convention, 1969 (No. 129); the Maternity Protection Convention, 1952 (No. 103); and the Working Environment Convention, 1977 (No. 148); as well as the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19); Conventions No. 26, 95 and 131 regarding wages; and the Private Employment Agencies Convention, 1997 (No. 181).<sup>91</sup> In addition, Spain has ratified all other major UN human rights treaties, including the ICCPR and ICESCR.<sup>92</sup> The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has published several comments on Spain's application of relevant ILO Conventions to migrant workers in the last five years, noting loopholes and gaps in protection that adversely impact migrant workers, particularly young and female migrant workers.<sup>93</sup>

As a member of the European Union, Spain also integrates relevant EU law into its own national law. It abides by the European Convention on Human Rights, the European Social Charter, the European Cultural Charter, and directives issued by the European Union. In its immigration policy, Spain follows the EU's *Posted Workers Directive* (96/71/EC), which provides that "employees posted to work in another member state are protected by that member state's mandatory employment legislation (Article 3, *Posted Workers Directive*)." In Spain, this includes legislation pertaining to minimum wages, overtime rates, maximum work periods, minimum rest periods and paid annual holidays, freedom to join a trade union and the right to strike, and the right to privacy and dignity at the workplace.<sup>94</sup>

### IMMIGRATION FRAMEWORK

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In Spain, overall governance of migration is carried out under the Ministry of Inclusion, Social Security and Migration (Ministerio de Inclusión, Seguridad Social y Migraciones), in particular its State Secretariat on

Migration (Secretaría de Estado de Migraciones).<sup>95</sup> These institutions coordinate migration management, including integration of immigrant communities into the economy.<sup>96</sup> Another relevant national institution is the General Directorate for Equal Treatment and Ethnic Racial Diversity (Dirección General para la Igualdad de trato y Diversidad Étnico Racial), which is dedicated to enforcing the right of non-discrimination and housed under the Ministry of Equality.

A foreigner arriving in Spain to work “must do so for the positions authorized for this purpose, have a valid passport, present the necessary documents that justify the object and the conditions of stay and, finally, prove that he has sufficient means of living for the period of time you want to stay in Spain or be able to obtain them legally.”<sup>97</sup> In order to work, migrants outside of the European Economic Area – member states of the EU plus Iceland, Liechtenstein, and Norway from the European Free Trade Association – must have a valid employment visa obtained at a consulate in their country of origin.<sup>98</sup> Over the past two decades, Spain has developed a “demand driven system” for admitting low- and middle-skilled migrants from outside the EU (third-country nationals).<sup>99</sup> Employers, trade unions, and regional governments are involved in the sponsorship and integration of migrants.<sup>100</sup> Additionally, Spain’s bilateral agreements with non-EU countries play an important role in the labor migration system.<sup>101</sup>

In 2000, Spain passed the *Law on the Rights and Freedoms of Foreigners in Spain and their Integration* (Law 4/2000).<sup>102</sup> At the same time, Spain also introduced a mass regularization process to reduce their undocumented population.<sup>103</sup> The law comprehensively addressed immigration and extended rights to migrants to align with EU policy on immigration.<sup>104</sup> It also introduced key elements of Spain’s current migration system, including the consultation process with trade unions and employers’ associations, expanded rights and services to migrants (including access to healthcare, housing, legal aid, and family reunification), and an increase of bilateral agreements featuring preferential recruitment.<sup>105</sup> At the same time, the law included sanctions for irregular entry, migrant trafficking, and employment of unauthorized immigrants.<sup>106</sup>

The Royal Decree 2393/2004, passed in 2004, further adjusted the migration system to better meet labor market needs.<sup>107</sup> The Decree set forth two main pathways to admit low- and middle-skilled immigrants to Spain: the General Regime and the Collective Management System.<sup>108</sup> The Decree also introduced a process to regularize unauthorized immigrants on a rolling basis.<sup>109</sup> Under the General Regime, employers can sponsor migrants (third-country nationals) for specific employment if the local public employment office conducts a labor-market check and can verify that no Spanish or EU national was available.<sup>110</sup> In 2004, the Government created a region-specific shortage occupation list called the Catalogue of Hard-to-Fill Occupations. The Government allowed employers to forgo the labor market test for occupations in the catalogue, which enabled them to recruit more quickly.<sup>111</sup> This Catalogue is updated quarterly by the Tripartite Labour Commission for Immigration.<sup>112</sup>

Under the General Regime, a third-country national must have already signed a contract for specific employment prior to arriving in Spain, with determined working and social conditions. A permit is granted only if employers and the local employment office have unsuccessfully searched for candidates who are national workers, citizens of EU member states, citizens of European Economic Area countries and Switzerland, or third-country nationals already legally residing in Spain.<sup>113</sup> Furthermore, to work in Spain, a migrant is required to obtain a Social Security number, register in the municipality of residence, and establish a bank account.<sup>114</sup> Initial residence and work permits for migrants under the General Regime last for one year and are restricted to initial occupation of hire and geographic region. After one year, permit holders can renew their visas on a two-year basis and become eligible for permanent citizenship after five years.<sup>115</sup>

In addition to these long-term work visas, the Spanish migrant admission system has a Collective Management System<sup>116</sup> to admit groups of migrants for seasonal and other short-term jobs, primarily in the agriculture sector.<sup>117</sup> This pathway allows employers to recruit and hire groups of workers from countries with

which Spain entertains bilateral agreements. Alternatively, employers can apply to hire foreign workers to fill temporary jobs, which a government-run selection committee then fills.<sup>118</sup>

There are two main options for migration through the Collective Management System. Temporary jobs typically involve seasonal work (lasting 9-12 months), and a migrant must arrive having already signed a contract for a specific job with determined social and working conditions.<sup>119</sup> The migrant worker must return home at the end of the contract and register with the Spanish consulate or face a three-year ban from work in Spain.<sup>120</sup> Meanwhile, the “stable jobs” pathway provides work permits for one to two years in in-demand sectors such as construction and hospitality.<sup>121</sup> These jobs are subject to quotas set by the State Public Employment Service (Servicio Público de Empleo Estatal) under the Ministry of Labor and Social Economy (Ministerio de Trabajo y Economía Social) and in consultation with the Tripartite Immigration Labor Commission.<sup>122</sup> This pathway compels employers to secure housing facilities that are clean and adequate for prospective temporary workers.<sup>123</sup> In addition, three-month job-search visas are available to the family members of Spanish nationals or for migrants working in a sector experiencing high demand or labor shortages.<sup>124</sup> Notably, irregular-status workers, who entered the country in violation of immigration laws, do not qualify for the benefits that accompany temporary worker status.<sup>125</sup>

More recent reforms to Spain’s regular immigration framework include Law 2/2009, which sought to align Spanish policy with updated EU policy and legislative guidelines.<sup>126</sup> The law incorporated EU directives on the EU Blue Card for highly qualified professionals and researchers, and it required labor migrants renewing permits to document their integration efforts in line with EU policy on migration and international protection.<sup>127</sup> The Law also sought to improve the channeling of labor migration to meet the needs of the Spanish labor market.<sup>128</sup> Meanwhile, Royal Decree 1224/2009 brought Spanish procedures for the recognition of foreign credentials in line with EU policy.<sup>129</sup>

Aside from employment visas, third-country nationals residing without registration in Spain may receive temporary residence permits on the basis of social, labor, and familial ties.<sup>130</sup> Proving these ties, in a process called “*arraigo*,” often takes several years. Demonstrating social ties is the most common process for migrant regularization. Workers must have lived in Spain for three consecutive years and have an employment contract before applying for the social-ties residence permit.<sup>131</sup> In 2011, the law was amended to allow for relatives of Spanish nationals to apply for *arraigo* without a prior period of residence.<sup>132</sup> To demonstrate labor ties, migrants must have worked in Spain without proper authorization for 183 days and lived in Spain continuously for two years. To prove this work occurred, the migrant must have a judicial or administrative inspector verify that their employer hired unauthorized workers.<sup>133</sup>

## LABOR LAWS

In Spain, employment and labor regulations are codified in the Workers’ Statute (Royal Decree Law 2/2015). This statute establishes labor rights: it integrates rights from the Spanish Constitution, including the right to privacy, movement, expression, meeting, association, participation, education, unionization, strike, while also enshrining additional rights, such as the right to promotion and occupational training at work, the right to timely compensation, and a comprehensive non-discrimination clause.<sup>134</sup> These employment rights apply to anyone who is an employee under an employment contract, including temporary workers.<sup>135</sup> In particular, Article 27 guarantees a minimum wage, determined annually based on a variety of economic factors. Article 28 guarantees equal pay for equal work regardless of gender. It also mandates that employers keep a registry of median salaries and other remuneration disaggregated by gender and requires them to justify any gross disparities. Spain has other labor laws that overlap with the Workers’ Statute, including the Occupational

Risk Prevention Law that ensures health and safety in the workplace. A recent measure, for example, requires employees to register daily working hours when arriving and leaving the workplace (Royal Decree-law 8/2019).

To combat gender-based discrimination,<sup>136</sup> the Spanish Parliament passed the Royal Decree No. 6/2019, of Urgent Measures to Guarantee Equality of Treatment and Opportunities Between Women and Men in Employment and Occupation. This was the first piece of Spanish legislation passed with the express purpose of addressing the gender pay gap.<sup>137</sup> However, some observers pointed out the narrow scope of the legislation and called for more comprehensive measures.<sup>138</sup> Accordingly, in 2020, the government adopted two decrees to improve gender equality in the workplace: the Equality Plan Decree (Royal Decree 901/2020) and the Equal Pay Decree (Royal Decree 902/2020). The first sets forth requirements for employers to report compensation, disaggregated by gender, across their workforces; the second specifies rules for companies with at least 50 employees to draw up negotiated equality plans, which must include “salary audits assessing the employers’ compensation conditions, and action plans to address any pay disparities.”<sup>139</sup>

Meanwhile, neither the Spanish Constitution nor the Workers’ Statute guarantees equal pay between migrants and nationals. There is a separate statute, however – Organic Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration (LO 4/2000, amended 557/2011) – which prohibits direct or indirect discrimination against migrant workers. This includes discrimination based on race, color, national origin, ethnicity, or religion that affects any of their basic human rights, including right to the remuneration regulated in the constitution.<sup>140</sup>

## WAGES AND COLLECTIVE AGREEMENTS

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Article 27.1 of the Workers’ Statute governs Spain’s national minimum wage and includes a list of factors used to determine wages: the annual consumer prices index, the national productivity average, the contribution of labor to the gross national income, and the general economic context. The law states that the Spanish government determines the minimum wage following consultation with unions and key employment associations. The government set the minimum wage at 950 euros per month in 2020, a 22 percent increase from the previous year, and kept it the same in 2021.<sup>141</sup> The government also defined workday hours as a maximum of 9 hours per day and 40 hours per week.<sup>142</sup>

In addition to government-mandated minimum wage, collective bargaining agreements set pay scales and other non-pay issues for many employees.<sup>143</sup> Negotiations for these agreements take place at the national, regional, and provincial or company levels.<sup>144</sup> Spain has a high collective bargaining coverage rate. Most workers are covered by multiemployer collective agreements,<sup>145</sup> which do not distinguish between sex, gender, permanent, or temporary worker status.<sup>146</sup> Collective bargaining agreements are legally binding for all parties in the industry they cover. At the regional and national levels, trade unions can sign agreements on behalf of employees.<sup>147</sup>

## DOMESTIC WORKER REGULATIONS

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Certain sectors and industries in Spain, including the domestic work sector, have special legislation and agreements to protect workers’ rights. According to the most recent ILO research, there were over 615,000 domestic workers in Spain in 2017, reflecting 3.3 percent of total employment; female domestic workers reflect 6.3 percent of Spain’s total employment of women.<sup>148</sup> Human rights groups report that an additional 200,000 domestic workers, most of whom are female migrant workers from Latin America, could remain uncounted.<sup>149</sup> In 2015, close to 27 percent of all migrant work was in the care economy.<sup>150</sup> Migrant work in the care economy



was heavily skewed towards women: 50 percent of migrant women worked in the care economy, compared with 5 percent of men.<sup>151</sup>

In recent years, Spain has made efforts to formalize and improve domestic workers' rights in order "to counterbalance occupational segregation and social inequality."<sup>152</sup> In 2011, Spain passed Royal Decree No. 1620/2011, which reformed labor and social security legislation on domestic work.<sup>153</sup> The Decree introduced social security and attempted to equalize employment rights for domestic workers with those in other industries.<sup>154</sup>

The Decree mandated substantive improvements to the working conditions of domestic workers.<sup>155</sup> For example, it lifted an exemption that excluded domestic workers from the right to an employment contract.<sup>156</sup> The Decree also stipulated that domestic workers must receive the minimum wage and regulated the amount that can be deducted from workers' wages for accommodation and maintenance.<sup>157</sup> Domestic workers were further given the autonomy to negotiate wage raises.<sup>158</sup> The work week was standardized to forty hours, and the daily rest period was increased to a minimum of 12 hours.<sup>159</sup> Largely as a result of advocacy by domestic worker associations, the Decree also required a consecutive 36 hour weekly rest period on Sunday and either Saturday or Monday.<sup>160</sup> The Decree introduced various forms of leave for domestic workers into accordance with article 37 of the Labour Code requiring weekly rest, public holidays, maternity leave, and shortened workdays.<sup>161</sup> Perhaps as a result of these advances, the mean pay gap within the care economy is similar to the overall gap in Spain, which is a departure from an observed worldwide trend of migrant care workers experiencing a greater pay gap with national care workers than in other industries.<sup>162</sup> Nevertheless, in 2015, the migrant pay gap for care workers remained substantial, at around 29 percent. Data from 2017 found that the hourly wage of domestic workers was 24.6 percent less than the hourly wage of low-skilled employees, a disparity that may be even greater for migrant care workers.<sup>163</sup>

Indeed, despite gains made under Decree No. 1620/2011, domestic workers lack certain legal entitlements present in other sectors.<sup>164</sup> For example, the Decree requires written termination of a contract but allows dismissal without just cause.<sup>165</sup> Furthermore, while the Decree obligates the employer to provide adequate health and safety conditions, specific legislation on health and safety in the workplace still excludes domestic workers (see, e.g., Article 3(4) Law 31/1995).<sup>166</sup> In addition, while Article 12 of Decree 1620/2011 requires the Labor and Social Security Inspectorate to enforce the legislation, a prior law still in place requires inspectors to secure prior consent or court order before doing so, potentially jeopardizing the efficacy of the legislation. Moreover, the Decree No. 1620/2011 also entitles domestic workers to social security, except for unemployment insurance. However, an estimated 40 percent of domestic workers in Spain do not claim social security and might not even be aware that they can. Finally, domestic workers were significantly impacted by the onset of the COVID-19 pandemic. Following a concerted advocacy campaign, the Spanish government implemented emergency unemployment benefits for the many domestic workers who lost their jobs.<sup>167</sup>

Adjudication of migrant workers' rights within Spain must take place in Spanish courts, which operate at three levels: local, provincial, and national.<sup>168</sup> These courts hear both ordinary and special claims. Ordinary claims usually concern individual rights and breaches of contract, while special proceedings concern employers' infringement upon employees' fundamental rights, "including gender discrimination, annual leave, termination of employment relationships, appropriate professional category, substantial modification of working conditions and geographical mobility."<sup>169</sup>

Spain's specialized labor courts (*Juzgados de lo Social*) deal with specific claims in employment cases, including "claims made under labour law, both in individual disputes between workers and employers arising from the employment contract, and in relation to collective bargaining, as well as social security claims or claims against the state when it bears liability under employment legislation."<sup>170</sup>

In addition, Spain's Labour and Social Security Inspectorate is tasked with imposing fines on companies that do not abide by or implement the country's labor laws.<sup>171</sup> The inspectorate has administrative sections in every province and "can conduct checks in firms, summon employers to the labour inspectorate or require them to produce documents or reports to clarify employment matters."<sup>172</sup> Spain has 17 territorial inspectorates and 52 provincial inspectorates. Under the leadership of the Central Labour Inspectorate, nine specialized groups across Spain's federal states investigate the illegal employment of migrants, which includes "carry[ing] out inspections in factories, on construction sites and other outside workplaces, for example on farms."<sup>173</sup> Moreover, Health and Safety Inspectors visit companies "every three months to evaluate if the policy is being carried out effectively, monitor and enforce compliance, [and identify] any risks which the management should rectify and any preventative action they should take."<sup>174</sup> However, stakeholders note that such inspections are often cursory and ineffective (see section on enforcement below).<sup>175</sup>

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## FACTORS CONTRIBUTING TO THE WAGE GAP

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Research and stakeholder interviews revealed a number of factors that appear to contribute to the wage gap in Spain, as well as other employment inequalities between migrant and national workers. Below, authors highlight the most prevalent contributing factors that emerged from interviews and research conducted.

### CONNECTING EMPLOYMENT TO IMMIGRATION STATUS

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**In Spain, the immigration status of migrants who enter as third-country nationals is often tied to their employment, making migrant workers dependent on their relationship with a particular employer and thereby reducing their bargaining power.** As migrant workers must depend on attaining and continuing specific employment to preserve their immigration status, they are more likely to experience wage stagnation, lack of employment mobility, and harsher work conditions.<sup>176</sup> By connecting employment to migrant workers' immigration status, Spain's laws and policies foster an unequal power relationship and dependence on a particular job and specific employer.

First, the Spanish immigration system makes it difficult for third-country nationals to attain permission to migrate without first having secured a job, thereby incentivizing migrants to accept any employment (likely a lower-paying job with few benefits or guarantees) in exchange for a work visa.<sup>177</sup> This system also foments a "black market" for contract selling. Because migrants often need contracts to keep their residence status after their temporary contract expires, migrants are sometimes forced to buy new contracts from intermediaries.<sup>178</sup> As these employment contracts are not regulated, they frequently provide low wages and inadequate worker protections. Studies have documented predatory recruitment practices that take advantage of migrants "by paying workers much less than declared, or by creating fake contracts."<sup>179</sup> In these cases, migrants can assert fewer rights against their actual employer because there is an intermediary agency supplying the employment contract.

The legal framework linking visa work permits to employment contracts often confines migrants to a specific sector and geographical area, hampering employment mobility in violation of Convention No. 143, Article 14(a).<sup>180</sup> Migrants' lack of employment mobility emboldens employers to engage in abusive practices with greater impunity. Abuses of temporary migrant workers are particularly rampant in the agricultural sector, where the combination of temporary contracts in countries of origin through the Collective Management System<sup>181</sup> and the circular migration system can create "a strong worker dependency on employers."<sup>182</sup> Some employers are known to allow specific workers back the next season without having to go through the selection process. The dependence of migrant workers on their specific employer "usually leads workers to be more

‘docile’ and willing to accept abusive working conditions.”<sup>183</sup> As such, by making immigration status conditional on specific employment, Spanish law creates incentives for migrant workers to accept and maintain lower paying jobs; hampers their labor mobility; and can make them susceptible to abuse, exploitation and continued depressed wages.<sup>184</sup>

## FAILURE TO GIVE DUE CREDIT TO FOREIGN QUALIFICATIONS AND TRAINING

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**Non-recognition or under-recognition of foreign qualifications and skills-enhancing training drives over-qualified migrants towards low-skilled work, resulting in lower pay and fewer protections for migrant workers.** Many migrants work in positions that are unsuitable for their education, experience, and qualification level. This dynamic suggests that degrees or qualifications acquired in the migrant’s country of origin are of limited transferability.<sup>185</sup>

In Spain, several barriers prevent employers from recognizing migrants’ education and qualifications. Servicio Doméstico Activo (SEDOAC), a domestic workers’ organization, noted that the cost of degree transfers can be prohibitive for many migrants.<sup>186</sup> Moreover, the degree transfer process is often long and convoluted, especially for migrants new to the country.<sup>187</sup> Moreover, in some sectors, transfers may require years of additional study and credential acquisition in Spain.<sup>188</sup> For example, lawyers requesting degree recognition must first submit an application to the Ministry of Education and pay a fee. Once the application is submitted, “[t]he General Department of Qualifications and Recognition of Qualifications of the Ministry of Education makes a determination on the application, and may require an applicant to meet additional requirements, for instance, undertaking an aptitude test, internship period, project or course attendance.”<sup>189</sup> For many migrants, this process can take years to complete.<sup>190</sup>

In addition, some sectors impose quotas on the number of migrants that are allowed to practice, leading some migrants to opt for employment in sectors outside their areas of expertise.<sup>191</sup> SEDOAC noted that highly-educated migrants, such as judges and doctors, were forced to integrate into the Spanish labor force as domestic workers because it was their only viable employment option.<sup>192</sup>

Limited recognition of foreign qualifications, in turn, drives migrants towards low-skilled work with lower pay and fewer protections than their chosen professions. Migrant workers in Spain are concentrated in sectors such as agriculture, construction, tourism (e.g. restaurant workers, cleaners, kitchen assistants), and domestic and care services.<sup>193</sup> As noted above, in 2015, close to 27 percent of all migrant work in Spain was in the care economy.<sup>194</sup> The national population’s preference for high-standard working conditions and wages has “created a niche market for labor in low-skilled occupations that [has been] readily filled by foreign workers.”<sup>195</sup>

There is evidence that discrimination plays a role in this labor market segmentation. The Spanish Observatory of Racism and Xenophobia found that “existing differences in educational levels do not adequately explain the differences in the types of work obtained by migrants versus nationals, which would appear to suggest the existence of a certain level of discrimination in enterprises when selecting and recruiting young persons of foreign origin for the various types of job.”<sup>196</sup>

## PREVALENCE OF TEMPORARY CONTRACTS

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**Migrant workers are more likely to occupy temporary, informal, and less secure positions in the Spanish labor market than nationals, which renders them more vulnerable to employment-related**

**abuse, including inadequate compensation.** These temporary and informal positions largely offer fewer and less generous benefits as well as lower pay.<sup>197</sup> According to the ILO Report, in 2015, about 42 percent of migrant workers in Spain had temporary work contracts, whereas only about 23 percent of national workers did.<sup>198</sup> Moreover, about 45 percent of migrant women had temporary work contracts, compared to 40 percent of migrant men.<sup>199</sup>

Some researchers have speculated that employers may be reluctant to hire migrant workers for indeterminate periods of time, for reasons such as employers' unfamiliarity with foreign credentials or concerns that migrants may return home and leave the employer without needed labor. As such, employers may prefer to hire workers under temporary contracts with clear terms and end dates.<sup>200</sup> Since it is relatively difficult to transition from a temporary to permanent contract, migrant workers who intend to stay in Spain permanently are at risk of occupying temporary positions repeatedly over the long-term.<sup>201</sup> For example, the construction sector, which is the third largest employer of immigrant workers, also has one of the lowest proportion of permanent contracts.<sup>202</sup> These temporary contracts are insecure and offer no growth potential both in terms of seniority, wages, benefits and skills-building.

Many migrants are recruited by temporary work agencies which, by nature, offer only temporary opportunities with employers used to a transient workforce.<sup>203</sup> The IUEM (Instituto Universitario de Estudios sobre Migraciones) noted that workers hired by intermediary agencies almost never negotiate contracts directly with employers but depend on the agencies to determine the contract length and conditions.<sup>204</sup> These intermediary agencies have not always observed collective bargaining agreements, particularly in the agriculture sector,<sup>205</sup> which may explain why these workers often receive subminimum wages.<sup>206</sup> The temporary nature of these contracts – and workers' inherent job insecurity – also disincentivize migrant workers from demanding higher wages on par with national workers.<sup>207</sup> These factors are compounded by legal barriers to securing union representation for temporary migrant workers<sup>208</sup> and the difficulty of holding employers accountable for breaches of contract before the temporary worker has left their place of employment (see section below on enforcement).<sup>209</sup>

The prevalence of temporary contracts among migrants in Spain has implications beyond wages. The precarious and short-term nature of the contracts also impacts migrant workers' access to social security and state benefits.<sup>210</sup> Even if formally allowed to use social services, many migrants are not aware that they are entitled to such benefits while on temporary contracts.<sup>211</sup> The current system does not facilitate the instruction and time that would be necessary to ensure that migrants are familiar with available social services. The lack of benefits and extra support from social services lead to migrants to experience a lower quality of life, as they must spend the little money they make on basic necessities.<sup>212</sup>

## BARRIERS TO EFFECTIVE COLLECTIVE BARGAINING

**Collective bargaining of Spanish workers tends to benefit nationals more than migrant workers (especially temporary workers), which helps explain higher wages in sectors dominated by nationals.** In Spain, migrant union membership rates are lower than that of the national population.<sup>213</sup> Even though most collective bargaining agreements that determine wages cover workers broadly, including migrant workers, unions in Spain primarily represent “permanent” workers, most of whom are nationals.<sup>214</sup> The barriers to accessing union membership are particularly pronounced in certain industries, such as domestic work, which is not protected by collective bargaining, and agriculture.<sup>215</sup> This leaves many migrant workers disjointed, disenfranchised, and with low bargaining power.

As the Confederación Sindical de Comisiones Obreras (CCOO) explained, migrants are difficult to mobilize because of their temporary and geographically dispersed work patterns.<sup>216</sup> The Spanish unions CCOO and Union Sindical Obrera (USO) have likewise recognized the difficulty of representing migrant workers because of circumstances such as their short contracts and time in the country, their fear of speaking out against abuses, their undocumented status, their lack of Spanish language fluency, or simply because they are uninformed about their rights and the unions' work.<sup>217</sup> In addition, IUEM pointed out that intermediary recruitment agencies often take the place of unions by negotiating contract terms with employers. This indirect process makes it more difficult for migrants to exercise their rights, such as the right to be paid the amount owed according to their contracts.<sup>218</sup>

Indeed, employers in Spain have systematically violated migrant workers' collective agreements, particularly in the agriculture sector.<sup>219</sup> For example, some employers have imposed minimum performance requirements, such as picking quotas in agriculture, despite collective agreements explicitly prohibiting these requirements.<sup>220</sup> Moreover, there is often a stark disparity between the actual work migrants contribute and the pay they receive.<sup>221</sup> In seasonal work, studies have documented dismissals of workers before the end of the season and outside of the two-week trial period.<sup>222</sup> These discrepancies between the law and reality could be remedied in part by union representation and political pressure. Yet the absence of migrant-worker trade unionization, as noted, exacerbates these problems, leading to lower pay and greater job insecurity overall for migrant workers.

## LACK OF RIGHTS ENFORCEMENT

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**Insufficient and ineffective enforcement mechanisms for labor protections allow employers to pay migrant workers less, especially those in temporary positions, without fear of government intervention.** Although Spain has comparatively strong labor laws, reports indicate that effective enforcement is lacking.<sup>223</sup> Observers have noted that employers frequently violate labor laws governing working hours, wages due, and rest days.<sup>224</sup> Sparse enforcement mechanisms in turn allow employers to pay migrant workers less without facing consequences.

While collective agreements and wage laws theoretically protect migrant workers, employers often undercut their rights in practice. Agricultural migrant workers in southern Spain report that employers find ways to reduce their wages despite minimum wage provisions. For example, employers may refuse to pay travel costs to work, pay for fewer days than the migrant has worked, or generate fraudulent pay slips.<sup>225</sup> A study by Cartas Española found that 44.6 percent of migrants interviewed had experienced an economic violation (e.g. were underpaid), 40.5 percent experienced a rest period violation, 35.2 percent had a contract violation, and 31.2 percent experienced a grave violation of their human rights in the workplace.<sup>226</sup> However, only five percent took steps to denounce the workplace violation. Of those who did not file a complaint, 68.4 percent said they did not complain because they feared losing their job, even though they were conscious that their employer had violated their rights.<sup>227</sup>

Migrants in the domestic work and tourism sectors frequently experience underpayment for work performed.<sup>228</sup> Employers often exploit domestic workers by making them work overtime without adequate compensation. Domestic workers have limited recourse due to the lack of labor inspections in private homes.<sup>229</sup> In the tourism sector, 32.3 percent of migrant workers said they were not paid for overtime hours worked, and 46 percent of migrants working in seasonal jobs reported pay below their corresponding legal wages.<sup>230</sup> Unions have found that undocumented migrants working in the agricultural industry are "routinely being paid less than half the legal minimum."<sup>231</sup> These sectors are less regulated and significant power imbalances between employers and employees.<sup>232</sup> Spain's lack of robust enforcement mechanisms therefore renders many

employment regulations ineffective at ensuring fair wages and conditions for migrant and national workers alike. Inadequate rights enforcement leaves migrant workers in Spain vulnerable to various forms of abuse, including human trafficking — especially when workers have other vulnerability factors, such as a past history of sexual or physical abuse within the household.<sup>233</sup>

Scholars have noted that inspectors in Spain do not conduct frequent inspections, possibly due to lack of institutional capacity.<sup>234</sup> In the absence of government-initiated inspections, the burden falls on workers themselves to report violations. However, worker-initiated complaint processes are arduous, and many migrant workers fear losing their jobs or being deported.<sup>235</sup>

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## EFFORTS TO ADDRESS EXISTING BARRIERS FOR MIGRANT WORKERS

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### STATE EFFORTS TO COMBAT DISCRIMINATION AND ENHANCE INTEGRATION

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Policymakers in Spain have sought to address barriers to equal and dignified work for migrants. The Strategic Plan for Citizenship and Integration (PECI), which began in 2007 and was updated in 2011, included the II Strategic Plan for Citizenship and Integration (PECI) 2011-14, a “comprehensive strategy against racism, racial discrimination, xenophobia and intolerance.”<sup>236</sup> In line with this plan, the government published “guides on ‘How to act in cases of discrimination, hate crime and intolerance’ intended for citizens,” non-governmental organizations, public employees and lawyers.<sup>237</sup>

In order to enforce the right to non-discrimination, policymakers also enacted Article 71 of Law 4/2000, which “established the Spanish Observatory of Racism and Xenophobia.” This oversight agency is dedicated to “1. collecting and analysing information on racism and xenophobia[,] 2. Promoting the principles of equal treatment and non-discrimination, along with the fight against racism and xenophobia[, and] 3. collaborating with different public, private, national and international agents relevant in the prevention of racism and xenophobia.”<sup>238</sup> The Observatory researched, documented, and published over 100 studies analyzing trends in racism and forms of intolerance in Spain. The plan expired in 2015, but the Observatory maintains that efforts are ongoing.<sup>239</sup> Spain’s most recent social integration law is Law 2/2009,<sup>240</sup> which guarantees migrants equal treatment under employment law and social security, as well as “effective equality” for women and non-discrimination for migrants legally in the country.<sup>241</sup>

Spain’s General Directorate for Equal Treatment and Ethnic Racial Diversity (DGITYDER) works across the government to promote policies, research, special measures, and other initiatives to further opportunity and ensure equal treatment for marginalized groups. In 2021, the Directorate published a report examining access to rights among Spain’s African and Afro-Descendent population.<sup>242</sup> The Council for the Elimination of Racial and Ethnic Discrimination is administratively attached to the Directorate and connects victims of racial or ethnic discrimination to a network of NGOs.<sup>243</sup>

### THE WORK OF UNIONS

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Unionization of migrant workers and union programming help provide benefits for migrant workers in Spain. Both the Trade Union Confederation of Workers’ Commissions (CCOO) and the General Union of Workers (UGT) have programs aimed at monitoring and promoting the rights of migrant workers.

Unions and associations like the CCOO, UGT, and USO have provided resources for migrants to bring complaints and access legal assistance.<sup>244</sup> They have advocated for the development of new legal and regulatory measures, increased budget allocations for migrants, dedicated resources for social service providers



and workplace inspectors, and more robust monitoring of workplaces to detect and punish discriminatory practices. For example, the UGT advocated for the creation of an Equal Pay Law – to ensure men and women receive equal remuneration for work of equal value – with input from social partners; as a large labor union, they have a budget to bring about significant change.<sup>245</sup> The UGT also encouraged the development of mechanisms that ensure equality in collective negotiations.<sup>246</sup>

Additionally, most unions offer some services to migrant workers. For example, USO runs a social integration program to help immigrants integrate into the work force, including workshops that inform migrants of their rights.<sup>247</sup> CCOO also helps connect migrants to social services organizations.<sup>248</sup> In the construction and care sectors, trade unions have been instrumental in providing information to migrant workers about the conditions of collective agreements.<sup>249</sup>

In addition, trade unions have increasingly helped establish local-level forums to discuss housing, education, economic relations, and other welfare services for migrants, as well as the monitoring of employment conditions.<sup>250</sup> Union involvement in local and regional government forums has been particularly prevalent in areas where agriculture is prominent and immigration is a key component of the labor market.<sup>251</sup> These forums have allowed trade unions to influence public policy affecting employers with migrant workforces, although the outcomes have not been consistent across regions.<sup>252</sup>

## INTER-GOVERNMENTAL ORGANIZATIONS AND CIVIL SOCIETY

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In the 2000s, the Spanish government increased its support to civil society organizations serving migrant populations to help build capacity in the sector.<sup>253</sup> Spain's Organización Internacional Para las Migraciones (OIM) assists government agencies with migration policy and migratory governance projects. For instance, the OIM helped organize a pilot project for circular migration of students from Morocco to study in Spain and return to Morocco.<sup>254</sup> IUEM is also conducting a program for low-income, predominantly migrant neighborhoods around Spain to facilitate migrant integration in Spanish society.<sup>255</sup> NGOs like Caritas Española work to document employment abuses happening in Spain, especially in remote areas. Caritas campaigns for greater migrant rights, supports economic integration of migrants, and helps respond to emergency situations.<sup>256</sup>

In addition, Spain has associations of workers from specific States of origin and for certain sectors. SEDOAC, for instance, is a domestic worker organization that works towards greater recognition and dignity for their workers. SEDOAC empowers domestic workers to know their rights, noting that information can be powerful.<sup>257</sup> It also aims to convey the importance of caregivers to the public. Moreover, SEDOAC facilitates networking among domestic workers to create a support system for female migrant workers. Additionally, SEDOAC fights for legislative change to guarantee more expansive protections for domestic workers. Recently, SEDOAC established an empowerment center to provide a wide variety of programming for domestic workers, including legal advice, psychological services, courses on cooking and rights, and other services. This pilot program was first of its kind in Spain, helping 2,500 women in the first six months.

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## FINDINGS

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Past and current efforts detailed above have improved the circumstances of migrant workers, but the barriers and conditions in Spain adversely impact wages of migrant workers and their ability to advocate for improved compensation. Thus, these barriers at least contribute, if not cause, the substantial wage gap between

migrants and nationals described in the ILO Report. In particular, the documented under-recognition of education and skills-based training helps explain the existence of a substantial “unexplained” wage gap in the lower-wage and unskilled sectors. The strength of the labor organizing sector, in combination with the exclusion of migrants from those organizing efforts, can push wages down in sectors often occupied by migrants while protecting the wages in sectors occupied by nationals.<sup>258</sup>

More research is needed to determine the causal relationship between barriers and the evident wage gap. However, the marked concentration of migrant workers in low-skilled positions, despite these workers’ comparable educational and professional backgrounds, suggests that discriminatory legal and policy factors are present. Specifically, inflexibilities embedded in the immigration system with regard to migrants’ choice of work creates a power imbalance that employers can exploit. This dynamic has myriad consequences, diminishing migrant workers’ ability to demand equal pay for equal work, bargain for better working conditions on par with nationals, and change employment in search of better wages or opportunities.

## THE UNITED STATES

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According to 2018 data, a plurality of migrant workers in the US (30 percent) work in low-skilled or unskilled positions.<sup>259</sup> However, there is a comparatively small migrant wage gap (15.3 percent).<sup>260</sup> As detailed above, Spain, for example, has an approximately 29 percent gap and the other states in the data. Other European countries face similarly high migrant pay gaps, including an approximately 30 percent gap in Italy and a 20 percent gap in the Netherlands.<sup>261</sup> The wage gap in the U.S. was highest in the middle of the wage distribution (about 22 percent)<sup>262</sup> and lowest at the bottom decile, where the gap shrinks to around 4 percent; at the top decile of, the pay gap was 12 percent, slightly under the mean migrant pay gap.<sup>263</sup>

According to the ILO, the unexplained wage gap – the gap labor market characteristics do not account for – was between two to 10 percent in 2018.<sup>264</sup> The unexplained wage gap was most prominent in the mid-levels of the distribution (D6-D8), though nearly absent at the lowest decile.<sup>265</sup> The estimated pay gap between migrant and non-migrant women was 18.8 percent in 2018, while the gap between migrant and non-migrant men was 15.7 percent.<sup>266</sup> Migrant care workers, the majority of whom are women, also experienced a higher pay gap at 20 percent.<sup>267</sup> Overall, migrant workers in the U.S. earn between 15 and 20 percent less than nationals over their working years.<sup>268</sup>

Though the gap in the U.S. appears narrower than some peer countries, the unique labor and employment context in the U.S. makes this gap misleading. In the U.S., “migrant worker,” as it is defined in the ILO Report and this Report, encompasses a diverse group of non-citizen workers who differ in privilege and protection, and who face a range of policies, standards, rights, benefits and discriminatory treatment. For example, U.S. laws and policies primarily distinguish on the basis of the particular iteration of “non-citizenship,” rather than between the categories of citizens and non-citizens. Workers on temporary work visas (“nonimmigrants”),<sup>269</sup> workers without a work visa (undocumented), workers with indefinite work-dependent visas (including a variety of industry-specific visas), and those with work-independent indefinite visas (regular-status permanent residents or immigrants) are all “non-citizens” but receive very different treatment under U.S. law, with the last category receiving similar treatment to citizens. The legal and policy framework of the United States applies different standards, requirements and treatment to each of these categories, with disparate implications for their work conditions and wages.

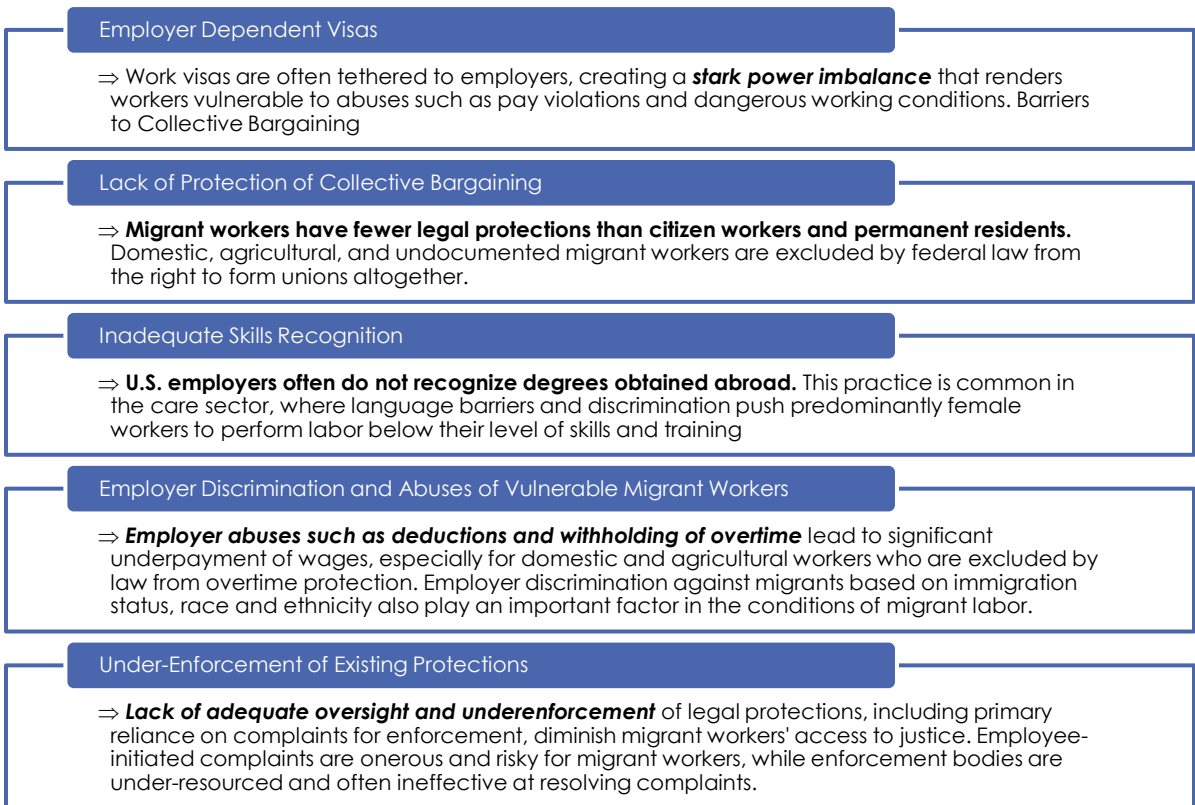
Moreover, much discrimination against migrants in the U.S. depends on whether employers perceive the person as an “immigrant” or “native” of the U.S., a categorization which is often highly racialized.<sup>270</sup> Non-

white U.S. citizens may experience the same kinds of discrimination and non-preferential treatment as immigrants, as anti-immigrant sentiment is often a proxy for racial and ethnic discrimination.<sup>271</sup> As such, while the wage gap statistics cited above may partially reflect migrant workers' experiences of inequality, it does not capture the full range of workplace discrimination against those perceived and treated as migrants, as such discrimination varies even among migrants themselves. In this context, this case study will track the ILO distinction between citizen and migrant while also recognizing relevant dynamics that impact the barriers and conditions migrant workers laboring in the United States face.

Finally, immigrant labor features more prominently in the U.S. workforce than most other countries in the ILO Report, including the two other case-study countries featured in this Report. Moreover, non-U.S. citizens perform most work that exists in the lowest-wage sector.<sup>272</sup> Although foreign-born workers are approximately 18 percent of the total labor force, about half of these workers are in the lowest paid industries, such as food services, construction, agricultural, and the care sector.<sup>273</sup> For example, 9 percent of foreign-born persons work in construction, but these workers make up nearly one quarter of the construction industry.<sup>274</sup> Similarly, 21 percent of workers in the food services industry are foreign born.<sup>275</sup>

Similarly, according to 2017 estimates, undocumented workers represent 5 percent of the U.S. work force.<sup>276</sup> A 2013 estimate found that these workers generate 3 percent of the U.S. private sector's gross domestic product (GDP).<sup>277</sup> Yet these workers comprise 18 percent of the country's agricultural labor and 13 percent of low-skilled construction labor, two of the lowest paid industries in the U.S. labor force.<sup>278</sup> Within the construction industry, one study found that undocumented immigrants comprised approximately 30 percent of drywall installers, roofers and painters.<sup>279</sup> Further, nearly 40 percent of home health aides are foreign-born workers.<sup>280</sup>

Within this particular country context that relies heavily on non-citizen labor, the following points provide a brief summary of the main research findings:




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## MIGRATION AND LABOR CONTEXT

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In the United States, the population of migrants, as defined by the ILO Report (i.e., non-nationals residing in the country), encompasses two types of residents: “immigrants” and “nonimmigrants,” treated separately under U.S. law. Under U.S. law, an “immigrant” is a foreign national admitted to the United States as a lawful permanent resident – that is, a foreign national who migrates to the United States with the intention to remain therein but who does not vote or have the same rights and benefits as citizens.<sup>281</sup> A “nonimmigrant,” by contrast, is a foreign national “who seeks temporary entry to the United States for a specific purpose,” such as work or education.<sup>282</sup> Colloquially, individuals who are foreign born but naturalized citizens may also be referred to as immigrants,<sup>283</sup> and communities may be considered immigrants for various social and cultural reasons.<sup>284</sup> This categorization, while present in some statistical estimates, is technically inconsistent with the law, which does not consider naturalized citizens as immigrants (though some distinctions are made between naturalized citizens and citizens-at-birth, including the ability to become president which is reserved for citizens born within a U.S. territory).<sup>285</sup> Migrants can also belong to the “undocumented” or “unauthorized” population – foreign nationals who enter the U.S. without a visa or who continue to work after a temporary visa expires.

The proportion of immigrants (lawful permanent residents or “LPRs”) in the U.S. population has risen significantly over the past 50 years, mostly due to large-scale immigration from Latin America and Asia.<sup>286</sup> In 1970, immigrants comprised only 4.7 percent of the population; in 2019 they comprised 13.7 percent (44.9

million).<sup>287</sup> As such, 13.7 percent of the U.S. population resides permanently in the country but does not have citizenship and cannot participate in the political process through voting. In 2019, 24 percent of all immigrants were from Mexico, India and China. The Philippines, El Salvador, Vietnam, Cuba, and the Dominican Republic also represented smaller, but significant, immigrant populations.<sup>288</sup>

Since 2004, the U.S. Department of Homeland Security (DHS) has conducted a periodic estimate of the total nonimmigrant population residing in the United States. Between 2004 and 2016, the nonimmigrant population rose from 1.5 million to 3.2 million.<sup>289</sup> In 2004, the countries with the highest number of nonimmigrants in the United States were Mexico, Canada, India, the United Kingdom, and Japan.<sup>290</sup> By 2019, the majority of nonimmigrant residents in the United States were from India (27 percent), China (15 percent), Mexico (8 percent), and Canada (6 percent).<sup>291</sup> In 2019, over half of the United States' nonimmigrant population were men (57 percent).<sup>292</sup> However, estimates showed that women made up over half of the exchange visitor population (five percent), which includes some migrant labor, such as au pairs and teachers.<sup>293</sup>

Although the nonimmigrant population in the U.S. has increased, the number of unauthorized immigrants declined from 12.3 million in 2007 to 10.3 million in 2019 following a period of economic growth outside the U.S. in the 1990s and early 2000s.<sup>294</sup> The countries of origin for unauthorized immigrants have also shifted over this period. The number of unauthorized immigrants from Mexico has declined, although it remains high, and the number of unauthorized immigrants from Asia and Central America (El Salvador, Guatemala, Honduras) has risen.<sup>295</sup> The level of annual refugee admissions has fluctuated over the last thirty years in correlation with a shrinking annual refugee admissions ceiling.<sup>296</sup>

The DHS survey of the U.S. nonimmigrant population further divides nonimmigrants into four categories: temporary workers, students, exchange visitors, and diplomats. In 2016, about 48 percent of the 2.3 million nonimmigrants were temporary workers (38 percent were students, 11 percent were exchange visitors, and 4 percent were diplomats). Among temporary workers, most were from India (40 percent), Mexico (12 percent), Canada (9 percent), and Japan (5 percent).<sup>297</sup> Chinese nonimmigrants, who represent a significant portion of the overall temporary residents in the United States (15 percent), made up only 4 percent of the temporary worker population, whereas they comprised 30 percent of nonimmigrant students.<sup>298</sup> The opposite was true of Mexican nonimmigrants: 85 percent of Mexican nonimmigrants entered the United States as temporary workers in 2016, compared to 10 percent who entered as students.<sup>299</sup>

Temporary visas are issued for both low- and high-skilled work. Low-skilled temporary work visas are typically granted for short durations and are often seasonal, though many employers hire the same migrant workers on seasonal visas year after year.<sup>300</sup> Employers also fill many low-skill positions with unauthorized migrant workers.<sup>301</sup> Further, the United States issues a significant number of temporary visas to migrant workers for high-skill work. The U.S. Citizen and Immigration Services recorded the presence of 583,420 H-1B (high skill temporary visa) nonimmigrant workers in 2019.<sup>302</sup>

Visa data shows that the temporary worker non-immigrant population tends to be segregated by nationality, and sometimes gender, in certain employment industries. For example, in 2018, migrant workers from India almost exclusively obtained high-skill visas, while migrant workers from Mexico most commonly obtained low-skill visas.<sup>303</sup> In 2018, the vast majority of temporary work visas were granted to Mexican nationals for temporary work in agriculture and other low-skill industries such as domestic work.<sup>304</sup> Approximately 20 percent of domestic workers in the United States are foreign-born non-citizens, 91.5 percent of which are women.<sup>305</sup>

The well-documented forces driving migration to the U.S. include lack of economic opportunity, concerns for safety, natural disasters, and poor governance.<sup>306</sup> Many migrants move to the U.S. from poorer

countries where earning potential is limited and job opportunities are scarce.<sup>307</sup> Lack of safety in a home country, along with corruption, is another common reason for migration and a root cause of migration to the U.S. from the Northern Triangle countries of Guatemala, Honduras, and El Salvador.<sup>308</sup> A 2019 survey by the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Children’s Fund (UNICEF) found that 20 percent of migrating families from the Northern Triangle countries left because of violence.<sup>309</sup> Environmental factors causing migration, such as natural disasters, crop failure, pollution or draught, can feed into the economic, social, and safety factors at the root of migration.<sup>310</sup> Survey data from the U.S. Department of State in 2018 of non-immigrants found that 887,528 reported that they came to the U.S. for employment opportunities, 773,706 came to be with family, 714,885 came for education, and 73,779 migrated for a safer living environment.<sup>311</sup>

The United States has several standing bilateral agreements and cooperation arrangements with other countries, with implications for the migration patterns noted above. Some recent examples include: the agreement between the U.S. and the Dominican Republic signed in 2003 to combat the unsafe transport of migrants by sea and smuggling of migrants;<sup>312</sup> the cooperation arrangement between the U.S. and Guatemala concerning temporary agricultural and non-agricultural workers programs, otherwise known as the H-2A and H-2B visa programs;<sup>313</sup> and the 2019 Asylum Cooperative Agreements (ACAs) with the nations of the Northern Triangle – El Salvador, Guatemala and Honduras – which limited the ability of nationals of these countries to access asylum in the United States (repealed as of February 2021).<sup>314</sup> In addition, the United States was part of the *North American Free Trade Agreement* (NAFTA) from January 1994 until July 2020.<sup>315</sup> This agreement between Mexico, the United States and Canada, was supplanted by the *United States-Mexico-Canada Agreement* (USMCA).<sup>316</sup>

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## RELEVANT LAWS AND POLICIES

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### CONSTITUTIONAL GUARANTEES AND INTERNATIONAL COMMITMENTS

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Formally, the relevant rights provided by the United States Constitution apply to citizens and non-citizens and include: freedom of religion, expression, assembly and association, as well as the right to petition, fair trial, and against racial discrimination.<sup>317</sup> The Fourteenth Amendment ensures equal protection and due process of law. The First Amendment regulates “the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”<sup>318</sup>

The United States has ratified two of the ILO’s fundamental Conventions: the Abolition of Forced Labour Convention, 1957 (No. 105) and the Worst Forms of Child Labour Convention, 1999 (No. 182). It has also ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and the Labour Administration Convention, 1978 (No. 150), and it currently has 10 ILO Conventions in force.<sup>319</sup> In addition, the U.S. has ratified five of eighteen major UN human rights treaties, including the ICCPR.<sup>320</sup>

### IMMIGRATION FRAMEWORK RELEVANT TO MIGRANT WORK

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Since the United States enacted the Immigration and Nationality Act (INA) in 1965, entry into the U.S. labor market as a nonimmigrant worker has been contingent on an offer of employment.<sup>321</sup> Work visas granted to nonimmigrant workers are tied to the duration of the contract and employer. Overall, the INA created thirteen unique temporary visa categories for nonimmigrants, temporary workers, and families of temporary



workers in the United States.<sup>322</sup> In 2018, the U.S. State Department issued over nine million temporary visas, roughly five percent of which went to temporary workers.<sup>323</sup> The Department of Labor (DOL) and the Department of Homeland Security (DHS) jointly determine how many visas to supply and to whom.<sup>324</sup> The most common visa categories are detailed below.

- The H-1B visa is a visa that U.S. employers secure for highly-skilled workers.<sup>325</sup> The U.S. government issues around 135,000 of these visas every year. <sup>326</sup> Some migrants obtain H-1B visas following completion of a higher education degree in the U.S. and receiving a job offer in the country.<sup>327</sup>
- The H-2A (agriculture) visa is a seasonal visa granted for no longer than 10 months. Many workers renew their visas, returning to the same employer year after year.<sup>328</sup> There has been a more than 800 percent increase in H-2A workers admitted to the United States in the last 10 years.<sup>329</sup> Today, the majority of agricultural workers in the United States are male Mexican nationals.<sup>330</sup> Before requesting visas from the DHS to recruit foreign workers, an employer must first get approval from a state agency, begin recruitment for national workers by posting on jobs.com, and certify wage and hiring conditions with the DOL. <sup>331</sup> Many employers use labor brokers and employers' associations to help recruit migrant workers.<sup>332</sup> Smaller employers typically use farm labor contractors.<sup>333</sup> Regardless of which entity applies for the visa, three requirements must be shown: lack of national workers, proper wage, and adequate living conditions.<sup>334</sup>
- The H-2B visa is a non-agriculture, low-skill visa that encompasses manufacturing, construction, factory, landscaping, hospitality, amusement and recreation, forestry, and fishing industries.<sup>335</sup> Granted on a first-come-first-serve basis, only 66,000 are available every year to employers.<sup>336</sup> As with the H-2A visa, the government does not approve any temporary work H-2B visas unless the employer has sufficiently shown that no national workers are available to fill the job. Employers are required to provide both the DOL and the migrant worker with a job order that states the wage rate, length of stay, and work hours.<sup>337</sup> H-2B workers are required to be paid at least the minimum wage, and their employers must cover all transportation and visa expenses.<sup>338</sup>
- The J-1 visa is an exchange visitor visa program for work-study or full-time study.<sup>339</sup> J-1 visa holders work in both high- and low-skill industries.<sup>340</sup> The U.S. State Department grants J-1 visas to approved sponsors, which often subcontract with other industries to recruit migrant workers.<sup>341</sup> The program's duration is essentially indefinite as there is no limit to the number of extensions that the state department can grant.<sup>342</sup>
- The B-1 visa is granted to persons who wish to enter the United States and remain for a specific limited period of time to conclude "business of a legitimate nature."<sup>343</sup> B-1 visas are granted for an initial maximum period of six months, with the possibility of extension for a total stay of up to one year.<sup>344</sup>
- The A-3 and G-5 visa is granted to domestic workers of foreign diplomats and other foreign officials.<sup>345</sup> A-3 and G-5 workers are subject to a specialized regime with certain protections: they must be provided a contract in a language they understand that includes a statement of the hourly wage to be paid, the frequency and form of payment, and a bank account with which to accept payments.<sup>346</sup> While these protections exist on paper, the mechanisms to enforce them are virtually nonexistent.<sup>347</sup>

In addition to nonimmigrants who work under these and other specialized visas, as of January 2022, there are roughly 11.35 million unauthorized immigrants in the United States.<sup>348</sup> The Immigration Reform and Control Act (IRCA), which prohibits the employment of unauthorized workers, places enforcement responsibility in the hands of employers by requiring them to verify that employees are authorized to work in the United States.<sup>349</sup> However, there is no regular oversight to ensure that employers are verifying workers' documents properly and a great degree of deference is typically given to employers regarding proof of documentation.<sup>350</sup>

The United States government operates or funds a small number of programs supporting migrant workers. In particular, the U.S. has developed two main initiatives to support migrant and seasonal farmworkers. The National Farmworker Jobs Program (NFJP) provides grants to community-based organizations and public agencies to promote economic stability, skill acquisition, and job opportunities for migrant and seasonal farmworkers. Services provided by NFJP grantees include career services, training services, youth services, housing assistance, and other short-term direct assistance to promote employment retention.<sup>351</sup> The Monitor Advocate System ensures that migrant and seasonal farmworkers have access to career services, skill development, and workforce protections.<sup>352</sup>

The U.S. government also supports some migrant health initiatives. For example, the Health Resources and Services Administration (HRSA) is committed to increasing migrant farmworkers' access to health care and funds the Farmworker Health Network, which provides training and technical assistance to over 1,100 Community & Migrant Health Centers across the U.S.<sup>353</sup> Additionally, the Center for Disease Control and Prevention (CDC)'s Office of Minority Health and Health Equity (OMHHE) increases awareness of migrant health issues by supporting three regional health conferences across the U.S. which train practitioners working in health centers serving migrants.<sup>354</sup>

## REGULATION OF WAGES AND HOURS

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The Department of Labor (DOL) is a cabinet-level agency that administers and enforces U.S. federal employment and labor laws extending to all workers except for independent contractors and small employers.<sup>355</sup> Some of these national laws include provisions of the INA (discussed above), the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act, and the Migrant and Seasonal Agricultural Worker Protection Act.<sup>356</sup> Along with enforcement through private rights of action, the DOL protects many of the rights to which migrant workers in the United States are entitled, including their rights to a minimum wage, overtime pay, and a safe working environment.

The FLSA establishes a minimum wage for all workers, as well as protections from unnecessary wage deductions and excessive hours. While the federal minimum wage is \$7.25 per hour, many states have raised the minimum wage in their jurisdictions and provided greater employee protections.<sup>357</sup> However, the FLSA explicitly exempts agricultural workers and some domestic workers (live-in workers) from the right to receive overtime wages, thus excluding a significant segment of migrant and immigrant worker population.<sup>358</sup> This exclusion means these workers do not receive additional compensation for hours worked over the standard work-week cap. The FLSA previously exempted all domestic workers, but recently extended protections, retaining limitations only on live-in domestic workers.<sup>359</sup> Independent contractors are also exempt from FLSA protection.

Supplementing the FLSA standards, federal law sets a wage rate for migrant workers entering on some temporary foreign labor visas, with the intention of ensuring these workers receive industry-appropriate wages. The goal of this regulation is primarily to ensure employers are not incentivized to hire foreign workers in favor of U.S. workers as a cost-cutting measure. However, as discussed below, enforcement of these wage rates is inadequate and often ineffective for a number of reasons, including vulnerability of migrant workers in the recruitment and employment process.

Both low-skill and high-skill temporary labor visa programs have regulations that set workers' wages above the federal minimum wage. Workers entering the U.S. on H-2A agriculture visas, for example, are entitled to a higher wage rate than the federal minimum wage calculated by the DOL in reference to the industry wages for non-migrant laborers.<sup>360</sup> A "prevailing wage" rate also applies to low-skill H-2B non-agricultural worker

visas. This wage is meant to mirror the wage that would be set for a national worker in the same industry and location.<sup>361</sup> Similarly, H-1B workers must be paid a “required” wage, which can be the prevailing wage or the employer’s “actual wage,” whichever is greater.<sup>362</sup> The “actual wage” is the wage rate paid to similarly qualified individuals engaged in specific employment.<sup>363</sup> However, in practice, employers may resort to paying H-1B workers the prevailing rather than the actual wage if the latter is greater, often effectively depressing the wages for foreign workers in an industry. The Economic Policy Institute found that the two lowest permissible H-1B prevailing wage levels, which apply to three-fifths of all H-1B jobs, are lower than the local median salaries. For example, in the common H-1B computer related occupations, median salaries for H-1B workers were 17 to 34 percent lower on average than local median salaries.<sup>364</sup>

No other visa categories are guaranteed a particular wage rate. Instead, all other migrant worker visa holders – such as those with B-1 and L-1 visas – tend to receive the minimum wage as specified in standard labor law protections. This rate is often well below the actual wage rate paid to other workers.<sup>365</sup>

### WORKPLACE SAFETY REGULATIONS

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The Occupational Health and Safety Act (OSHA) protects health and safety conditions in the workplace and establishes an enforcement body to adjudicate complaints.<sup>366</sup> Compliance officers follow a priority hierarchy to assign inspections: imminent danger situations, fatalities and hospitalizations, formal complaint inspections, and internally-initiated inspections.<sup>367</sup> Despite this regulatory framework, there is evidence that the Occupational Safety and Health Administration has failed in recent years to protect migrant workers in meat and poultry factories from workplace harms and abuses such as a lack of proper breaks<sup>368</sup> and protective equipment.<sup>369</sup> However, migrants rarely complain about these conditions due to the risk of retaliation by employers, a risk that OSHA itself has not taken special measures to address.<sup>370</sup>

### NON-DISCRIMINATION REGULATIONS

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A federal law, Title VII of the Civil Rights Act, protects workers from discriminatory work decisions (in hiring, firing, and compensation) based on national origin, race, religion or sex.<sup>371</sup> The Civil Rights Act also created the Equal Employment Opportunity Commission (EEOC), which has the power to investigate and adjudicate claims of Title VII violations.<sup>372</sup> The Act explicitly exempts small employers (with fewer than 15 employees) from its requirements.<sup>373</sup> Although the EEOC has affirmed that all Title VII protections extend to migrant workers in the United States regardless of immigration status,<sup>374</sup> enforcement is difficult due to limited resources, reliance on private rights of action, and migrant workers’ vulnerability. Moreover, courts have foreclosed at least one form of anti-discrimination protection by ruling that Title VII does not apply when the discrimination occurs outside of the United States, such as during recruitment<sup>375</sup>. They have also denied some remedies to workers unauthorized to work in the U.S., such as back-pay.

The Immigration and Nationality Act (INA) does prohibit employer discrimination on the basis of national origin or immigration status in hiring (including recruitment) and firing.<sup>376</sup> The U.S. Department of Justice enforces this law through the Immigrant and Employee Rights Section and the Office of Special Counsel for Immigration-Related Unfair Employment Practices. Together, these Sections investigate and provide remedies for migrant worker claims concerning violations of the anti-discrimination provisions of the INA, such as those prohibiting discrimination on the basis of citizenship and national origin upon hiring, unfair documentary practices during the employment eligibility verification process, and workplace retaliation and intimidation.<sup>377</sup>

## REGULATION OF FARM CONTRACTORS

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The Migrant and Seasonal Agriculture Worker Protection Act (AWPA) regulates farm labor contractors, imposing housing, transportation, and wage requirements similar to those imposed on the H-2A program.<sup>378</sup> Although the AWPA explicitly does not cover H-2A workers, it does protect some H-2B workers in the forestry industry as well as migrant workers who work for farm labor contractors.<sup>379</sup> The AWPA provides for a private cause of action against abusive employers and so enforcement largely requires workers engage private legal representation to assert rights in court.<sup>380</sup>

## COLLECTIVE AGREEMENTS AND UNION REPRESENTATION

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Another agency charged with enforcing federal employment law is the National Labor Relations Board (NLRB). The NLRB extends an important self-help remedy to migrant workers. By enforcing the National Labor Relations Act (NLRA), this federal agency has the mandate to foster an environment in which many migrant workers can advocate and negotiate for better wages and working conditions. However, some categories of workers are excluded from the protections of the NLRA, namely agricultural and domestic workers, two sectors that are heavily populated by poorly compensated and low-skill migrants in the United States.<sup>381</sup> In recognition of this gap in protection, a small number of U.S. states have passed legislation protecting migrant agricultural workers' right to unionize.<sup>382</sup> The Farm Labor Organizing Committee (FLOC) has also worked to unionize farmworkers in Ohio and North Carolina, and it has succeeded in raising wages and negotiating contracts outside of the NLRA.<sup>383</sup>

Nevertheless, these protections have been eroded for unauthorized migrant workers. In its 2002 *Hoffman Plastic* decision, the Supreme Court effectively denied unauthorized migrants substantial bargaining power by prohibiting backpay to unauthorized migrants who were wrongfully discharged for union activity.<sup>384</sup> This decision has given employers an incentive to hire unauthorized workers because it permits them to stifle union activity with the threat of termination and withheld wages.<sup>385</sup> A year later, the Inter-American Court of Human Rights issued an Advisory Opinion on the case, finding that the Supreme Court decision restricted unauthorized workers' labor rights and contravened their right to equality regardless of their migration status.<sup>386</sup> However, domestic law remains unchanged.

## DISPUTE MECHANISMS

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The United States has a federal court system and state and local court systems.<sup>387</sup> All migrant workers, in principle, have access to these judicial avenues for redress. However, they have no right to free or subsidized legal representation, which means workers must pay an attorney to assist them with their case or find someone willing to represent them pro bono. This presents a major limitation in enforcement of most labor and employment protections listed above. In recognition of this difficulty, some workplace protection laws, like the Fair Labor Standards Act, contain "attorney fee" shifting provisions allowing the prevailing party to ask the losing party to pay the fees of their legal representative.<sup>388</sup> These fee shifting provisions make it easier for a low-wage worker to secure legal representation. Still, the process is expensive and risky for any worker and, as discussed below, far more so for a worker with a precarious immigration status.

Since the 1970s, the Executive Branch has encouraged the use of alternative dispute resolution, such as mediation, for workplace disputes, which has yielded mixed results. The Administrative Dispute Resolution

Acts of 1990 and 1996, and the Alternative Dispute Resolution Act of 1998 required federal government agencies to implement policies encouraging the use of alternative dispute resolution.<sup>389</sup> One program that emerged from this initiative was the Equal Opportunity Employment Commission (EEOC), the federal government agency that enforces Title VII and other federal anti-discrimination statutes.<sup>390</sup> Employment discrimination claims are first filed with the EEOC, upon which a mediation process is initiated that can involve a variety of alternative dispute resolution approaches.<sup>391</sup> Once the initial process is concluded, the EEOC may file a lawsuit in court on the worker's behalf or, more often, give the worker permission to file a claim on their own behalf. This process, again, can result in a resolution through mediation or simply delay the legal process for the worker.<sup>392</sup>

A separate federal agency, the National Labor Relations Board (NLRB), settles claims of violations of the National Labor Relations Act.<sup>393</sup> Issues under their jurisdiction include allegations against employers for “threats, interrogations and unlawful disciplinary actions against employees for their union activity; promises of benefits to discourage unionization; and, in the context of collective bargaining relationships, refusals to provide information, refusals to bargain, and withdrawals of recognition.”<sup>394</sup>

In parallel, the Wage and Hour Division enforces the Fair Labor Standards Act (FLSA). The enforcement is carried out by investigators stationed across the United States. The Wage and Hour Division can “gather data on wages, hours, and other employment conditions or practices, in order to determine compliance with the law.”<sup>395</sup> When the Division finds a violation, it can recommend changes in employment practices to meet compliance standards.<sup>396</sup> The Wage and Hour Division also enforces the Migrant and Seasonal Agriculture Worker Protection Act, and it enforces field sanitation on behalf of OSHA. The Division also works with U.S. Citizen and Immigration Services (USCIS) to approve employer requests for H1-B, H-2B and H-2A workers. Division officials may visit work sites, check payroll records, and interview employees to identify potential violations in the temporary work visa system. Half of the Division's investigations are driven by complaints, and half are initiated by the agency. The agency initiates investigations in sectors with vulnerable and low-wage workers such as agriculture, landscaping, and sanitary workers.<sup>397</sup>

The Occupational Safety and Health Administration, which implements the Occupational Safety and Health Act (OSHA), is dedicated to ensuring safe working conditions and conducts inspections based on level of priority such as an “imminent danger situation, fatality, or a worker complaint.”<sup>398</sup> Finally, the Homeland Security Investigations division of U.S. Immigrations and Customs Enforcement investigates worksite and employment crimes related to the cross-border movement of people, and it may investigate employment of undocumented immigrants.<sup>399</sup>

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## FACTORS CONTRIBUTING TO THE WAGE GAP

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### VISA DEPENDENCY

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**Work visas in the United States are often tethered to employers, creating a *stark power imbalance* that renders workers vulnerable to abuses such as pay violations and dangerous working conditions.** Workers in employer-reliant visa programs are less likely to report exploitative conditions due to fear of employer retaliation through termination, loss of legal status, and threats of deportation. Moreover, government agencies tasked with enforcement of these protections rely primarily on employee complaints rather than workplace monitoring. As such, abuses often go unremedied and unnoticed.

Most nonimmigrant visas require form I-129, in which employers “file on behalf of a nonimmigrant worker to come to the United States temporarily to perform services or labor, or to receive training, as an H-1B, H-2A, H-2B, H-3, L-1, O-1, O-2, P-1, P-1S, P-2, P-2S, P-3, P-3S, Q-1 or R-1 nonimmigrant worker.”<sup>400</sup> The high stakes of termination – namely, loss of legal status and the threat of deportation – lower the bargaining power that migrant workers have vis-à-vis their employers when it comes to negotiating better working conditions and vindicating their rights. As has been documented, employers, in turn, capitalize on their power by intimidating workers and promoting dependency through high recruitment fees,<sup>401</sup> while shielding themselves from liability. In some extreme cases, employers maximize the dependence of migrant workers by confiscating their passports,<sup>402</sup> controlling their freedom of movement,<sup>403</sup> and intimidating them with the threat of brute force.<sup>404</sup>

Moreover, the use of temporary employment agencies places a downward pressure on wages in industries where migrants are over-represented. Misconduct in these agencies is a recurrent issue, and opaque practices can make it hard for workers to seek relief for workplace abuses.<sup>405</sup> Some migrant workers do not work for a single employer during the duration of their visa but are tied to labor contractors who shift employees from post to post. This system, which is particularly common in the agriculture industry, contributes to the difficulty for migrant workers of seeking relief for workplace abuses and discrimination.<sup>406</sup>

Employers, across industries, undercut wages and deny workplace protections by creating complicated pay schemes and misclassifying workers into categories with minimal protections and lower pay standards. There have been widespread reports of worker abuse in both the H-2A and H-2B visa programs in particular. From 2009 through 2013, the Department of Labor’s Wage and Hour Division found that 866 H-2A and 60 H-2B employers had violated at least one requirement or worker protection.<sup>407</sup> Between 2011 and 2013, the National Human Trafficking Resource Center (NHTRC) received 1,400 complaints of labor violations related to H-2A and H-2B workers. Two-thirds of the complaints of labor violations involved H-2B workers compared to one-third of complaints involving H-2A workers. The majority of complaints were related to pay, hours worked, and contract violations.<sup>408</sup> Other alleged abuses included “wrongful termination and hazardous, unsafe, and unsanitary working conditions.”<sup>409</sup>

During the same period, the NHTRC received 35 complaints, primarily from workers in the agriculture, landscaping, and carnival industries, which had key indicators of trafficking of H-2A and H-2B workers, “such as force, fraud, or coercion.”<sup>410</sup> Additionally, between 2012 and 2013, Department of Justice service providers assisted 340 H-2A or H-2B workers who were victims of human trafficking.<sup>411</sup> In general, research finds that migrant workers’ “riskier employment conditions, including restricted movement, minimal oversight mechanisms, withheld wages, and increasing debts” make them more vulnerable to trafficking than U.S. nationals.<sup>412</sup> A 2015 Government Accountability Office (GAO) report identified abuses of H-2A and H-2B workers including: “verbal or physical abuse, confiscation of identification documents, poor or unsafe conditions in the working or living environment, and problems with hours worked or pay rate, including no overtime pay and unfair paycheck deductions.”<sup>413</sup> The ILO Report also identified abuse during recruitment of H-2A and H-2B workers, including recruiter misconduct in the form of charging workers prohibited fees and providing false information about working and housing conditions.<sup>414</sup>

More recently, in 2020, the Labor Department closed 377 cases with confirmed H-2A violations.<sup>415</sup> A 2020 report surveying 100 H-2A workers found that all workers had experienced one or more serious legal violations of their rights, including paying high recruitment fees, not receiving travel reimbursements, wage violations, not receiving a contract, sexual harassment, threats, seizure of identity documents, substandard housing, and lack of essential safety equipment.<sup>416</sup>

Judicial case law provides further evidence of abuses against H-2B and H-2A workers. In *David v. Signal*



*International, LLC*,<sup>417</sup> one of the largest human trafficking cases in U.S. history, close to 500 workers were trafficked into the United States through the H-2B program to work in shipyards in the aftermath of Hurricane Katrina. They were forced into squalid living conditions and they experienced “fraudulent payment practices, and threats of serious harm upon their arrival.” Additionally, recruiting agents hired by marine industry company Signal International withheld their passports and visas and made them pay exorbitant fees during recruitment.<sup>418</sup> In another large case, *United States v. Askarkhodjaev*, hundreds of foreign workers, including H-2B workers were fraudulently recruited, charged high fees to obtain visas, compelled into service and hospitality jobs, forced to live in overcrowded and expensive apartments, and coerced through wage withholding and threats of deportation.<sup>419</sup> In a 2010 report, the U.S. Government Accountability Office (GAO), a non-partisan agency that conducts audits for the legislative branch, reported on ten cases of abuse committed by recruiters and employers participating in the H-2B visa program across 29 states in diverse industries. Their report found common violations, including unfair and excessive wages and fees, “fraudulent documentation submitted to federal agencies to circumvent program rules,” inadequate living conditions, harassment, and discrimination.<sup>420</sup>

Several cases provide illustrations of abuse against H-2A visa workers in particular. In *United States v. Svibel*, the first H-2A visa labor trafficking case successfully prosecuted by the U.S. government, a Minnesota farm recruited 76 H-2A visa workers from the Dominican Republic psychologically and physically threatened them, in addition to forcing them to pay substantial up-front fees.<sup>421</sup> In another case, 18 H-2A farm workers filed a lawsuit against their employer, Larson Orchards Management, for violating an agreement in which the company pledged not to retaliate against workers who raised safety and health concerns with their employer. The case concluded in a settlement in 2018.<sup>422</sup> And, finally, in 2020, a New Jersey farm was found to have housed workers in unsanitary conditions, denied workers access to kitchen facilities, and failed to provide workers with their work contracts before they applied for visas.<sup>423</sup>

Finally, reports abound of employers exploiting workers’ fears of deportation. Inadequate legal protections make it dangerous for workers to assert rights through legal process even in cases where they are protected by law. Despite regulatory commitments and judicial opinions that require the protection of immigration status in claims of workplace violations, immigrants have well-founded fears that they will be forced to reveal their immigration status in the course of these processes, fears that employers often exploit to discourage workers from asserting their rights.<sup>424</sup>

## BARRIERS TO WORKPLACE ORGANIZING AND UNIONIZATION

**Migrant workers, even those in high-skill positions, have fewer legal protections than citizen workers and permanent residents, weakening their bargaining power with employers.** Domestic, agricultural, and undocumented migrant workers are excluded by federal law from the right to form unions altogether.<sup>425</sup> These legal exclusions, as well as practical circumstances, make it extremely difficult for migrant workers to organize for better work conditions and fair remuneration.

Unions have difficulty organizing migrant workers who are generally scattered, often isolated, and sometimes transient.<sup>426</sup> Barriers to unionization have been documented, particularly for migrant farmworkers, independent contractors, and domestic workers. As noted, these workers are not covered under the National Labor Relations Act, which guarantees the right of workers to organize and bargain collectively for better wages and work conditions.<sup>427</sup> Migrant workers – many of whom work in sectors in which the right to collective bargaining is not protected – may form a union, but employers are not obligated to negotiate with them and may retaliate.<sup>428</sup> In general, migrant workers also face a widespread lack of access to information about their legal rights, presenting yet another barrier to successful collective bargaining.<sup>429</sup>

Another formidable barrier to the unionization of migrant workers is fear of employer retaliation. This fear is most accentuated with regard to undocumented migrant workers, who make up half of all agricultural laborers, and who are most likely to face deportation if they organize against workplace exploitation.<sup>430</sup> Migrant workers who have an employer-contingent immigration status, such as an H-2A visa, may also feel that if their employer retaliates, they could lose their job and become subject to deportation.<sup>431</sup>

In addition to the threat of employer retaliation, farm labor contractors, who are often the only point of contact between employers and workers, have opposed unionization.<sup>432</sup> Employers or contractors can prevent union representatives from entering their property, making it hard for unions to gain access to workers like H-2A visa holders, who all stay in housing that their employers either own or control.<sup>433</sup> In January 2021, the U.S. Supreme Court struck down a law that allowed union organizers to enter farms to speak to workers during nonworking hours.<sup>434</sup>

For temporary or seasonal migrant workers – which includes many workers in the agriculture industry – there are additional barriers to unionization. First, the short and seasonal nature of the work is not conducive to a union model, which requires time for collective bargaining and organizing.<sup>435</sup> Second, temporary and seasonal workers are more likely to be unfamiliar with the language, culture, and legal system in the United States. These barriers have been observed among migrant workers from Southern Mexico and Central America who do not speak Spanish or English.<sup>436</sup>

The barriers to unionization are acute for domestic workers, a sector that has been shown to be particularly vulnerable to abuse and exploitation.<sup>437</sup> In 2018, approximately 21 percent of all migrant work in the United States worked in the care economy, which is double the percent of non-migrant work in the sector.<sup>438</sup> Furthermore, migrant work in the care economy heavily skewed towards women,<sup>439</sup> around 35 percent of whom worked in the care economy in 2018 compared with 10 percent of men.<sup>440</sup> As noted above, the NLR expressly excludes domestic workers from coverage.<sup>441</sup> As such, domestic workers in the United States lack the right of collective bargaining, impacting their wages and work conditions.<sup>442</sup>

The foregoing barriers to union representation, which affect a large cross-sector of migrant workers in the United States, significantly impact workers' wages. Research has found that unionized immigrant workers earn more than non-union workers. In 2009, the average unionized immigrant worker earned \$18.61 per hour compared to \$12.34 among non-unionized immigrant workers. Unionized immigrant workers were also more likely to have health insurance and a retirement plan.<sup>443</sup> Additionally, in the U.S. unionized Hispanic workers are paid 20.1 percent more than non-unionized Hispanic workers.<sup>444</sup>

## NON-RECOGNITION OF FOREIGN QUALIFICATIONS

**U.S. employers often do not recognize degrees obtained abroad, forcing migrant workers into jobs below their qualifications and skills and further depressing their wages.** This practice is common in the care sector, where language barriers and discrimination push predominantly female workers to perform labor below their level of skills and training.<sup>445</sup>

According to the ILO Report, in 2018, 78.7 percent of migrant workers in the U.S. had a secondary education, yet only 35.8 percent of migrant workers held a high- or semi-skilled job; this discrepancy does not exist among U.S. nationals.<sup>446</sup> That year, 48.8 percent of non-migrant workers in the U.S. had high-skill jobs, compared to only 29.8 percent of migrant workers.<sup>447</sup> Further, about 5 percent of migrant wage workers had semi-skilled jobs,, while about 10 percent non-migrant workers held semi-skilled positions<sup>448</sup> Meanwhile,

around 27 percent of migrant workers performed low-skilled jobs, five percent more than non-migrant workers; 18 percent of migrant workers performed unskilled jobs, compared to seven percent of non-migrant workers.<sup>449</sup>

Experts agree that these disparities are, at least partially, caused by employers' unwillingness to recognize foreign qualifications and degrees.<sup>450</sup> The U.S. government does not have a uniform policy to regulate and facilitate the recognition of degrees obtained abroad, placing the onus on migrant workers to seek degree and qualification recognition themselves. Under this decentralized and largely privatized system, international degree holders must turn to a "competent authority" – which could be an educational institution, private employer or state or territorial licensing board – to recognize their degrees and qualifications. Private credential evaluation services have emerged to account for this lack of regulation,<sup>451</sup> though these services are often expensive.<sup>452</sup> A 2016 analysis found that 25 percent of foreign-born college graduates worked in low-skilled jobs or were unemployed as opposed to only 18 percent of college-educated nationals.<sup>453</sup>

For undocumented workers, the disparities are even more stark. As of 2018, undocumented workers earn wages that are 42 percent less than U.S.-born and regularized workers.<sup>454</sup> Even when accounting for education and skills, studies estimate a wage gap between 8 to 24 percent.<sup>455</sup> Seventy-five percent of undocumented workers are considered overqualified – based on education and skills – for their chosen employment, versus a 48 percent overqualification rate in documented workers.<sup>456</sup> A 2015 study on undocumented migrant workers from Mexico and Central America revealed that low-skilled migrant men received lower returns on their previous work experience and educational attainments than nationals in similar positions.<sup>457</sup> Similarly, a study published in 2010 on Mexican migrant workers in the U.S. showed that Mexican migrant workers – both documented and undocumented – received lower wages than similarly situated nationals, despite having comparable educational levels.<sup>458</sup>

If employers do not recognize their qualifications, migrants may have to repeat their studies or seek out additional qualifications.<sup>459</sup> Consequently, nearly two million college-educated immigrants and refugees are unemployed or underemployed. Undocumented migrants with college degrees face additional challenges, with forty percent underemployed.<sup>460</sup>

## EMPLOYER ABUSE OF VISA SYSTEM AND INCONSISTENT GOVERNMENT OVERSIGHT

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**Employer abuses like unlawful deductions, withholding of overtime, failure to pay minimum wage, and violations of worker contracts lead to significant underpayment of wages.**<sup>461</sup> The worker visa system in the United States is highly susceptible to misuse, especially through the misclassification of workers. Employers sometimes misclassify workers to avoid workplace protections reserved for certain classes of workers. For example, employers misclassify H-1B workers as B-1 or L-1 workers in order to avoid paying the prevailing wage required under the H-1B program and circumvent quotas that limit the number of worker visas in that program.<sup>462</sup> In fact, a 2008 U.S. Citizenship and Immigration Services (USCIS) report showed that 13 percent of high-skilled visa petitions contained incorrect information about the position and working conditions, or even contained companies that did not exist.<sup>463</sup> In addition, many H-2B workers are misclassified as independent contractors for similar reasons.<sup>464</sup>

Misclassifications have a detrimental impact on migrant wages. For example, migrants in back-of-house restaurant positions are sometimes wrongly classified as tipped workers, whose minimum hourly wages are less.<sup>465</sup> H-2A workers are frequently misclassified as H-2B workers, which allows employers to pay workers substantially less and not offer them free housing and federally funded legal services available to H-2A workers.<sup>466</sup> Another common form of misclassification involves employers misstating the work category for

H-2B employees and adhering to a lower prevailing wage than the work warrants.<sup>467</sup> Noncitizens are more likely to experience minimum wage violations, often due to independent contractor misclassification, than both U.S.-born and naturalized citizens. In 2017, 6.5 percent of noncitizens reported being paid below the minimum wage.<sup>468</sup>

The misclassification of H-2B workers as independent contractors also presents additional hurdles for workers pursuing claims of withheld wages.<sup>469</sup> Independent contractors are not covered under the NLRA, and minimum wage provisions do not apply to them.<sup>470</sup> They are also ineligible for unemployment insurance, workers compensation, and overtime. The lack of minimum wage standards facilitates lower compensation and exclusion from the NLRA limits collective bargaining, leaving the workers with little recourse for exploitative labor terms and conditions.<sup>471</sup>

Government agencies' uneven oversight further enables employers' misuse of labor visas. State agencies responsible for labor and employment conditions, such as the Department of Labor, do not systematically audit employers for compliance with I-9 documentation.<sup>472</sup> This lack of effective oversight allows for misclassification and hiring of undocumented workers in otherwise unlawful employment conditions.<sup>473</sup> Without effective oversight and preventative mechanisms, migrant workers are left with little recourse, apart from often expensive and intimidating legal processes, to the benefit of employers.<sup>474</sup> U.S. Immigration and Customs Enforcement (ICE), the federal agency that focuses on enforcement of immigration laws, has raided worksites with unauthorized workers and deported them, with little accountability for their employers.<sup>475</sup> Employers can avoid liability by relying on perceived authenticity of documentation.<sup>476</sup> Employers have also successfully shifted blame onto labor brokers, who sometimes misclassify employees as independent contractors in order to bypass the employment verification system.<sup>477</sup>

## UNDER-ENFORCEMENT OF MIGRANT WORKERS' RIGHTS

**The U.S. relies primarily on employee complaints and legal claims to enforce migrant labor rights. Combined with a lack of adequate oversight and underenforcement of existing legal protections, this leaves migrant workers with limited access to justice. Employee-initiated complaints are onerous and risky for migrant workers, while enforcement bodies are under-resourced and often ineffective at resolving complaints.** The enforcement bodies that do exist to monitor and guarantee workers' rights do not always succeed in serving this purpose.<sup>478</sup> For example, while employer-provided housing must follow all "applicable safety standards," these standards are not specifically enumerated<sup>479</sup> and the DOL lacks sufficient resources to monitor for compliance properly.<sup>480</sup> Similarly, OSHA's processes provide inadequate protection for workers because of a lack of meaningful interagency cooperation to protect against retaliation and other labor law violations.<sup>481</sup>

In contrast to other States that proactively monitor workplaces, U.S. labor and employment protections rely primarily on employee complaints for enforcement. A system that relies on individual complaints is especially onerous for migrant workers, who often lack access to legal resources, experience language barriers, and lack community support.<sup>482</sup> Complaint processes are costly and risky for migrant workers. The negative consequences of nearly exclusive reliance on worker-initiated complaints have been well-documented. A migrant worker's visa can be revoked if the worker is fired from a job tied to their visa, which may cause them to be deported before they litigate the claim.<sup>483</sup> The National Employment Law Project has documented several cases of employer retaliation after a worker-initiated complaint. In most cases, the employer threatened to or did report the worker to DHS and ICE.<sup>484</sup> The Department of Labor (DOL) is limited in reach and resources, which may explain why it only investigates 80 percent of the complaints it receives.<sup>485</sup>

The Equal Employment Opportunity Commission (EEOC) and its state counterparts, tasked with addressing workplace discrimination, are also limited in resources and only initiate investigations after migrant workers initiate an onerous administrative process. The EEOC's budget is approximately 500 million dollars;<sup>486</sup> for comparison, the Environmental Protection Agency has a 12.083 billion-dollar budget for the same fiscal year.<sup>487</sup> Anti-discrimination claims first require workers to file a complaint with the EEOC field office within one hundred eighty days of the discriminatory act.<sup>488</sup> The EEOC then sends a copy of the charge to the employer<sup>489</sup> and begins an investigation.<sup>490</sup> Even when the EEOC finds preliminary evidence of discrimination, it often dismisses the case and issues a "Notice of the Right to Sue," noting that the charge is untimely or a violation is difficult to ascertain.<sup>491</sup> The EEOC has faced chronic backlogs that have contributed to the agency's limited ability to process cases. Since 2008, the EEOC has placed increasingly more complaints on its lowest-priority track, which means that these cases receive little investigation and no mediation or other efforts on behalf of the complainants. In 2018, 30 percent of cases were placed in this track. Additionally, in 2018, only 13 percent of all cases closed ended with a settlement or other relief for the complainant.<sup>492</sup>

After dismissal, the "Notice of the Right to Sue" effectively grants an individual permission to bring an anti-discrimination suit.<sup>493</sup> The employee can independently seek recovery in court within ninety days of receiving the notice, which often too short given barriers to legal and monetary resources.<sup>494</sup> In addition, migrant workers typically have to be physically present in the United States in order to carry out the suit, which is often difficult in the face of employer retaliation or a lengthy trial.<sup>495</sup>

Finally, though many labor and employment laws allow workers to bring their complaints and claims directly in court, this is not a viable option for all workers. Litigation in the United States is extremely expensive.<sup>496</sup> The temporary nature of visas as well as the threat of deportation further diminishes the possibility of a private civil suit. Finally, even when migrant workers are able to vindicate their claims in court, remedies are often unsatisfactory. This is especially true for unauthorized workers, to whom courts have foreclosed all legal remedies.<sup>497</sup>

The failure of the United States to adequately protect migrant workers' rights has not gone unnoticed internationally. The International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR) has noted the United States' lack of oversight in some occupations with high populations of migrant workers. Between 2012 and 2020, CEACR has repeatedly observed the United States' lack of compliance with the Worst Forms of Child Labour Convention, 1999 (No. 182), expressing concern about the longstanding practice of allowing children under 18 years to be employed in agriculture jobs under dangerous conditions, including long hours, exposure to pesticides, and risk of serious injury.<sup>498</sup> According to a 2018 Government Accountability Office (GAO) report, over 100,000 children work in agriculture, and an estimated 27 percent of those children hold a green card or are unauthorized.<sup>499</sup> The CEACR has also questioned U.S. compliance with the Shipowners' Liability (Sick and Injured Seaman) Convention, as non-resident foreign seafarers working on vessels registered in the U.S. are prevented from claiming injury or death benefits under certain circumstances. In 2011 and 2016, CEACR requested that the U.S. "ensure equality of treatment to all seafarers irrespective of their nationality."<sup>500</sup>

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## EFFORTS TO ADDRESS EXISTING BARRIERS FOR MIGRANT WORKERS

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### LEGISLATIVE AND POLICY EFFORTS BY GOVERNMENT

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In the last decade, there have been numerous calls for reform in immigration laws. Some of these efforts aim to improve the conditions for migrant labor. For example, the High-Skilled Integrity and Fairness Act drafted in 2017 proposed to change the visa allocation system for high-skilled workers to an auction system



in which employers would be granted visas based on the amount they were willing to pay.<sup>501</sup> It also sought to improve the working conditions that employers must guarantee.<sup>502</sup> The Fairness for High-Skilled Immigrants Act of 2019, which ultimately failed in the 116<sup>th</sup> Session of Congress, proposed to remove per-country caps for employment-based green card categories.<sup>503</sup> Most recently, on June 1, 2021, the Equal Access to Green Cards for Legal Employment (EAGLE) Act was introduced in Congress. The Act models itself after the aforementioned 2019 Act, and it would similarly eliminate per-country caps for employment-based visa categories and raises per-country caps for family-based visa categories.<sup>504</sup> The Act would also institute increased oversight of the H-1B program and provide additional authority for the Department of Labor to investigate and sanction H-1B employers for payment violations and misclassifications.<sup>505</sup> However, none of these legislative initiatives have been passed to date.

During the COVID-19 pandemic, the Centers for Disease Control and Prevention (CDC) has funded the National Resource Center for Refugees, Immigrants, and Migrant (NRC-RIM), which gives resources to community organizations and health departments supporting migrant communities impacted by COVID-19.<sup>506</sup>

## THE WORK OF UNIONS

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Unions' migrant worker-centered services and advocacy provide some support to migrant communities in the United States. Union support for migrant farmworkers is more robust than it is in other sectors. Three main unions that advocate for migrant farm worker's labor rights are United Farm Workers (UFW), Farm Labor Organizing Committee (FLOC) under the AFL-CIO, and Píneros y Campesinos Unidos del Noroeste (PCUN), all of which promote human rights for migrant farmworkers.<sup>507</sup>

Unions like UFW, FLOC, and PCUN provide services to migrant farmworkers and advocate for state-level policy supporting new regulatory measures and workplace monitoring to correct exploitative practices.<sup>508</sup> The UFW advocates for reforms on issues of worker protections, pesticides, and immigration. UFW has sponsored overtime pay laws for farmworkers in California and is supporting a similar bill at the federal level.<sup>509</sup> They have also advocated for improved heat-stress regulations and monitoring.<sup>510</sup> FLOC in North Carolina uses legal advocacy to represent migrant workers. From 2017-2019, FLOC helped migrant workers recover \$600,000 in stolen wages.<sup>511</sup> FLOC also educates workers on their rights and trains leaders to help fellow workers. PCUN offers support services to migrant workers. They run a farmworkers service center where workers can report abuses, receive legal representation, and find assistance with paperwork and translation.<sup>512</sup>

Unions have also advocated for better protections for guest workers at the national level. When the Biden Administration announced an increase in quotas for H-2B visas in Spring 2021,<sup>513</sup> ten trade unions representing food and commercial workers, craftworkers, painters, professional employees, boilermakers, and iron workers responded with a letter opposing the increase, citing the lack of worker safety in the H-2B program. The unions advocated instead for increased worker protections in the H-2B program, including standards for H-2B employers to pay prevailing wage and increased debarment of H-2B employers in violation of the law.<sup>514</sup>

## SUPPORT FROM CIVIL SOCIETY ORGANIZATIONS

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Civil society organizations (CSOs) provide a range of services and support to migrant workers in the United States. Organizations educate migrant workers on their rights, work with migrant workers facing labor abuses, provide legal services for migrant workers and engage in legal advocacy on migrant issues, connect migrant workers to resources, organize and promote migrant worker leadership, and advocate for worker



protections and rights. Many CSOs across the U.S. also engage in collective advocacy efforts. For example, Centro de los Derechos del Migrante, Inc. (CDM) has partnered with a network of organizations including Comité de Apoyo a los Trabajadores Agrícolas (CATA), Legal Aid Justice Center, and Rebirth, Inc., as well as the CDC, to campaign against the targeting of migrant workers in protein processing facilities in the Delaware, Maryland and Virginia region.<sup>515</sup>

CSOs have also influenced legislation promoting migrant worker's rights. The Rural and Migrant Ministry has coordinated the Justice for Farmworkers Legislative campaign in New York for twenty years to promote the input of migrant farmworkers in legislation. Their efforts culminated in the passage of the Farm Laborer Fair Labor Practices Act in 2019, which removed the exclusion of farmworkers from New York State Labor Laws.<sup>516</sup>

Furthermore, CSOs promote migrant worker justice across the U.S. and in countries of origin. For example, CDM conducts preventative "know your rights" training in over 230 Mexican communities with high rates of people who travel to work in the U.S. CDM is also a point of contact for migrant workers facing labor abuses in the U.S, providing intake, evaluation and referrals.<sup>517</sup> In the U.S. South, the Campaign for Migrant Worker Justice supports tobacco farmworkers through education, direct services, and organizing.<sup>518</sup> In Vermont, Migrant Justice runs a workers' rights hotline to recover stolen wages for migrant workers. Migrant Justice has organized migrant dairy workers to create the Milk with Dignity agreement with Ben & Jerry's Ice Cream, implementing worker-driven social responsibility with their suppliers.<sup>519</sup> In New Jersey, the Comite de Apoyo a los Trabajadores Agrícolas organizes to address wage theft, workplace discrimination, unfair firings and unsafe conditions.<sup>520</sup>

Though inadequate to the overwhelming need, many organizations do offer some legal assistance to migrant workers around housing, safe working conditions, and fair wages, including Migrant Legal Aid in Michigan and the Refugee and Immigrant Center for Education and Legal Services in Texas.<sup>521</sup> In addition, the U.S. has associations of workers in certain sectors with high populations of migrant workers. The National Domestic Workers Alliance (NDWA) is an association of domestic workers organizing for respect, recognition, and labor standards in the sector. The Alliance connects and empowers domestic workers through local chapters to help them organize for their rights.<sup>522</sup> The Alliance offers benefits to its members such as vision and prescription discounts, life insurance, and financial counseling. Additionally, NDWA advocates for legislative change through the passage of Domestic Workers Bills of Rights on the state and federal levels.<sup>523</sup> Additionally, several U.S. organizations advocate for migrant farmworkers, including Migrant Justice, the Campaign for Migrant Worker Justice and Comite de Apoyo a los Trabajadores Agrícolas among many others.<sup>524</sup>

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## FINDINGS

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There have been efforts in the US to improve labor and employment conditions for its diverse population of migrant laborers. However, significant barriers exist to meaningful reform. Further, the lack of political will, as evidenced by nearly absent monitoring and under-enforcement and the exclusion of vulnerable industries from labor protections, preserves inequalities between migrant and nationals evident in the substantial wage gap. As in Spain, the U.S. immigration system disadvantages many migrant workers upon arrival by making their legal status in the country dependent on continued employment with a specific employer. Loopholes, exclusions, and gaps in the US legal framework exacerbate this stark power imbalance. In addition, the government's lack of robust enforcement of laws that *do* protect migrants means that employers who engage

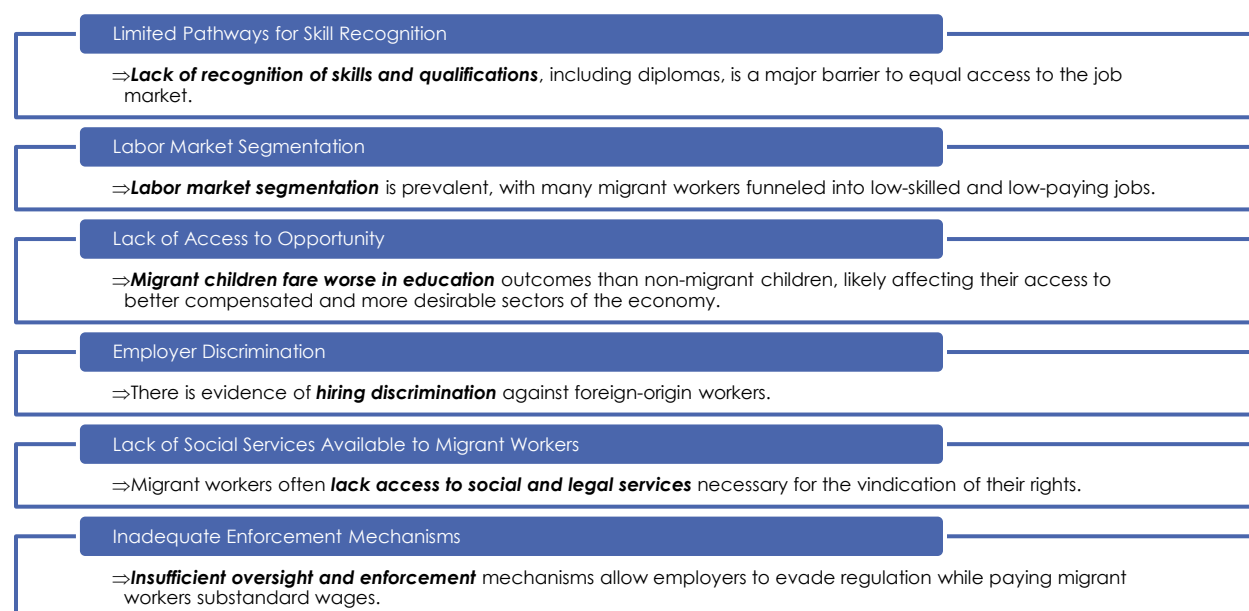
in underpayment, exploitation, and abuse often do so with impunity. These factors compound the disadvantages that many migrant workers experience compared to their national counterparts.

## BELGIUM

ILO research undertaken using 2015 (pre-COVID data) estimated that, in Belgium, the mean wage gap between migrant and national workers is 12.7 percent,<sup>525</sup> most of which (11.71 percent) is “unexplained.”<sup>526</sup> This is the case at all deciles of the wage distribution.<sup>527</sup> Thus, if migrants in Belgium were compensated in accordance with their labor market attributes (e.g. education and skills), the migrant pay gap would almost disappear.<sup>528</sup> The mean pay gap is highest in the middle of the wage distribution, and it shrinks at the bottom and top deciles of the wage distribution.<sup>529</sup> The estimated pay gap between migrant and national women is 15.1 percent, while the gap between migrant and national men is 10.10 percent.<sup>530</sup>

The case study on Belgium<sup>531</sup> highlights some factors that lead to a depression of migrant workers’ wages. In 2015, migrants (defined as non-nationals) comprised over 10 percent of the population and represented roughly nine percent of all wage workers in Belgium.<sup>532</sup> Following suggestions by stakeholders and experts working in the Belgian context, the case study also touches on the inequalities faced by all individuals considered of “foreign-origin’, a category which includes first-generation *and* second-generation “migrants” (those with at least one parent of foreign origin).<sup>533</sup> First-generation persons account for approximately 17 percent of the Belgian population<sup>534</sup>, while second-generation persons account for approximately 18 percent.<sup>535</sup> Both of these categories may include some migrants (those who lack the Belgian nationality).

Research conducted suggests the following summary conclusions:



Under Belgian law, anyone who is not of Belgian nationality is considered a “foreigner.”<sup>536</sup> This category includes EU nationals and non-EU nationals (i.e., third-country nationals).<sup>537</sup> Statistics on the number of “migrants” in Belgium, defined as non-nationals, are difficult to ascertain. In 2020, the U.N. Department of Economic and Social Affairs estimated that around two million individuals living in Belgium were born outside of the country.<sup>538</sup> However, the number of “foreign-origin” persons (those with at least one non-national parent) is significantly higher, at around 2.2 million people in 2021 (out of a total population of approximately 12 million).<sup>539</sup> A study has predicted that, given the influx in migration to Belgium in recent decades, one in two people in Belgium will be of foreign origin by 2060.<sup>540</sup>

Foreigners wishing to reside in the country for longer than three months must seek a resident permit from the National Register.<sup>541</sup> This permit details each applicant’s “reason for residence” and country of origin. According to the data from this register, the most common reasons people migrate to Belgium are for employment and family reunification.<sup>542</sup> Indeed, between 2010 and 2016, work was the primary reason for residence for over 50 percent of migrants from the EU-14 and nearly 70 percent of migrants from the EU-13 regions. Conversely, family was the reason for residence for over 65 percent of people from EU Candidate nations and over 50 percent of people from other European nations.<sup>543</sup> Foreigners in Belgium are often from European countries; France, Italy, and the Netherlands have historically comprised over 40 percent of the total immigrant population.<sup>544</sup> Family was also the primary reason for residence for those from the Maghreb, Other African, and Oceania/Far East, Other Asian, and South/Central American regions.<sup>545</sup> In addition to migrating to Belgium for work or family, people also migrate to Belgium to study or seek international protection.<sup>546</sup> Despite some efforts at regularization, there is still a sizeable number of “irregular migrants” in Belgium.<sup>547</sup> Statistics from 2007 indicate that the number was around 100,000.<sup>548</sup> More recent estimates place the number of “unauthorized workers” anywhere between 40,000 and 140,000.<sup>549</sup>

According to the ILO Report, in 2015, half of all migrant wage workers in Belgium were women, reflecting the share of female workers in the general population.<sup>550</sup> However, female migrant wage workers were over-represented in unskilled jobs, occupying such positions at around 34 percent (compared to around 16 percent of male migrant wage workers).<sup>551</sup> In particular, migrant work in the care economy was heavily skewed towards women, around 50 percent of whom worked in the care economy compared with 10 percent of men.<sup>552</sup> Overall, around 22 percent of migrant wage workers performed unskilled jobs in 2015 – a significantly higher proportion than national wage workers, less than 10 percent of whom performed unskilled jobs.<sup>553</sup> Meanwhile, only about 22 percent of migrant workers served in high-skilled occupations (compared to around 36 percent of national workers), despite both populations having similar higher-education backgrounds (about 32 percent of migrant workers compared to 37 percent of national workers).<sup>554</sup> These discrepancies, however, differ widely according national origin of the migrant population.<sup>555</sup>

Belgium has standing agreements with a number of both EU and non-EU nations governing labor relations.<sup>556</sup> These agreements detail, inter alia, the recruitment and settlement of workers to and from Belgium,<sup>557</sup> working and living conditions for migrants,<sup>558</sup> the guarantee of certain social rights,<sup>559</sup> the employment of students studying in Belgium or a host country,<sup>560</sup> and family reunification.

NON-DISCRIMINATION LAWS AND INTERNATIONAL  
COMMITMENTS RELATED TO MIGRANT WORK

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The Constitution of Belgium guarantees equality and prohibits discrimination under the law.<sup>561</sup> Articles 10 and 11 specifically guarantee equality between men and women and abolish any distinctions on the basis of class.<sup>562</sup> In addition, Article 23 provides that “[e]veryone has the right to lead a life in keeping with human dignity” and guarantees social, economic and cultural rights, including the rights to freely choose an occupation, collective bargaining, equal pay for equal work, fair terms of employment and fair remuneration.<sup>563</sup>

Several laws in Belgium expand the legal basis for combating discrimination in employment and occupation, bringing them in line with European anti-discrimination policy.<sup>564</sup> These include: the Law of 10 May 2007 combatting certain forms of discrimination,<sup>565</sup> the Law of 10 May 2007 addressing gender-based discrimination generally,<sup>566</sup> and the Law of 22 April 2012 addressing the wage gap between men and women specifically.<sup>567</sup> The Decree of 19 March 2012 protects against discrimination based on “nationality, alleged race, skin color, ancestry or national or ethnic origin, age, sexual orientation, religious or philosophical belief, disability, sex and related criteria such as pregnancy, childbirth and maternity, or transsexualism, civil status, birth, wealth, political ideas, union conviction, language, current or future state of health, a physical or genetic characteristic or social origin.”<sup>568</sup> In addition, the Law of 30 July 1981 protects against acts inspired by racism and xenophobia.<sup>569</sup> Taken together, these laws prohibit discrimination on the grounds of age, gender identity, marital state, birth, religious and political beliefs, language, disability, and social origin. Importantly, some of these laws also provide avenues for victims of discrimination to seek relief in competent civil or specialized labor courts.<sup>570</sup>

At the international level, Belgium has ratified most UN human rights treaties and ILO Conventions relevant to migrant workers, including the fundamental ILO Conventions (except those on a safe and health working environment); the Protocol to the Forced Labour Convention, 1930; the Migration for Employment Convention (Revised), 1949 (No. 97); the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26); the Protection of Wages Convention, 1949 (No. 95); the Labour Inspection Convention, 1947 (No. 81); the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) and Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121); the Employment Policy Convention, 1964 (No. 122); the Private Employment Agencies Convention, 1997 (No. 181); and the Domestic Workers Convention, 2011 (No. 189). However, Belgium has not yet ratified the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), or the UN International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families.<sup>571</sup> These unratified conventions provide additional protection to migrant workers, including those in irregular situations, against forced labor; the confiscation and destruction of identity, travel, and work documents by employers and government officials; and from being imprisoned for failing to fulfill employment contracts.<sup>572</sup> They also guarantee basic human rights to all migrant workers, irrespective of status.

IMMIGRATION FRAMEWORK RELEVANT TO MIGRANT WORK

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Belgium’s federal government is primarily responsible for immigration policies, while regions and communities<sup>573</sup> manage integration strategies. The Law of 15 December 1980 on the Entry, Residence, Settlement, and Removal of Foreign Nationals (hereafter “the 1980 Migration Law”) is Belgium’s main immigration statute, also covering asylum. The Law of 30 April 1999, meanwhile, sets out the types of work permits granted to foreigners who wish to work in Belgium. Since the 1970s, labor migration has been limited

to high-skilled migrants and migrants who work in specific sectors. Belgium has other immigration laws that cover integration<sup>574</sup> and requirements for the acquisition of nationality.<sup>575</sup>

According to the 1980 Migration Law, citizens of EU member states – as well as citizens of European Economic Area (EEA) plus Switzerland – may enter Belgium if they have a national identity card or a valid passport. They do not require work visas and may stay for more than three months in Belgium if they obtain a resident permit and are employed or self-employed, if they enter to seek employment, or if they have enough resources not to be a burden on the Belgian government.<sup>576</sup> A residence permit is valid for five years and must be renewed.<sup>577</sup> An EU citizen who completes five years of uninterrupted stay in Belgium may reside in Belgium permanently.<sup>578</sup>

The process for non-EU/EEA and Swiss citizens to both live and work in Belgium is different.<sup>579</sup> Since March 2019, in most cases, third-country nationals who wish to live and work in Belgium must submit a single permit request to the appropriate regional administration. Most requests are submitted through an employer, but there are procedures for self-employed persons as well.<sup>580</sup> The request for a work permit is the same as the request for a stay permit (hence the name “single” permit).<sup>581</sup> The main types of work permits differ by region, length of stay, and type of work, but generally share the same characteristics:

Permit Name	Eligibility	Length of Stay	Other Information
Work Permit B	N/A	One job post with a specific employer for up to 12 months; can be renewed if the requirements continue to be met. <sup>582</sup>	Before hiring a foreign worker, the employer must first obtain an employment authorization and show that no suitable candidate is available within the Belgian or EU market (EU nationals and long-term residents) for that position. Employers must pay at least the set minimum wage.
Work Permit A	Workers who held a Work Permit B for a certain length of time. (In the Flanders Region, applicants must have been legally working in Belgium for four out of the five years preceding their application, <sup>583</sup> while in the Wallonia Region, the period is four out of ten years, <sup>584</sup> and in the Brussels Region the period is two out of ten years. <sup>585</sup> )	Indefinite	This permit often leads to permanent residency. Permanent residents do not need a work permit.
Work Permit C	Temporary visitors, such as students and family members of residents, as well as asylum seekers.	Up to 12 months; can be renewed under certain circumstances. <sup>586</sup>	N/A
European Blue Card	Highly-qualified workers from outside the EU, provided they have higher professional qualifications, such as a university degree, and an employment contract or binding job offer with a Belgian company offering the worker a salary above a certain level.	N/A	The EU Blue Card applies in 25 of the 27 EU States (it does not apply in Denmark or Ireland). <sup>587</sup>
Self-Employed and Posted Workers	Posted workers and independent (self-employed) workers in certain occupations may pursue temporary or part-time work in Belgium by filing a “Limosa Declaration.” <sup>588</sup>	N/A	Because it is somewhat easier to obtain this form of authorization, “sham self-employment” – the practice of performing undeclared work for an employer without a permit – is very common in Belgium. <sup>589</sup> Since 2016, there have been two important legislative changes aiming to curb unauthorized work. First, workers may be sanctioned if they have undeclared employment. <sup>590</sup> Second, payment of wages in cash is forbidden. <sup>591</sup>

## LABOR LAWS AND THEIR RELEVANCE TO MIGRANT WORKERS

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Like the other case study countries, Belgium has various laws and regulations covering wages, collective agreements, migrant labor, and oversight and dispute mechanisms, as well as additional regulation of certain labor sectors. Laws relating to occupational safety are codified in the Code du bien-être au travail, or “Code of well-being at work.”<sup>592</sup> The Code covers basic safety requirements for workplaces, including regulations limiting exposure to environmental factors, workplace accidents, and the operation of work equipment.<sup>593</sup> Other laws set maximum working hours, provide for a weekly day of rest, and guarantee paid leave to certain employees, such as parents who are expecting children.<sup>594</sup>

## WAGES AND COLLECTIVE AGREEMENTS

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Wage negotiations in Belgium are structured at the national level, the sector level, and at the individual company level.<sup>595</sup> While sectors and companies may choose to increase minimum wages, they cannot go below what is set at the national level. Following the passage of the Law of 5 December 1968, which authorized the creation of labor unions and empowered them to enter into collective agreements with employers,<sup>596</sup> the key players in wage negotiations and agreements have been unions and employers.<sup>597</sup>

The three main trade unions in Belgium are: the Confederation of Christian Trade Unions (“ACV/CSC”), the General Labour Federation of Belgium (“ABVV/FGTB”), and the General Confederation of Liberal Trade Unions of Belgium (“ACLVB/CGSLB”). Together, they cover 55-60 percent of workers in Belgium.<sup>598</sup> Unions play a major role in collective bargaining agreements,<sup>599</sup> and they also provide unemployment and legal help to migrant workers. Unions are leading forces in organizing movements that may lead to legislative action.<sup>600</sup> Unions are also key in bringing legal claims for violations of contractual terms.<sup>601</sup> Additionally, unions work on raising funds<sup>602</sup> to help their workers. For example, ACV/CSC has started two social funds. One is for workers who have difficulties within their own families, and the other is to finance trainings and workshops, so workers have access to information on health and safety regulations in their sector.<sup>603</sup> The National Labor Council provides another route for workers and employers to address their concerns. Established by Law of 29 May 1952, the National Labor Council communicates to the government “all opinions or proposals concerning general problems of a social nature of interest to employers and workers.”<sup>604</sup>

According to public sources and conversations with union representatives in Belgium, however, there are not many programs targeted towards migrant workers.<sup>605</sup> This is in part due to language and cultural barriers that prevent or discourage migrants from joining unions, but also due in part to high union fees and employers pressuring migrant workers not to speak to third parties.<sup>606</sup> Outreach campaigns aimed at mobilizing migrant workers (and identifying their unique needs), therefore, are most helpful at early stages in the hiring process, given that discrimination tends to occur at the hiring stage.<sup>607</sup>



## SPECIAL REGULATIONS FOR EU POSTED WORKERS

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In Belgium, a posted worker is “an employee [from an EU Member State] who is sent by his employer to carry out a service in another EU Member State on a temporary basis, in the context of a contract of services, an intra-group posting or a hiring out through a temporary agency.”<sup>608</sup> In general, companies based in the EU, the European Economic Area (EEA), and Switzerland may carry out construction work in Belgium using their own workers without a work permit or qualification certification.<sup>609</sup>

Employers who post workers to Belgium must comply with Belgian labor laws, Royal Decrees, and binding collective agreements that cover working time and holidays, nondiscrimination, health and safety, and remuneration conditions.<sup>610</sup> However, if the relevant provisions in the law of the worker’s country of origin are more favorable to the worker, those must be applied.<sup>611</sup> Employers must also comply with the EU directives on labor and employment and posted workers.<sup>612</sup> A posted worker’s actual travel, accommodation, or food expenses may not be deducted from their remuneration; however, allowances directly linked to the secondment (posting) may otherwise be considered part of the remuneration conditions.<sup>613</sup> With regard to workplace health and safety for posted workers, both the host company and the sending employer must sign an agreement covering their cooperation over health and safety regulations.<sup>614</sup>

Pursuant to the Belgian Act of 5 March 2002 concerning working conditions, remuneration, and employment (as amended in 2016), workers currently or previously posted in Belgium may take legal action in Belgium to assert their rights under the Act, without prejudice to their ability to sue in another country’s courts.<sup>615</sup> Further, organizations that represent workers (i.e. unions) or organizations that represent employers may bring legal action in Belgium in the case of disputes regarding the rights of posted workers, and they may do so without authorization or complaint from the affected worker.<sup>616</sup>

## CONSTRUCTION WORKERS

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There are about 1.3 million posted workers in the construction industry alone.<sup>617</sup> Jobs within the construction industry are divided into different categories based on skill level, with the national minimum wage varying by category; these numbers come from joint labor agreements that have become part of Belgian labor law.<sup>618</sup> Categories range from I to IV, with mandated minimum wages ascending according to the specialization required for the job.<sup>619</sup> The lower range starts at around 14 euros an hour, and the latter categories can receive up to around 21 euros per hour.<sup>620</sup>

In addition to minimum wage, construction workers in Belgium also receive annual “loyalty stamps” and “bad-weather-stoppage stamps” from the Belgian government, funded by contributions that employers are required to make to the occupational welfare fund for construction workers.<sup>621</sup> Loyalty stamps are intended to recognize workers’ loyalty to the construction sector and equal nine percent of their gross compensation.<sup>622</sup> Bad-weather-stoppage-stamps compensate employees who primarily work outdoors for their inability to work due to bad weather and equal two percent of gross compensation.<sup>623</sup> Workers who perform night work,<sup>624</sup> Saturday work,<sup>625</sup> and dangerous work receive additional compensation.<sup>626</sup> Construction workers must also receive particular breaks and rest periods, compensation in payment or time off for overtime, and at least twenty-four hours’ notice about changes to their working hours.<sup>627</sup>

## THE SERVICE VOUCHER SYSTEM AND REGULATIONS FOR DOMESTIC WORKERS

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In Belgium, one sector in particular – the care sector – has stark disparities in pay for national and foreign-born workers. Migrant workers receive 20 percent less pay than nationals, a gap significantly higher than the one that exists in the general migrant population.<sup>628</sup> According to the ILO Report, about 28 percent of all migrant work occurs in the care economy, double that of national work in the sector.<sup>629</sup> As noted above, this work sector is heavily dominated by women: around 50 percent of female migrant workers work in the care economy compared with 10 percent of male migrant workers.<sup>630</sup>

In Belgium, there is a national service voucher system for regulating domestic service work.<sup>631</sup> The Royal Decree concerning Service Checks of 12 December 2001, as amended on 17 August 2012,<sup>632</sup> created this system by introducing a service voucher agency (a third party) in the relationship between the private employer and the domestic worker. This third party becomes the formal employer, rather than the household or family.<sup>633</sup> To benefit from the voucher system, the worker must have Belgian nationality or otherwise be authorized to live and work in Belgium.<sup>634</sup> The Royal Decree concerning Service Checks of 12 December 2001 also sets the guidelines for this program, including working conditions, remuneration, and the repayment of subsidies for non-compliance. Lastly, employers are exempted from paying social security contributions for domestic workers who work for less than four hours a day or less than 24 hours a week.<sup>635</sup> The voucher system aims to facilitate registration of domestic workers.

In 2016, Belgium had 129,134 voucher workers.<sup>636</sup> Of these workers, over 97 percent were female and over 28 percent were of a foreign nationality.<sup>637</sup> These numbers do not account for domestic work conducted by irregular-status migrants, however, given that workers in an irregular situation are unable to participate in the program due to their undocumented status and related inability to contract.<sup>638</sup> In 2016, EU-13 migrants made up the greatest percentage of service voucher workers at 42 percent, while South/Central American migrants comprised the second highest share, at 29 percent.<sup>639</sup>

According to the Employment Contracts Act of 1978 (loi due 3 juillet 1978 relative aux contrats de travail, article 5, 108 à 188), domestic service employers must ensure suitable work conditions, safekeeping of the personal objects, and necessary clothing for domestic workers to carry out their work. The Act also sets standards for sick leave and disability pay.<sup>640</sup> Collective Agreement No. 43 also includes domestic workers under its scope. This agreement provides a minimum wage for all workers 21 years or older.<sup>641</sup>

The Belgian Labor Inspectorate's oversight, enforcement, and dispute mechanisms help regulate labor abuses. The departments of the Inspectorate conduct workplace inspections by request or on their own initiative.<sup>642</sup> Inspection of domestic work often occur in response to reports from neighbors, householders' acquaintances, neighborhood police, and social workers visiting the home.<sup>643</sup> If the Inspectorate finds a lack of compliance, it can impose penalties on the employer, including fines.<sup>644</sup> It may also mediate disputes between workers and employees.<sup>645</sup> All complaints brought to the Inspectorate are kept confidential.<sup>646</sup>

In 2015, the Labor Inspectorate reported on about 600 - 700 cases in which a spontaneous inspection found an undocumented worker at a work site, out of 9,583 total inspections.<sup>647</sup> While the Inspectorate initiates administrative procedures to sanction the employer in a timely manner, it typically does not initiate the parallel procedures to claim the unpaid wages owed to the undocumented worker. In the limited number of cases in 2015 where an undocumented worker received compensation for withheld wages, the undocumented workers filed the complaint directly to the labor inspectorate office themselves. Further, most received minimal compensation, under the three-month presumed minimum for duration of employment. Out of 200 cases where CSC – a trade union assisting undocumented workers to reclaim their wages – intervened in 2015, fewer than 30 complaints went to the Labor Inspectorate due to the high burden required to establish proof of a

working relationship, and none recuperated outstanding wages. Similarly, of 30 complaints launched with the help of the NGO OR.C.A. (Organization for Undocumented Workers) in 2015, only one has been successful in recuperating outstanding wages.

A 2014 Social Fieldwork Research report interviewed 30 experts working in the context of the inspection and processing of labor exploitation cases to gain a representative understanding of exploitation complaints in Belgium. Twenty-five experts reported encountering human trafficking for labor exploitation,<sup>648</sup> and experts across all professional groups reported that migrants performing unskilled labor were at highest risk of exploitation. Almost all interviewees identified construction work as a sector where labor exploitation occurs most frequently. Other sectors identified as high in labor exploitation included the domestic and non-domestic household help sector and the agriculture sector.<sup>649</sup> All of these sectors have relatively high proportions of migrant workers.

Two quasi-judicial bodies promoting equality can receive labor-related complaints. The Centre for Equality and the Fight against Racism (UNIA) investigates individual reports of discrimination in the workplace and offers a variety of solutions, including negotiation and reconciliation, legal action (recommended in one percent of cases), providing an official recommendation to concerned authorities, and referring the case to a local partner.<sup>650</sup> The Institute for the Equality of Women and Men (IEFH) also has a legal unit that handles complaints concerning discrimination based on sex. The legal unit offers advice, assistance in conciliation or judicial procedures, and gives opinions.<sup>651</sup>

There are various dispute mechanisms available to migrants and nationals in Belgium. However, legal remedies differ depending on whether someone is a third country national or an EU national.<sup>652</sup> This is because EU nationals benefit from more protective EU treaties, regulations, and laws, while non-EU nationals are only protected by Belgian laws, which can often be more protective of Belgian nationals.<sup>653</sup> Nine labor courts have jurisdiction over labor and employment disputes. These courts cover individual employment disputes, social security issues, disputes regarding the establishment and running of corporate bodies with employees' representatives, and disputes arising from administrative fines. According to lawyers and legal officers who are involved in the system, success rates do not seem to correlate with whether or not someone is a Belgian national or a third country national.<sup>654</sup> Conciliation, mediation, and arbitration may be used as alternative disputes resolution.

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## FACTORS CONTRIBUTING TO THE WAGE GAP

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### NON-RECOGNITION OF FOREIGN QUALIFICATIONS

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**Lack of recognition of skills and qualifications, including diplomas, is a major barrier to equal access to the job market.** In Belgium, those wishing to work in certain regulated professions, such as the medical profession, are legally required to have a recognized diploma.<sup>655</sup> A recognized diploma is also often a condition for working in the public sector<sup>656</sup> and as a self-employed person.<sup>657</sup> Migrants, however, face significant barriers to the recognition of foreign degrees and qualifications,<sup>658</sup> including incomplete access to documents, high costs associated with translating documents and submitting requests for recognition, and timing limits.<sup>659</sup> As a result, studies have shown that “on average, one out of every three (33.2 percent) migrants is overqualified for their job compared to approximately one out of every five native-born Belgians (19.8 percent).”<sup>660</sup>

Notably, a qualification recognition framework exists for higher education but not for lower education certificates,<sup>661</sup> which are more likely to be in a foreign language or format, decreasing their chances of employers

considering them legitimate.<sup>662</sup> Even if they are considered legitimate, foreign master's degrees are often translated into Belgian bachelor's degrees.<sup>663</sup> Furthermore, unlike other EU countries, Belgium does not have laws providing for the automatic recognition of degrees from former colonies.<sup>664</sup> The consequences of degree and qualification discrimination vary according to gender, nationality, and worker status. EU migrants are less likely to experience difficulties with foreign degree and qualification recognition than non-EU migrants,<sup>665</sup> while being a woman significantly increases the risk of over-qualification.<sup>666</sup>

## UNEQUAL EDUCATIONAL OPPORTUNITIES

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**Migrant children fare worse in education outcomes than non-migrant children, likely affecting their access to better compensated and more desirable sectors of the economy.** Access to education and higher learning opportunities influence migrants' access to the labor market generally, but especially to more highly paid jobs and sectors with opportunities for advancement. Compared to Belgian nationals, children of migrants, including those who were born in Belgium to non-Belgian nationals, fare much worse in terms of education outcomes,<sup>667</sup> and there is some evidence that such outcomes are related to segregation in housing and schools.<sup>668</sup> Certain laws make schooling more expensive for migrants, while market mechanisms make some schools more privileged than others, thus perpetuating measurable differences in schooling experiences for students.<sup>669</sup>

Additionally, the Commissioner for Human Rights of the Council of Europe has found that children of immigrant backgrounds are over-represented in specialized education “due to a number of factors, including disadvantage connected to a lack of proficiency in the language of education.”<sup>670</sup> The differences in classroom quality, language prerequisites for secondary education, and channeling of students into professions based on assessment of language over competence eventually lead to inequality in work opportunities and lower pay for migrants as well as workers of foreign origin.

## LABOR MARKET SEGREGATION

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**Labor market segmentation is prevalent, with many migrant workers funneled into low-skilled and low-paying jobs.** The Belgian labor market can be divided into two general segments: “The first is marked by stable jobs and high salaries, while the second is marked by temporary jobs, lower salaries, and more job insecurity,” with very little mobility between the two.<sup>671</sup> Labor market segregation manifests in migrants' overrepresentation in low-paid jobs. Indeed, according to the ILO Report, around 22 percent of migrant workers perform unskilled jobs, a significantly higher proportion than national workers, less than 10 percent of whom perform unskilled jobs.<sup>672</sup> In addition, temporary work contracts are much more prevalent among migrant workers than national workers.<sup>673</sup>

Labor market segmentation in Belgium has been developing for some time. According to data from 2008-2016, migrants from Asian States, Central and South America, and EU-13 States were overrepresented in sectors with low salaries.<sup>674</sup> Meanwhile, Belgian nationals were overrepresented in the three highest salary deciles throughout Belgium and underrepresented in the lowest three salary categories.<sup>675</sup> Labor market segregation on the basis of gender is also seen in Belgium, compounding the wage gap that women migrant laborers experience. For instance, domestic workers, the majority of whom are women of foreign origin,<sup>676</sup> receive 11.50 euro per hour while construction migrant workers, mostly male, receive an average of 16 euros per hour.<sup>677</sup>

**Hiring discrimination likely plays a major factor in these trends.**<sup>678</sup> Even though Belgian laws prevent discrimination in the workplace,<sup>679</sup> there is evidence of hiring discrimination from various studies.<sup>680</sup> A study focusing on the discrimination of foreigners in the labor market in Brussels demonstrated that almost 50 percent of people of foreign origin will face discrimination at least once during their job search.<sup>681</sup> Non-nationals are often given different information than nationals, and they often face worse working conditions.<sup>682</sup> Furthermore, even though employers are the main actors behind hiring, several court cases have demonstrated that discrimination may occur due to customer preferences and pressure.<sup>683</sup>

## BARRIERS TO ASCERTAINING DISCRIMINATION AND ACCESSING REMEDIES

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**Migrant workers often lack access to social and legal services necessary to vindicate their rights.** Migrant workers are less integrated into the social and legal structures at the local level and therefore often lack knowledge of their rights and how to vindicate them, with first-generation and unauthorized migrants suffering the most.<sup>684</sup> Newcomers experience greater difficulties in forming social bonds with their coworkers due to language barriers, among other factors.<sup>685</sup> The result is that migrant workers often fail to discover disparities in pay or learn of different routes to redress. This problem has been documented in the construction sector. Because construction jobs are divided into several categories, each with their own wage rates, it is particularly difficult for migrant workers to know whether they are being paid less because of discrimination or because of a difference in job assignment.<sup>686</sup>

Even when migrant workers are aware that they are receiving lesser wages or otherwise experiencing workplace discrimination, many choose not to complain due to language barriers, lack of support, or fear of losing their job or being deported. Every time a migrant worker contacts the police to place a labor complaint, the police notify the Migration Office.<sup>687</sup> Although the Migration Office maintains that they do not deport migrant workers complaining of workplace discrimination,<sup>688</sup> this notification system nonetheless results in a chilling effect, discouraging migrant workers from reporting workplace violations. Finally, when it comes to seeking relief from dispute mechanisms, migrant workers have weaker access to legal resources than Belgian and other EU nationals.<sup>689</sup>

These challenges are exacerbated for migrant workers in irregular situations.<sup>690</sup> As noted above, there are anywhere between 40,000 and 140,000 migrants working in Belgium without authorization.<sup>691</sup> According to ORCA, an organization dedicated to helping workers in irregular situations, these workers are vulnerable to wage theft, exploitation and poor working conditions.<sup>692</sup> Migrant workers who are in an irregular situation may not be aware of their rights and may have trouble identifying where to address their complaints. NGOs such as ORCA and Ciré have raised concerns that there is no single point of contact where unauthorized workers can address their complaints anonymously. Fear of repercussions, particularly relating to residence status, also prevents workers from lodging complaints. Accordingly, these organizations have recommended creating a central contact point, which would guarantee worker anonymity while taking appropriate actions. Furthermore, for unauthorized workers, it can be difficult to provide proof of the employment relationship. Employers often attempt to minimize responsibility to avoid sanctions, and workers themselves may be reluctant to cooperate with officials. Migrants in irregular situations also risk paying the costs of court proceedings if they lose their case, and they are not guaranteed a temporary residence permit while their case is tried – both factors which likely dissuade workers from pursuing their case in civil court.<sup>693</sup>

## BARRIERS TO COLLECTIVE BARGAINING

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**Migrant workers in Belgium may face various barriers to collective bargaining.** Membership fees, even with reduced rates, often dissuade migrant workers from joining a collective bargaining agreement.<sup>694</sup> Heavy work schedules can make it difficult for workers to participate in a union.<sup>695</sup> Additionally, some migrant workers may not trust unions. Specifically, they may not trust that unions will not transmit personal data to government officials, and they may come from regions where trade unions are viewed as communist establishments.<sup>696</sup>

Along with cultural gaps, language barriers present a further obstacle to organizing migrant workers.<sup>697</sup> Moreover, migrant workers may face difficulties in having their needs met once in a union because their needs may differ from other workers in their sector.<sup>698</sup> Lack of data collection on migrant demographics within the union can also make it hard to create targeted and useful resources for these workers.<sup>699</sup> Undocumented migrant workers who are vulnerable to deportation may face employer threats of deportation in retaliation for joining a union.<sup>700</sup> Further, migrant workers often work in informal sectors such as agriculture, construction, and domestic and care work, making it more difficult for unions to reach them.<sup>701</sup>

Posted workers, who are sent by employers in their home country to work in Belgium, face further difficulties. Often, these workers are only in Belgium for short-term work.<sup>702</sup> For example, migrant construction workers might move jobs frequently, which can make it difficult for union representatives to reach workers.<sup>703</sup> These workers may also face pressure from their employer not to speak to third parties.<sup>704</sup>

Domestic migrant workers are often undocumented and particularly vulnerable to employer threats. These workers have reduced access to information, and their employers often provide false information in an attempt to isolate the worker. As a result, migrant domestic workers have less knowledge of their labor rights and are prevented from taking steps to ensure they are respected.<sup>705</sup> Migrant domestic workers who participate in the voucher system are particularly hard to reach because they work for many clients and do not regularly see colleagues.<sup>706</sup>

## INSUFFICIENT ENFORCEMENT OF MIGRANT WORKERS' RIGHTS

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**Insufficient oversight and enforcement mechanisms allow employers to evade regulation while paying migrant workers substandard wages.** The Belgian Labor Inspectorate's complaint procedures lead to the under-protection of migrant workers' rights for various reasons. First, inspection often focuses more on sentencing offenders than on obtaining desired outcomes for migrants, which can leave migrant workers without work and income.<sup>707</sup> Second, the Labor Inspectorate has successfully mitigated worker concerns of employer retaliation following employee-initiated complaints. As a result, workers will often complain only after enduring significant violations of their rights.<sup>708</sup> Additionally, complaints involving discrimination can be difficult to bring to court due to the need for robust evidence.<sup>709</sup>

The Belgian Labor Inspectorate system further presents significant issues for migrant workers in irregular situations. The frequent coordination of police and inspection efforts can be harmful to migrant workers.<sup>710</sup> While both the police and immigration authorities do not need to be involved or notified in labor inspection cases, police regularly accompany labor inspectors during inspections due to safety concerns, and police are obliged to check the residence permits of workers.<sup>711</sup> Further, as civil servants, labor inspectors themselves have the formal obligation to report migrant workers in an irregular situation to immigration authorities. Labor inspectors' duty to report links labor inspection to immigration enforcement and fundamentally undermines the complaint mechanism.<sup>712</sup> ILO's CEACR has expressed repeated concern over labor inspectors' duty to report irregular-status migrants, as this hinders their ability to protect the rights and



interests of migrant workers.<sup>713</sup> Although, in practice, labor inspections infrequently jeopardize workers' immigration status,<sup>714</sup> such coordination still has a chilling effect. Additionally, migrant workers face a fine for undeclared work, which is only waived if the worker files a complaint or is a potential victim of human trafficking or exploitation. The threat of sanction presents a major barrier for low-income and undocumented workers to file complaints.<sup>715</sup>

Specific industries present further challenges for enforcing migrant workers' rights. In the construction industry, for example, enforcing the law is difficult due to the use of sub-contracting schemes. Even if an umbrella company complies with the law, a sub-contractor down the line may withhold wages or otherwise disregard migrant workers' rights. For example, an EU building constructed in Brussels employed migrant workers, then withheld their wages or paid them under the table.<sup>716</sup> Construction employers have also created other loopholes. For instance, undeclared workers in the construction industry may receive a salary with the stipulation that they pay the company back at a later date. Moreover, the construction industry typically employs many different categories of workers with varied salaries. Migrant construction workers often lack information to determine which category and salary apply to them.<sup>717</sup> Migrant domestic workers also face particular challenges in enforcing their rights. Detecting exploitation of domestic workers is difficult due to the private nature of their work. During the COVID-19 pandemic, detection has become even more difficult, due to increased isolation of domestic workers.<sup>718</sup>

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## EFFORTS TO ADDRESS EXISTING BARRIERS FOR MIGRANT WORKERS

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Even though migrants in Belgium face significant challenges and discrimination in the workplace, some governmental and non-governmental efforts seek to address these issues. Civil society organizations, NGOs, and local organizations actively work to combat the discrimination and integration challenges that migrants face in the workplace.

### NATIONAL EFFORTS TO COMBAT DISCRIMINATION AND ENHANCE INTEGRATION

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Each regional government (Flanders, Wallonia and Brussels) has an agency that focuses on integration,<sup>719</sup> with 11 integration plans in total (one in Brussels, seven in Flanders, and three in Wallonia). Wallonia issued its first decree in 1996, outlining priorities of “social cohesion within an intercultural society, equal access to services, and social and economic participation.” In 2004, the Flemish Interior Ministry designed its own integration strategies focusing on the “fight against ethnic divide and the weak education attainment of [third-country nationals], improve[ment] of equal access to services,” and the attainment of Dutch as a second language. In 2017, Brussels issued its migrant integration strategy, which prioritized “citizenship training, French or Dutch as second language, and social and economic participation.”<sup>720</sup> In the three regions, integration programs are required for any newly arrived non-EU foreigners.<sup>721</sup> In 2014, Wallonia issued its third decree making it mandatory for newcomers to partake in an integration program that includes French language classes, citizenship training, and professional orientation.<sup>722</sup> These programs, while helpful in offering migrant workers a basic understanding of the labor market, do not go far enough in enhancing their understanding of the particular laws and policies unique to each work sector. As such, they have a limited impact when it comes to empowering migrant workers and closing the wage gap.<sup>723</sup>

Integration programs have seen varying degrees of success. 2019 data from the European Migration Network (EMN) found that 45.7 percent of migrants were at risk of poverty and social exclusion compared

with 16.7 percent of nationals. EMN also found that in 2020, the unemployment rate of migrants was at 19.6 percent compared with five percent of nationals.<sup>724</sup> Other research has found that the variation of integration policies across Belgium can limit the efficacy of integration programs and create difficulties for migrants. For example, Flemish authorities do not accept the integration curriculum of Wallonia, which means that migrants who move regions must redo a civic integration curriculum. Further, different municipalities, employment offices, integration centers, and other entities have varied integration objectives, which can create confusion for immigrants.<sup>725</sup>

## THE WORK OF UNIONS

There are three main unions in Belgium: the Confederation of Christian Trade Unions (ACV/CSC), the Belgian General Federation of Labour (ABVV/FGTB) and the Federation of Liberal Trade Unions of Belgium (ACLVB/ CGSLB). Together, these unions cover 55-60 percent of Belgian workers. Collective agreements in each sector cover all workers in a certain industry.<sup>726</sup> These unions support migrant workers by processing worker complaints, advocacy, and collective bargaining on behalf of migrant workers.

These three unions have created channels through which migrant workers can lodge complaints and receive support in the complaints process. For example, ABVV has offices across Belgium dedicated to the complaints processes of workers. Migrant workers can seek advice from trade union officials on a range of issues such as verification of paychecks, reimbursement for transportation, and sexual harassment. Sexual harassment questions are particularly prevalent in the domestic voucher industry, where 98 percent of the workers are women.<sup>727</sup> The Brussels branch of the CSC-ACV trade union also offers a weekly legal help desk open to non-union members and migrant workers in an irregular situation.

To allow workers in irregular situations to benefit from all union services, CSC-ACV allows these workers to become a union member for a significantly reduced membership fee of €4 per month.<sup>728</sup> Trade unions provide a favorable alternative forum for migrant worker complaints. Complaint procedures carried out by government officials can be intimidating because they require a formal interview and proof of identification. In comparison, trade unions often use a less formal approach that is geared towards worker understanding.<sup>729</sup> Trade unions also support potential migrant worker victims in their interactions with government authorities and in court. Union representatives may intervene when a complaint results in the detention or deportation of the migrant worker. Unions can also assist in organizing class actions against fraudulent employers and help ensure workers receive court-awarded compensation.<sup>730</sup>

Belgian trade unions also advocate for migrant workers' rights. In 2013, Belgian trade unions helped found the Commission for Good Offices (CGO), a mediating body that helps solve labor conflicts and remedy legal loopholes for diplomatic households that employ domestic workers.<sup>731</sup> ABVV has campaigned for regularizing undocumented migrants, against criminalizing undocumented migrants, and against deporting migrants.<sup>732</sup> ABVV has organized direct actions in support of migrant workers' rights, such as actions in response to the arrests of undocumented migrant workers in 2018.<sup>733</sup> In 2019, the CSC-ACV and FGTB trade unions organized a wide-scale domestic workers strike in support of a fair collective agreement for domestic workers employed via service vouchers.<sup>734</sup> The campaign called for better working conditions, expanded government subsidies, and an increase in the service voucher rate.<sup>735</sup> They also carried out this campaign on social media and made informative documents widely available, increasing public awareness of this issue.<sup>736</sup>

In 2018, CSC-ACV and ABVV organized a colloquium to push the Belgian government to ratify international instruments protecting migrant workers against exploitation and discrimination such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their

Families.<sup>737</sup> In May - July 2021, the CSC-ACV and FGTB supported a group of undocumented migrants on a hunger strike to demand regularization. The unions proposed that the government give these migrants legal access to jobs in demand; two-thirds of undocumented migrants work in a shortage profession in Belgium.<sup>738</sup>

The CSC-ACV advocates for undocumented domestic workers in particular. Because of these workers' fears of deportation and their lack of central location, the union helps facilitate internet campaigns through Facebook, WhatsApp, and other social media platforms. CSC-ACV also reaches out to politicians with demands on behalf of these workers.<sup>739</sup> CSC-ACV has started a variety of social funds to connect domestic workers to resources and trainings, such as connecting migrant domestic workers to language training. Finally, the union has advocated for the government to cover domestic workers' transportation costs and grant them their right to free equipment.<sup>740</sup>

### CIVIL SOCIETY AND INTER-GOVERNMENTAL ORGANIZATIONS COMBATTING DISCRIMINATION AND EXPLOITATION

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Civil society organizations work to ameliorate labor exploitation. Some examples include: the Platform for International Cooperation on Undocumented Migration (PICUM) in Brussels, which aims to promote social justice and respect for the human rights of undocumented migrants within Europe;<sup>741</sup> Payoke, Suya, and Pagasa, which are specialized centers for the reception of victims of human trafficking;<sup>742</sup> and UNIA, an independent government organization that advocates for stronger antidiscrimination policies and provides legal representation to documented and undocumented migrants.<sup>743</sup> UNIA focuses on five main areas regarding nationality discrimination: employment nationality requirements, discrimination based on work permit orders, obstacles to freedom of movement for EU workers, hate speech based on nationality, and abuses of the posted worker system.<sup>744</sup>

There has been an increase in pilot programs designed to facilitate immigrant participation in the labor market. Labour-INT, for example, focuses on helping refugees and others applying for international protection by providing skills assessments and advice on how to look for employment.<sup>745</sup> Other programs seek to fill gaps in government integration programs, such as by creating mentoring networks that connect migrants with non-migrant established professionals in relevant work sectors.<sup>746</sup> Service providers working in this space emphasize the importance of breaking down social barriers and helping to form social bonds between nationals and migrants. Through such connections, migrant workers can receive information about their rights and any wage discrepancies that may exist. Additionally, mentorship programs can help migrant workers understand the different routes to redressing discrimination, including when complaints must be filed and with which agency.<sup>747</sup>

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### FINDINGS

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Despite these efforts, the barriers and conditions detailed above are likely responsible, at least in part, for the substantial “unexplained” wage gap between migrants and nationals in Belgium. Discrimination in hiring, coupled with barriers in degree and qualification recognition, funnel migrants into low-skilled and low-paid positions, placing them at a disadvantage compared to national workers with similar labor-market characteristics. In fact, these discrepancies were observed between nationals and foreign-origin workers more generally, suggesting that differentials linked to discrimination are likely more prevalent in Belgium than indicated by the raw quantitative wage gap.

As with the other case studies, migrant workers in Belgium face steep barriers to claiming their rights guaranteed under the law. They have decreased access to social and legal services that can promote their bargaining power in the employment context. Meanwhile, the government mechanisms that exist to enforce labor rights have proven inadequate, as they place the burden on migrant workers to report violations without considering the risks they incur in doing so. In short, these factors likely contribute to the wage gap in Belgium, even if they do not exhaust the range of conditions that affect migrants and foreign-origin workers more broadly.

## TRENDS AND OBSERVATIONS

While the three case studies in this Report cannot capture the many complex internal dynamics, policies, and practices present in each country that combine to create the wage gap between migrants and nationals, they offer insight into factors that likely facilitate a wage gap to the detriment of migrants, especially in low-wage, low-skilled sectors. In analyzing these three high-income country case studies, common shortcomings in policy and practice emerge. This section aims to distill some of these patterns.

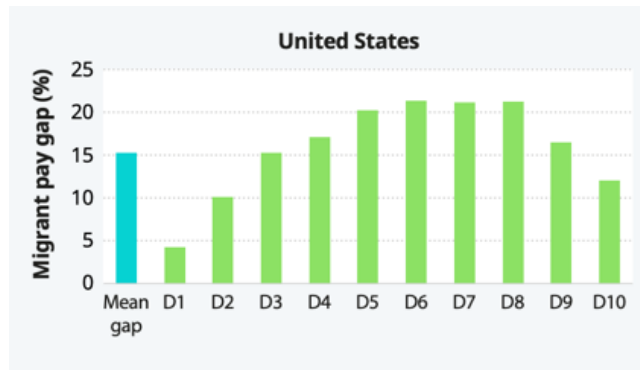
### COUNTRY-SPECIFIC FEATURES

First, it is important to note the unique factors present in each country case study. Spain, the United States, and Belgium all have wage gaps to the detriment of migrant workers that cut across all hourly wage distributions, from the bottom ten percent of wage earners to the top ten percent.<sup>748</sup> However, divergences among these three case studies are evident when looking at the shape of their wage gap distribution, signaling unique dynamics that impact the wage gap in each country.



Using data from 2015, Spain has the highest mean wage gap among the three countries, at 28.3 percent. However, the wage gap is heavily skewed towards the lowest income group (where there is an almost 60 percent

pay gap) and steadily narrows with rising income levels.<sup>749</sup> As noted in the case study, Spain’s immigration and legal framework funnels many of its migrant workers – even those with higher education degrees<sup>750</sup> – into low-skill, low-wage positions.<sup>751</sup> Employers must first offer any job to nationals, EU citizens, and other third-country nationals legally residing in Spain before turning to non-EU migrants.<sup>752</sup> As a result, the jobs filled by migrant workers are often temporary<sup>753</sup> and involve long hours without overtime pay.<sup>754</sup>



Based on 2018 statistics, the United States has the second largest mean wage gap, at 15.3 percent. Its wage gap distribution is more consistent at the various levels of income than Spain, shaped like a bell curve, with the largest wage gap occurring in the high-middle income groups.<sup>755</sup> This distribution highlights the depressed wages given to middle- and high-skilled workers. While low-skilled migrant workers in the United States receive lower wages than similarly-situated nationals, the difference in pay rate in absolute numbers is generally smaller.<sup>756</sup> Workers in the middle of the income distribution, on the other hand, get the highest wage gap penalty, in part due to the widespread practice of misclassification.<sup>757</sup> The lack of oversight over these visa classifications prevents detection and contributes to the lasting and pervasive effect of this practice on migrant wages. Thus, although there is a large contingency of low-skilled, low-wage migrant workers in the United States who face such abuses as long hours, low wages, and no overtime pay, the wage gap among the higher-wage, medium-skill jobs is actually wider.



Lastly, Belgium’s mean wage gap, calculated with data from 2015, is the lowest and most consistent of the three countries – although still significant – at 12.7 percent. The wage gap is largest in the low-middle income categories but is relatively consistent among all but the two extremes – the lowest and highest income

groups.<sup>758</sup> Indeed, the shape of the wage gap distribution suggests little relationship between the size of the wage gap and income level. Such consistency suggests entrenched discrimination against migrant workers, except at the highest level of income, where the largest shares of foreign workers are from North America and EU countries.<sup>759</sup> At the same time, the lower overall wage gap in Belgium compared to the other two case studies may be due in part to highly structured wage bargaining and collective agreements that secure minimum wages at national and sector levels, in addition to the service voucher system for the domestic sector. These initiatives likely help to bring a measure of basic economic security to workers in the lowest income levels, yet they have not been sufficient to eradicate the wage gap between migrants and nationals.

## COMMONALITIES ACROSS CASE STUDIES

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Despite these differences, there are several common trends in the laws, policies, practices, and social and cultural factors that contribute to overall lower wages across all three case studies. Migrant workers are consistently offered lower-paid positions than their national counterparts for a number of reasons, including immigration policies that funnel migrants into unskilled and low-skilled positions, laws that fail to enable the recognition of foreign degrees and qualifications, and employer discrimination in hiring and career advancement. Additionally, migrant workers are less likely to engage in the collective bargaining shown to improve working conditions and prompt higher wages, due in part to language and cultural barriers, lower union participation, and fear of reprisal by employers. Finally, mechanisms for the enforcement of labor and employment laws often fail to adequately identify and/or remedy employers' wage and immigration violations. Taken together, these factors contribute to lower overall wages for migrant workers compared to similarly situated nationals.

## IMPACT OF IMMIGRATION LAWS AND WORK VISA SYSTEMS

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**Migrant workers in Spain, the United States, and Belgium occupy a greater proportion of undesirable, lower-paid positions than national workers.** In Spain, around 51 percent of migrant wage workers are employed in unskilled or low-skilled jobs (compared to around 26 percent of national wage workers).<sup>760</sup> In the United States, roughly 45 percent of migrant wage workers (compared to around 29 percent of national wage workers) are in these positions.<sup>761</sup> And in Belgium, around 40 percent of migrants (compared to around 22 percent of nationals) do the same.<sup>762</sup>

Although several factors likely account for this trend – as will be summarized below – immigration frameworks initially determine who is able to migrate, as well as what privileges they will enjoy and limitations they will experience. Across the three case studies, immigration policies were designed in large part to fill labor market shortages in the host countries.<sup>763</sup> Being high-income countries to begin with, many of these labor market shortages are in low-skilled and unskilled jobs, which are less favorable in terms of pay, benefits and protections, and are less likely to attract sufficient national workers to satisfy need.<sup>764</sup> As these positions become increasingly occupied by migrant workers, who have less bargaining power and effective access to justice to begin with, they become progressively less protected, less well-paid, and less desirable. By failing to correct this feedback loop, countries' labor market segmentation becomes increasingly pronounced, resulting in entrenched migrant wage gaps.

**Secondly, immigration policies can drive this trend by requiring migrants to obtain job offers *prior* to entering the host country.**<sup>765</sup> The requirement to have a job prior to entry creates incentives for workers who want or feel compelled to migrate to another country to accept any employment available, even



if such employment is undesirable in terms of wages or conditions of labor.<sup>766</sup> Work visas that grant permission for time-limited stays, such as seasonal work programs and short-term visas subject to periodic renewals,<sup>767</sup> set up migrant workers to accept temporary contracts that are by nature more precarious. Indeed, in most high-income countries, including Spain and Belgium, migrant workers were about twice more likely to hold temporary contracts than their national counterparts.<sup>768</sup> Additionally, these work visas are often tied to specific employers,<sup>769</sup> hampering migrant workers' labor market mobility and, by extension, their ability to find higher-paid positions that offer better protections. These conditions serve to entrench power imbalances between migrant workers and their employers, contributing to migrant workers' inability and reluctance to assert their rights.

**Restrictive immigration policies that limit entry for labor also tend to send many migrant workers into the informal economy, which entails lower wages, little job security, and exploitative work conditions for those workers.**<sup>770</sup> For example, in Spain, where many migrants are permitted to stay in the country only if they secure a new work contract, an unregulated labor market has emerged whereby intermediaries<sup>771</sup> arrange employment under illegitimate or opaque contracts, opening the door for employers to pay workers lower wages than initially agreed.<sup>772</sup> Similarly, in the United States, migrant workers laboring under work visas must exit the country before obtaining a new visa. Instead of undertaking risky, time-consuming and costly processes that could result in being denied a work visa, many opt to overstay their visas and enter the unregulated labor market.<sup>773</sup> Meanwhile, employers, who must pass an employment verification process in order to hire foreign workers,<sup>774</sup> often opt to hire undocumented workers who will accept depressed wages and are less likely to demand favorable work conditions.<sup>775</sup> In Belgium, migrants who overstay their work visas are typically re-employed without authorization in low-pay, low-skilled jobs.<sup>776</sup> In addition, because self-employed migrant workers in Belgium do not need a work permit, “sham self-employment” – the practice of performing undeclared work for an employer without a permit – is common, and often involves payment of severely depressed wages without social benefits.<sup>777</sup> Where similar immigration frameworks exist – and they are indeed common among many countries<sup>778</sup> – they lead to wage stagnation and harsher working conditions for migrant workers compared to others in the labor market.

## EDUCATIONAL AND TRAINING REQUIREMENTS

**Another reason that migrant workers across all three case studies are channeled into low-paid positions is the lack of streamlined recognition of their foreign degrees and qualifications.** Many migrants enter host countries with extensive skills, training, and educational backgrounds, which would render them eligible for higher-skilled positions.<sup>779</sup> However, complex and time-consuming degree recognition processes often discourage them from seeking recognition of their credentials,<sup>780</sup> thereby precluding them from attaining those higher paid positions.<sup>781</sup> Consequently, migrant workers often opt for job positions different from their areas of expertise and/or below their skill levels.<sup>782</sup>

Indeed, across three case studies, migrant workers must go through convoluted processes (if any are available at all) to have their degrees recognized by employers.<sup>783</sup> This trend indicates why the “unexplained gaps” in the three case-study countries were positive, meaning that labor market characteristics of the respective migrant and national populations failed to account for the wage gap in all cases.<sup>784</sup> Yet the situation in these three countries is reflected throughout many countries around the world, where degree and qualification recognition tend to involve costly and convoluted processes.<sup>785</sup> This failure to implement comprehensive and affordable degree recognition programs leads to a reduced financial return on higher education and other qualifications for migrant workers globally.

## UNDER-PROVISION OF BENEFITS AND IMPACT ON NET PAY

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**Aside from being lower paid, many of the positions offered to migrants offer fewer benefits, such as sick leave, and do not grant overtime protection.**<sup>786</sup> For example, in the United States, agricultural workers and domestic workers, both of which are disproportionately comprised of migrant workers, are excluded from overtime and collective bargaining rights.<sup>787</sup> In Spain, domestic workers were excluded from maternity protections and social security benefits before the enactment of Royal Decree No. 1620/2011, although some gaps in protection still exist.<sup>788</sup> Sector-based exclusion from otherwise standard labor protections has been observed in other countries and most frequently affects agricultural and domestic workers, industries in which migrant workers are disproportionately represented.<sup>789</sup> Migrants who work in the informal economy are rarely offered any protections or benefits at all.<sup>790</sup>

The result is that even if migrant workers in these positions are granted the same “pay” (such as the minimum wage) as other workers in the industry, their ultimate take-home remuneration is less. Migrant workers who are excluded from overtime protection often face long hours without additional compensation, depressing their hourly rate to less than that of a worker who is provided with overtime compensation.<sup>791</sup> Additionally, migrant workers who do not receive sick or maternity leave, or who are not protected by workers compensation under a state’s health and safety laws, are forced to spend more of their money on doctors’ visits and medical care, depleting their net wages.<sup>792</sup>

## DISCRIMINATION

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**Discrimination by employers in hiring and career advancement opportunities further impacts migrants’ wages.** Many migrants are subject to stereotypes about their gender or national origin, leading to their segregation in certain low-paying jobs in sectors such as housekeeping or construction.<sup>793</sup> At the same time, migrants face discrimination in hiring and are sometimes excluded from certain job applicant pools merely because of their national origin.<sup>794</sup> As a result of this discrimination, migrant workers tend to cluster in low-wage sectors with fewer employment benefits.<sup>795</sup> Employment discrimination against migrants is also observed during the term of employment, in the form of fewer promotion opportunities for migrant workers<sup>796</sup> or lower pay compared to national workers for similar work performed.<sup>797</sup> These practices have a clear and direct impact on the wages of migrant workers.<sup>798</sup>

## RESTRICTED LABOR ORGANIZING

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**Migrant workers in the three case-study countries are less likely than national workers to engage in the types of collective action that could improve their wages.**<sup>799</sup> First, under some legal frameworks, migrants are – either *de jure* or *de facto* – excluded from collectively bargaining altogether. For example, the United States excludes certain migrant-heavy industries from legal protections of unionization.<sup>800</sup> Furthermore, even in countries where migrants are protected in their right to join unions, they may nonetheless fail to do so due to fear of reprisals in the form of job termination and deportation.<sup>801</sup>

Another factor in lower union membership among migrant workers may be that unions tend not to target these workers for membership<sup>802</sup> given their temporary status and physical and linguistic isolation.<sup>803</sup> Migrants working in temporary or seasonal positions may simply not be present in their positions for long enough to effectively participate in labor organizing. Furthermore, some of these workers are under contracts

that third-party intermediaries negotiated on their behalf, sometimes known as “temporary agencies,” further shielding them from the ability to negotiate conditions of work directly with their employers.<sup>804</sup>

## INACCESSIBILITY OF LEGAL REMEDIES AND ENFORCEMENT

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**Finally, mechanisms for enforcing labor and employment laws often fail to identify and remedy wage and immigration violations against migrant workers.** Spain, the United States, and Belgium all have state agencies charged with monitoring and enforcing labor laws; however, in each of the three countries, these agencies lack adequate resources to enforce those laws reliably and provide effective remedies for migrant workers.<sup>805</sup> Government inspectors’ lack of oversight in turn emboldens employers to violate labor laws with relative impunity.<sup>806</sup>

Other barriers migrant workers experience compound the impact of the state agencies’ inadequate resources. In the three case studies, migrant workers may formally bring legal claims regarding violations of their labor rights. However, many migrant workers do not bring such cases.<sup>807</sup> There are several likely reasons for this. First, migrants often lack knowledge of their rights and how to vindicate them.<sup>808</sup> Additionally, migrant workers often lack access to legal resources, such as attorneys and legal aid,<sup>809</sup> and are further discouraged by the threat of deportation or other serious consequences if they challenge their employers. Facing such obstacles to legal recourse, migrant workers are significantly less likely than national workers to file claims, which makes them vulnerable to labor-related violations.<sup>810</sup>

**Finally, across the three case studies, the challenges migrant workers face are most acute in specific migrant-heavy sectors, including the domestic work sector, the construction sector, and the agricultural sector.** Additionally, undocumented migrant workers and female migrant workers face particular vulnerabilities and inadequate protections.

In all three case studies, migrant workers faced similar challenges. They were funneled into lower wage, undesirable and insecure positions by various state policy choices. This was then compounded by employer discrimination and power imbalances unchecked by inadequate state monitoring and enforcement of workplace standards and rights. The patterns that emerged from the analysis were as follows:

## Migrant Labor in Undesirable Sectors

- Migrant workers tend to be funneled into lower-paid, less desirable positions where workers are already more vulnerable to abuse. In fact, the majority of migrant labor programs recruit migrants to fill positions experiencing labor market shortages. These tend to be sectors that nationals do not wish to work in due to poor conditions and compensation.

## Employer-Dependent Immigration Status

- Work visas are often employer-dependent. These visas exacerbate migrant vulnerability by requiring them to obtain job offers prior to entering the host country and tying them, once they arrive, to a particular employer or employment sector.

## Immigration Restrictions Push Migrants into Informal Economy

- Restrictive immigration policies send many migrant workers into the informal economy, due to limited opportunities and fear of deportation. Inadequate protection of workers in the informal economy renders migrants especially vulnerable.

## Non-Recognition of Foreign Degrees and Training

- Migrant workers are also channeled into low-paid positions due to employers' lack of recognition of their foreign degrees and qualifications. Many are employed in under-skilled or mis-skilled labor.

## Employer Discrimination Against Foreign Workers

- Discrimination by employers in hiring and offering career advancement opportunities adversely impacts migrants' wages.

## Barriers to Migrant Collective Action

- Migrant workers are less likely to engage in the types of collective action that could improve their wages due to job insecurity, instability, unfamiliarity with their rights and general social exclusion.

## Inadequate Enforcement of Workplace Rights and Standards

- Under-resourced and inadequate mechanisms for the enforcement of labor and employment laws often fail to identify and remedy wage and immigration violations against migrant workers in the sectors in which they are primarily employed.

## Insecure and Isolated Employment Sectors

- The challenges migrants face are most acute in specific migrant-heavy sectors, including the domestic work sector, the construction sector, and the agricultural sector, all of which tend to experience minimal regulation.

## CONCLUSION AND GENERAL RECOMMENDATIONS

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The global economy now relies heavily on the various forms of migrant labor; migrant workers constitute approximately 5 percent of the global labor force.<sup>811</sup> The millions of people that migrate and relocate to another country for work opportunities often receive lower wages for the same work or work of equal value when compared to their national counterparts. Foreign workers undertake more difficult and undesirable jobs than their national counterparts, thus contributing significantly to the functioning and well-being of the countries where they work. To create a more equal global community free from discrimination, work must be done to create instruments of governance, and reform existing ones, so that migrant workers prosper and fulfill their human rights along with nationals.<sup>812</sup> The following good practices and recommendations are meant to advance that goal.

### FAIR RECRUITMENT AND HIRING

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- Fair recruitment practices are crucial to protecting migrant workers from exploitation. In line with Migration for Employment Convention (Revised) (1949, No. 97), accountable public authorities should oversee labor recruitment practices.<sup>813</sup> In addition, countries should create systems of supervision of contracts of employment to ensure compliance with regulations.<sup>814</sup> Furthermore, recruitment practices should aim to simplify administrative formalities; provide interpretation services; assist migrant workers and their families with the initial settlement period; and protect migrants' journeys to and from their countries of origin.
- Immigration laws and policies should provide migrant workers greater autonomy to enter and move within labor markets by increasing visa regimes' flexibility with regard to migrant workers' legal residence and employment contracts. Specifically, visa terms and conditions should avoid tying migrant workers' residence status to remaining employed by a particular employer, as this creates imbalanced power dynamics that employers can easily abuse.
- Governments should promote coordinated actions among state agencies to regulate, license and oversee labor recruiters and third-party agencies systematically with a view towards eliminating abuse in recruitment and hiring.
- Governments should reduce barriers to skills and qualification recognition, such as by investing in faster processing times and waiving fees for low-income workers, to create a more efficient and equitable allocation of skills and talents. As part of this effort, governments should consider entering into bilateral agreements or equivalence systems that promote qualification recognition.

### LABOR PROTECTIONS AND ACCESS TO REMEDIES

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- Governments should integrate all employment sectors into a single regulatory regime of standard workplace protections and eliminate any legal definitions and provisions that exclude certain categories of workers from those protections. In addition to guaranteeing the same basic protections to all workers, regardless of the structure of their sector or industry, governments should undertake affirmative measures to create protections for sectors that are traditionally marginalized, such as the domestic work sector.
- Governments should create and adequately fund independent supervisory mechanisms to perform regular inspections of workplace conditions, especially in migrant-heavy sectors and programs that are known to

engage in exploitative practices. These mechanisms should prioritize enforcement by reliably applying sanctions and other penalties against employers who violate the law.

- Government and civil society actors should work to facilitate connections between migrant workers and unions to increase migrant worker representation and bargaining power. These actors should create mechanisms, such as hotlines or other simple complaint processes, for migrant workers, especially for employees of private families, to denounce workplace violations. Finally, they should seek to strengthen internal grievance and reporting mechanisms and increase migrant workers' access by to legal remedies, such as by providing free or low-cost legal services for migrants to seek recourse in courts.
- Governments should adopt measures to protect irregular-status workers against deportation when they bring complaints against their employers. Regularization campaigns, which allow undocumented workers with established ties to the host country to regularize their status, are essential to ensure that these workers obtain adequate labor protections and compensation for their work.

### INTEGRATION AND NON-DISCRIMINATION EFFORTS

- Governments should endeavor to increase funding for integration efforts to provide more services to migrants, including language classes, rights training, and more long-term support services. They should seek to implement individualized integration in policies, instead of one-size-fits-all approaches, that take into consideration a migrant's skills and unique circumstances.
- Government actors, civil society organizations, and social partners, including trade unions, should undertake anti-discrimination and cultural sensitization campaigns highlighting migrants' contribution to the labor market in order to combat discrimination and xenophobia.

### DATA COLLECTION AND TRANSPARENCY

- All relevant stakeholders, including government agencies and civil society organizations, should improve data collection and analysis on migrants' jobs, wages, and labor mobility. This data should be granular and allow for disaggregation by age, gender, nationality, and national origin. Special measures should be undertaken to establish consistent data tracking on gender in migrant-heavy industries.
- Relevant stakeholders should also develop analytic models that focus on how gender female workers' experiences in different sectors. Special focus should be directed towards analyzing how gender affects the probability of abuse or exploitation in the workplace.



**LIST OF INTERVIEWS CONDUCTED FOR THIS STUDY**

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**SPAIN**

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- **Comisiones Obreras (CCOO, Workers' Commission)**, Elena Blasco, Raquel Gómez, and Paloma López, April 7, 2020 via video call.
- **International Organization for Migration (IOM)**, Marcos Ulloa, Blanca La Roche, and Oussama Elbaroudi, April 22, 2020 via video call.
- **Union Sindical Obrera (USO, Workers' Trade Union)**, Javier de Vincente, Pablo Trapero, and Dulce Moreno, April 23, 2020 via video call.
- **Instituto Universitario de Estudios sobre Migraciones (IUEM, University Institute of Migration Studies)**, Luis Rodriguez Calles and Sergio Barciela Fernandez, April 24, 2020 via video call.
- **Servicio Domestico Activo (SEDOAC, Active Domestic Workers)**, Carolina Elias and Edith Espinola, May 5, 2020 via video call.

**BELGIUM**

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- **UNIA**, Laurent Fastrez, Legal Officer, May 20, 2020 via video call.
- **Myria**, Alexandra Buchler, Lawyer and Policy Advisor, May 20, 2020 via video call.
- **Service Public Fédéral, Emploi, Travail et Concertation Sociale (SPF)**, Valérie Gilbert, Ann Coenen, Dietert Devos, Tom Bevers, Marilyne De Spiegeleire, Valérie Burnel, April 2, 2020 via video call.
- **ABBV Union**, Issam Belani, Federal Secretary, April 3, 2020 via video call.
- **European Federation of Building and Woodworkers**, Warner Buelen, Political Secretary, April 7, 2020 via video call.
- **ACV-CSC Union**, Grace Papa, Regional Secretary, April 16, 2020 via video call.
- **UNIA**, Hannah Vermaut, Policy Advisor, April 9, 2020 via video call.
- **HIVA/KU Leuven**, Peter de Cuyper, Researcher, April 7, 2020 via video call.

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## UNITED STATES

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- **National Employment Law Project (NELP)**, Maya Pinto, Senior Researcher and Policy Analyst, May 8, 2020 via video call.
- **Florida Fruit and Vegetable Association (FFVA)**, Mike Carlton, Director of Labor Relations, May 8, 2020 via video call.
- **International Federation of Professional and Technical Engineers (IFPTE)**, Stan Sorscher, Labor Representative (retired), May 8, 2020 via video call.
- **Equal Employment Opportunity Commission (EEOC)**, Anna Park, Regional Attorney, Los Angeles Office, May 12, 2020 via video call.
- **Department of Labor, Wage and Hour Division (WHD)**, Michael Kravitz, Associate Administrator for the Office of Performance and Communication, May 14, 2020, via conference call.
- **Government Accountability Office (GAO)**, Cindy Brown Barnes, Director of Education, Workforce, and Income Security, May 12, 2020 via conference call.
- **American Civil Liberties Union (ACLU)**, Anjana Samant, Women's Rights Project, May 18, 2020 via video call.
- **Occupational Safety and Health Administration (OSHA)**, Sanji Kanth and Reginald Jackson, Office of General Industry and Agriculture Enforcement, May 1, 2020 via conference call.

**LIST OF INTERNATIONAL LEGAL FRAMEWORKS RELEVANT TO  
MIGRANT WORK**

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**ILO CONVENTIONS AND REGULATIONS**

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- The ILO Constitution, 1919
- The Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
- The Minimum Wage-Fixing Convention, 1928 (No. 26)
- The Forced Labour Convention, 1930 (No. 29)
- Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)
- The Declaration of Philadelphia, 1944
- The Labour Inspection Convention, 1947 (No. 81)
- The Freedom of Association and Protection of the Right to Organise Convention, 1948
- The Protection of Wages Convention, 1949 (No. 95)
- The Migration for Employment Convention (Revised), 1949 (No. 97)
- The Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- The Equal Remuneration Convention, 1951 (No. 100)
- The Maternity Protection Convention, 1952 (No. 103)
- The Abolition of Forced Labour Convention, 1957 (No. 105)
- The Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- The Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)
- The Employment Policy Convention, 1964 (No. 122)
- The Labour Inspection (Agriculture) Convention, 1969 (No. 129)
- The Minimum Wage Fixing Convention, 1970 (No. 131)
- The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- The Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)
- The Working Environment Convention, 1977 (No. 148)
- The Labour Administration Convention, 1978 (No. 150)
- The Labour Relations (Public Service) Convention, 1978 (No. 151)
- The Collective Bargaining Convention, 1981 (No. 154)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
- The Private Employment Agencies Convention, 1997 (No. 181)
- The Declaration on Fundamental Principles and Rights at Work, 1998
- The Worst Forms of Child Labour Convention, 1999 (No. 182).

- General Recommendation on Women Migrant Workers, 2006 (No. 28)
- The Declaration on Social Justice for a Fair Globalization, 2008
- The Domestic Workers Convention, 2011 (No. 189)

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## INTERNATIONAL HUMAN RIGHTS TREATIES

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- The Universal Declaration of Human Rights (UDHR) (1948)
- Convention Relating to the Status of Refugees (CSR) (1951)
- The International Covenant on Civil and Political Rights (ICCPR) (1966)
- The International Covenant on Economic, Social and Cultural Rights (1966)
- Convention on the Elimination of All Forms of Racial Discrimination (1969)(CERD)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW) (1990)

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<sup>1</sup> This 2023 report was researched and authored by faculty, staff and graduate students at the Global Human Rights Clinic of the University of Chicago Law School and the Lowenstein International Human Rights Clinic at Yale Law School with the support and cooperation of the International Labor Organization Labour Migration Branch of the Department on Equality and Conditions of Work. Faculty authors include Yale Law School Clinical Law Professor Claudia Flores, and University of Chicago clinical teaching fellows Nino Guruli and Mariana Olaizola. Student authors and researchers include University of Chicago law students Christy Crouse, Ana Luquerna, Ran Xu, Rachel Liebowitz, Chelsea Kehrer, and Gabriel Davis. The report was also written, researched and edited by Simone Gewirth at the University of Chicago Law School and Shannon Sommers at Yale Law School. All research and perspectives contained in the report may be attributed to report authors only and are based on available information and understanding of reviewed materials and interviews conducted.

<sup>2</sup> Silas Amo-Agyei, *The migrant pay gap: Understanding wage differences between migrants and nationals*, INTERNATIONAL LABOUR ORGANIZATION (2020) [“ILO Report”].

<sup>3</sup> The ILO Report constructs ten equally-sized deciles of wage distribution in each country to measure hourly wages from the bottom ten percent of wage earners up to the top ten percent of earners. “ILO Report,” *see above* note 2, at 1, 86.

<sup>4</sup> *Ibid.* See also, [https://www.ilo.org/global/about-the-ilo/multimedia/maps-and-charts/enhanced/WCMS\\_763891/lang-en/index.htm](https://www.ilo.org/global/about-the-ilo/multimedia/maps-and-charts/enhanced/WCMS_763891/lang-en/index.htm).

<sup>5</sup> At 72.1 percent and 69 percent respectively. “ILO Report,” *see above* note 2, at 1, 18.

<sup>6</sup> *Ibid.*, 1, 19, 15, 93.

<sup>7</sup> *Ibid.*, 1, 87.

<sup>8</sup> *Ibid.*, xiv.

<sup>9</sup> At 62 percent and 64.6 percent respectively. *Ibid.*, 1, 18.

<sup>10</sup> *Ibid.*, 1, 19.

<sup>11</sup> *Ibid.*, 1, 86.

<sup>12</sup> For example, in Gambia, non-migrant workers tend to earn more than migrant workers from the bottom to the fourth wage category, but this reverses in favor of migrant workers from the fifth to the tenth wage category, where migrant workers earn almost 55 percent more than non-migrant workers. *Ibid.*, 1, 86.

<sup>13</sup> *Ibid.*, 1, 30-32.

<sup>14</sup> At 19.6 percent compared to the overall mean migrant pay gap of 17.1 percent in the countries for which estimates are available for the care economy. *Ibid.*, 79.

<sup>15</sup> *Ibid.*, 1, 30.

<sup>16</sup> *Ibid.*, 1, 53-55.

<sup>17</sup> These so-called “explained parts” of the wage gap takes into account age, experience, education, occupational category, type of working contract, economic activity, public versus private sector employment, regional location, formality, gender, race, and hours worked. *Ibid.*, 1, 87.

<sup>18</sup> For example, approximately 10 percentage points of the 12.6 percent wage gap disfavoring migrant workers in high-income countries. *Ibid.*, 1, 87, 92.

<sup>19</sup> The 17.3 percent wage gap in favor of migrant workers in low- and middle-income countries is largely attributable to unexplained factors. *Ibid.*, 1, 87, 92.

<sup>20</sup> *Ibid.*, XXI.

<sup>21</sup> For example, in France, migrant workers in professional positions have similar educational scores as nationals but earn about 22 percent less per hour than their national counterparts. *Ibid.*, 1, 93.

<sup>22</sup> *Ibid.*, 1, 17, 93.

<sup>23</sup> *Ibid.*, 1, 86.

<sup>24</sup> *Ibid.*, 1, 86.

<sup>25</sup> *Ibid.*

<sup>26</sup> For example, in Gambia, non-migrant workers tend to earn more than migrant workers from the bottom to the fourth wage category, but this reverses in favor of migrant workers from the fifth to the tenth wage category, where migrant workers earn almost 55 percent more than non-migrant workers. *Ibid.*, 1, 70, 86.

<sup>27</sup> For example, in Argentina, Belgium, Denmark, Finland, Italy, and Sweden.

<sup>28</sup> For example, in Chile, Cyprus, France, Greece, Hungary, Ireland, Latvia, the Netherlands, and Spain.

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<sup>29</sup> The unexplained part is what remains after adjusting for observable labor market characteristics. To deconstruct the migrant pay gap, authors first determined a set of attributes considered observed indicators in survey data selected based on relevance to the wage determination process. Next, econometric techniques were applied using the observed attributes or characteristics to create a counterfactual wage distribution, which represents the wages migrants would earn if they received the same returns to their attributes and characteristics as nationals. This process was added to each wage distribution category. ILO Report,” *see above* note 2, at 1, 88.

<sup>30</sup> *Ibid.*, 1, 98.

<sup>31</sup> *Ibid.*

<sup>32</sup> For example, it would reverse from negative (in favor of migrants) to positive (in favor of nationals) in Bangladesh, Bulgaria, and Tanzania. In Costa Rica, Jordan, and Nepal, however, the wage gap would reverse from positive to negative. *Ibid.*, 1, 99.

<sup>33</sup> For this global desk review, authors focused on twelve countries chosen for their geographic diversity and range of wage gaps according to the ILO Report. These countries were: Argentina, Belgium, Canada, Costa Rica, Czech Republic, Jordan, Namibia, Portugal, Spain, Switzerland, the United Kingdom, and the United States.

<sup>34</sup> When countries make obtaining basic labor rights conditional upon meeting a required working period, particular groups of migrant workers (e.g., posted workers) are excluded and disproportionately impacted.

<sup>35</sup> For example, in the United Kingdom, labor law differentiates between “employees” and “workers.” For “workers” to be regarded as “employees,” they must have an employment contracts with the employers. Workers who do not qualify as employees receive less protection: they are not entitled to Statutory Redundancy Pay or the unconditional grant of Statutory Sick Pay and Statutory Maternity Pay. *Employment Status*, available at <https://www.gov.uk/employment-status/worker>.

<sup>36</sup> For example, in Portugal, Costa Rica, and Jordan, irregular workers are excluded from social security benefits. Spain and Switzerland require that all employees be registered for social security, but in practice employers do not register irregular workers. Additionally, in Spain, irregular workers are required to pay 40 percent of the costs of healthcare, costs which other workers are not required to burden.

<sup>37</sup> This problem occurs in Namibia, Portugal, and Spain where labor inspectorate bodies are insufficiently resourced and lack the manpower to complete their mandate.

<sup>38</sup> For example, the United States, Canada, and Czech Republic do not have labor courts, which can prolong the amount of time for a final disposition.

<sup>39</sup> For example, in the United Kingdom, workers who wish to file lawsuits must first notify the Advisory, Conciliation and Arbitration Service (Acas), a non-departmental public body under the Department for Business, Energy and Industrial Strategy, and acquire a certificate from this entity, a process which can be lengthy and costly. Acas, *How we are governed?*, <https://www.acas.org.uk/how-we-are-governed>.

<sup>40</sup> “ILO Report,” *see above* note 2, at 1, 86.

<sup>41</sup> According to the Migration for Employment Convention (Revised) (1949, No. 97), a “migrant for employment” is “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.” International Labor Organization, *2016 General Survey*, 29 (2016). A similar, albeit broader, definition is found in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), where a migrant worker is “a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a State of which he or she is not a national.” The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Article 1(2)*.

<sup>42</sup> See ILO Labour Migration Branch & ILO Department of Statistics, *ILO Global Estimates on International Migrant Workers: Results and Methodology 6* (ILO, 1 ed., 2015) [“ILO Global Estimates on International Migrant Workers”]. In the United States, for instance, a legal permanent resident worker enjoys far better access to enforcement of their rights than a seasonal farmworker entering with a temporary labor visa. See *Lawful Permanent Residents (LPR)*, U.S. Dept. of Homeland Security (last published Feb. 2020) <https://www.dhs.gov/immigration-statistics/lawful-permanent-residents>. Similarly, in most States, a regular migrant is in a far better position to negotiate and demand fair wages than an irregular migrant who may fear deportation.

<sup>43</sup> Terminology used by countries when referring to migrant workers include migrant workers, migrants for employment, overseas workers, immigrant workers, foreign workers, employment of aliens, foreigners and foreign nationals, non-national workers, and expatriate employees. See ILO, *Promoting fair Migration*, General Survey on the migrant workers instruments, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (1B), International Labour Conference, 105<sup>th</sup> session 2016, paras. 99 and 102 (and footnotes).

<sup>44</sup> Due to the COVID-19 Pandemic, the research team was unable to travel to Europe from the United States. Instead, they interviewed actors from each country via video conference.



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<sup>45</sup> “ILO Report,” *see above* note 2, Figure 17 at 71 (2020). Unlike in several other countries studied by the ILO, the mean pay gap within the care economy is similar to the overall pay gap in Spain. Spain’s wage gap was computed using the most recent data available to the ILO, from 2015. Given the age of the data and the global upheaval precipitated by Covid-19, the wage gap and other statistics may no longer be accurate.

<sup>46</sup> *Ibid.*, Appendix IV, Figure A-4 at 163.

<sup>47</sup> *Ibid.*, Figures 18 and 26.

<sup>48</sup> *Ibid.*, xx.

<sup>49</sup> *Ibid.*, Appendix IV, Figure A-7.

<sup>50</sup> *Ibid.*, 74.

<sup>51</sup> *Ibid.*, 75.

<sup>52</sup> *Ibid.*, Figures 28 and 29 at 90.

<sup>53</sup> For this case study, the authors conducted interviews with several stakeholders, including Comisiones Obreras (CCOO, Workers’ Commission), International Organization for Migration (IOM), Servicio Domestico Activo (SEDOAC, Active Domestic Workers), Union Sindical Obrera (USO, Workers’ Trade Union), and Instituto Universitario de Estudios sobre Migraciones (IUEM, University Institute of Migration Studies).

<sup>54</sup> Kate Hooper, “Spain’s Labour Migration Policies in the Aftermath of Economic Crisis,” Migration Policy Institute (Apr 2019) at 3-4 <https://www.migrationpolicy.org/sites/default/files/publications/MPIE-SpainMigrationPathways-Final.pdf> (“Foreign nationals accounted for 2.9 percent of the total population in 1998; a decade later, in 2008, they accounted for 13.4 percent. During this period, Spain became one of the top immigrant-receiving destinations in the Organisation for Economic Cooperation and Development (OECD)”) [“Hooper”].

<sup>55</sup> Carmen Gonzales Enriquez, *Highs and Lows of Immigrant Integration in Spain*, REAL INSTITUTO ELCANO (June 13, 2016),

[http://www.realinstitutoelcano.org/wps/portal/rielcano\\_en/contenido?WCM\\_GLOBAL\\_CONTEXT=/elcano/elcano\\_in/zonas\\_in/ari47-2016-gonzalez-enriquez-highs-lows-immigrant-integration-spain](http://www.realinstitutoelcano.org/wps/portal/rielcano_en/contenido?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/ari47-2016-gonzalez-enriquez-highs-lows-immigrant-integration-spain).

<sup>56</sup> Video Call Interview by IHRC with Marcos Ulloa, Blanca La Roche, and Oussama Elbaroudi, International Organization for Migration (IOM), April 22, 2020 [“April 22 Video Call Interview, IOM”].

<sup>57</sup> Nuria Bustamante & Sergio Díaz, “The changing composition of the immigrant population in recent years,” CaixaBank Research (July 12, 2023), <https://www.caixabankresearch.com/en/economics-markets/labour-market-demographics/changing-composition-immigrant-population-recent-years>.

<sup>58</sup> *Ibid.*

<sup>59</sup> Ministerio de Inclusión, Seguridad Social y Migraciones, *Estadística de extranjeros residentes en España* (December 31, 2020), [https://extranjeros.inclusion.gob.es/ficheros/estadisticas/operaciones/con-certificado/202012/Principales\\_resultados\\_residentes.pdf](https://extranjeros.inclusion.gob.es/ficheros/estadisticas/operaciones/con-certificado/202012/Principales_resultados_residentes.pdf) [“Ministerio de Inclusión”].

<sup>60</sup> Instituto Nacional de Estadística (INE), Cifras de Población (CP) a 1 de julio de 2020 Estadística de Migraciones (EM). Primer semestre de 2020 Datos provisionales, [https://www.ine.es/prensa/cp\\_j2020\\_p.pdf](https://www.ine.es/prensa/cp_j2020_p.pdf) (Jan. 28, 2021).

<sup>61</sup> María Martín, *Nearly Half of Migrants Who Arrive in Spain via Africa Report Violence on the Journey*, El País (April 22, 2019) [https://english.elpais.com/elpais/2019/04/15/inenglish/1555317222\\_931024.html](https://english.elpais.com/elpais/2019/04/15/inenglish/1555317222_931024.html)

<sup>62</sup> *Ibid.*

<sup>63</sup> “Ministerio de Inclusión,” *see above* note 59, at 11.

<sup>64</sup> Spain currently has bilateral agreements with Morocco, Ukraine, Ecuador, Colombia, Mauritania, the Dominican Republic, Gambia, The Republic of Guinea, Cape Verde, Mali, Niger, and Guinea-Bissau.

Secretaría de Estado de Migraciones, “Convenios marco de cooperación en materia de inmigración,” Portal de Inmigración, <https://www.inclusion.gob.es/web/migraciones/convenios-marco-de-cooperacion-en-materia-de-inmigracion>;

Secretaría de Estado de Migraciones, “Convenios de flujos migratorios laborales,” Portal de Inmigración, <https://www.inclusion.gob.es/web/migraciones/convenios-de-flujos-migratorios-laborales>.

<sup>65</sup> Piyasiri Wickramasekara, “Circular Migration: A Triple Win or a Dead End,” Global United Research Network International Labour Organization (2011), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1834762](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1834762), 12.

Alessandra Corrado, “Migrant crop pickers in Italy and Spain,” Heinrich Böll Foundation (June 2017) [https://www.boell.de/sites/default/files/e-paper\\_migrant-crop-pickers-in-italy-and-spain.pdf](https://www.boell.de/sites/default/files/e-paper_migrant-crop-pickers-in-italy-and-spain.pdf), 9-10.

<sup>66</sup> *Ibid.*, 12.

<sup>67</sup> *Ibid.*, 48. See also, Zyab Ibáñez et al., “Voluntary, involuntary and programmed circular migration in Spain: the case of Moroccan workers in the berry-producing region of Huelva (Spain),” Institut de Govern i Polítiques Públiques (Oct 2015), 38 <https://igop.uab.cat/wp-content/uploads/2016/07/UK-National-Report-Spain-Mobile-identities.pdf>.

<sup>68</sup> According to a recent study, the number of irregular or undocumented migrants in Spain in 2019 was between 390,000 and 470,000. Gonzalo Fanjul (Fundación porCausa) and Ismael Gálvez-Iniesta

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(Universidad Carlos III de Madrid), “Extranjeros, sin papeles e imprescindibles: Una fotografía de la inmigración irregular en España,” June 2020, <https://porcausa.org/wp-content/uploads/2020/07/RetratodelairregularidadporCausa.pdf>, 2. Many of the irregular migrants—around 47,000 in recent years—arrived via the Western Mediterranean route. See Lisa Schlein, *Change of Migration Routes Boosts Arrivals in Spain*, Voice of America (August 15, 2018), <https://www.voanews.com/a/change-of-migration-routes-boosts-arrivals-in-spain/4529586.html> [“Schlein”].

<sup>69</sup> “Hooper,” *see above* note 54, at 8.

<sup>70</sup> “Schlein,” *see above* note 68. See also, “Hooper” *above* note 54, at 8 (“Over the course of 2018, Spain recorded 58,569 arrivals by sea, primarily in mainland Andalucía, comprised mostly of nationals from North and West Africa”).

<sup>71</sup> “Hooper,” *see above* note 54, at 7.

<sup>72</sup> When broken down by gender, 13 percent more of migrant men participate in the labor force than national men, and 7.3 percent more of migrant women work than national women. “ILO Report,” *see above* note 2, at 20, 23.

<sup>73</sup> *Ibid.*, 13.

<sup>74</sup> Around 30 percent of migrant women have a university education compared to around 25 percent of migrant men, and equal amounts of migrant men and women have a secondary education. *Ibid.*, 34. These numbers are slightly different for non-wage workers. For a breakdown and comparison of non-wage migrant and national workers, *see Ibid.*, 26.

<sup>75</sup> “High skilled jobs include (where possible) senior officials, chief executive officers (CEOs) and other managerial positions, professional jobs, technical and associate professional jobs.” *Ibid.*, 37.

<sup>76</sup> *Ibid.*, 22.

<sup>77</sup> *Ibid.*, 37.

<sup>78</sup> *Ibid.*, 37. “Semi-skilled jobs consist of clerical support workers, service and sales workers, and skilled agricultural, forestry and fishery workers.”

<sup>79</sup> *Ibid.*, 38.

<sup>80</sup> *Ibid.*, 37. “Low-skilled jobs comprise craft and related trades workers, plant and machine operators, and assemblers.”

<sup>81</sup> *Ibid.*, 37. Unskilled jobs include elementary occupations. Tasks performed by workers in elementary occupations usually include: selling goods in streets and public places, or from door to door; providing various street services; cleaning, washing, pressing; taking care of apartment houses, hotels, offices and other buildings; washing windows and other glass surfaces of buildings; delivering messages or goods; carrying luggage; doorkeeping and property watching; stocking vending machines or reading and emptying meters; collecting garbage; sweeping streets and similar places; performing various simple farming, fishing, hunting or trapping tasks performing simple tasks connected with mining, construction and manufacturing including product-sorting and simple hand-assembling of components; packing by hand; freight handling; pedalling or hand-guiding vehicles to transport passengers and goods; driving animal-drawn vehicles or machinery. *See* ISCO International Standard Classification of Occupations, <https://www.ilo.org/public/english/bureau/stat/isco/isco88/9.htm>.

<sup>82</sup> “ILO Report,” *see above* note 2, at 39.

<sup>83</sup> *Ibid.*, 45.

<sup>84</sup> *Ibid.*, 44.

<sup>85</sup> Thomson Reuters, Legal Systems in Spain: Overview, (2020), [https://uk.practicallaw.thomsonreuters.com/7-634-0207?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/7-634-0207?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1).

<sup>86</sup> Cortes Generales, *Constitución Española*, (1978), <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf> [“Cortes Generales”].

<sup>87</sup> International Labour Organization, *XIV<sup>th</sup> Meeting of European Labour Court Judges: Collective Agreements*, (2006), [https://www.ilo.org/ifpdial/events/meetings/WCMS\\_159922/lang-en/index.htm](https://www.ilo.org/ifpdial/events/meetings/WCMS_159922/lang-en/index.htm).

<sup>88</sup> “Cortes Generales,” *see above* note 86, at 9-10.

<sup>89</sup> Oficina Internacional del Trabajo, *Nota Informativa- El Salario y La Migracion en España*, *see* Box, ILO Migrant Labor, Country Specific Memos, Spain, Sources [“*El Salario y La Migracion en España*”].

<sup>90</sup> International Labour Organization, *Normlex: Ratifications for Spain*, [https://www.ilo.org/dyn/normlex/en/?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102847](https://www.ilo.org/dyn/normlex/en/?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102847).

<sup>91</sup> *Ibid.*

<sup>92</sup> A non-exhaustive list of Spain’s U.N. human rights treaty ratifications include: the International Covenant on Civil and Political Rights; Convention on the Elimination of All Forms of Discrimination against Women; International Covenant on Economic, Social and Cultural Rights; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Convention on the Rights of the Child; International Convention on the Elimination of All Forms of Racial Discrimination; Convention against Torture

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and Other Cruel Inhuman or Degrading Treatment or Punishment; Convention for the Protection of All Persons from Enforced Disappearance; Convention on the Rights of Persons with Disabilities. See United Nations Human Rights Office of the High Commissioner, *Ratification Status for Spain*, (2020),

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=163&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=163&Lang=EN).

<sup>93</sup> See, e.g., ILO, *Worst Forms of Child Labour Convention, 1999 (no. 182) – Spain* (2017),

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:3288701](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3288701)

(noting that the austerity measures adopted by Spain, including a 97 percent budget cut between 2011 and 2016 of a compensatory education program that promotes equal opportunity for migrant children, resulted in the reduction of effective protections for migrant children and asylum seekers); ILO, *Forced Labor Convention, 1930 (No. 29) – Spain* (2017),

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3300919](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3300919) (noting

the lack of protections for migrant workers who are vulnerable to conditions amounting to forced labor); ILO, *Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) – Spain* (2017),

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3300124](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3300124)

(observing a loophole which results in migrant workers who experience temporary incapacity or permanent injury are not protected from deportation or granted other benefits); ILO, *Migration for Employment Convention (Revised), 1949 (No. 97)* (2019),

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3958858](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3958858)

(recognizing a host of issues with the treatment of foreign workers. These issues include high unemployment and poverty among non-EU citizens and migrant women without intervention from the government; discriminatory conditions of work for immigrant workers, especially in the agriculture, fishing and service sectors; illegal pay schemes of employment agencies specializing in domestic work) [*Migration for Employment Convention*]; ILO, *Migration for Employment Convention (Revised), 1949 (No. 97)* (2019),

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3966370](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3966370) (noting the exclusion of domestic workers from maternity protections in the Occupational Risk Prevention Act 1995 (No. 31)); ILO, *Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Spain* (2019),

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:3958866](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3958866)

(finding evidence of discrimination in the recruitment of young persons of foreign origin and found that discrimination on ethnic or racial grounds was the most widely perceived form of discrimination); ILO, *Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172) – Spain* (2021),

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:4021964](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4021964) (noting

that hotel housekeepers, who are mostly women immigrants, are exposed to deteriorating work conditions, including the loss of 40 percent of wages, social benefits and the ability to organize as well as increased workloads); ILO, *Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) – Spain* (2021),

[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:4021968](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4021968) (noting

that migrant workers were not included in measures implemented as part of the Spanish Employment Activation Strategy (EEAE) and annual employment policy plans (PAPE) while being between 20 and 30 percent more at risk for poverty than nationals. Further, the committee commented on the recent limits to the access of health-care services for irregular migrants and requested that Spain ensure the essential needs of migrant workers such as food, housing, clothing, medical care and education).

<sup>94</sup> Thomson Reuters, *Employment and Employee Benefits in Spain: Overview* (2020),

[https://content.next.westlaw.com/8-503-](https://content.next.westlaw.com/8-503-1479?transitionType=Default&contextData=(sc.Default)&lrTS=20191127103145918&firstPage=true&bhcp=1)

[1479?transitionType=Default&contextData=\(sc.Default\)&lrTS=20191127103145918&firstPage=true&bhcp=1](https://content.next.westlaw.com/8-503-1479?transitionType=Default&contextData=(sc.Default)&lrTS=20191127103145918&firstPage=true&bhcp=1) [*Employment and Employee Benefits in Spain*].

<sup>95</sup> El Ministerio de Inclusión, Seguridad Social y Migraciones, *¿Quiénes Somos?*, <https://www.inclusion.gob.es/en/el-ministerio/quienes-somos>.

<sup>96</sup> UNICEF, *ILO Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration*, 51 (2006), [https://www.ilo.org/asia/publications/WCMS\\_146243/lang-en/index.htm](https://www.ilo.org/asia/publications/WCMS_146243/lang-en/index.htm) [*Multilateral Framework on Labour Migration*].

<sup>97</sup> *El Salario y La Migración en España*, see above note 89.

<sup>98</sup> Ministerio de Asuntos Exteriores, Unión Europea y Cooperación, *Conditions for Entry into Spain*,

<https://www.exteriores.gob.es/Consulados/washington/en/ServiciosConsulares/Paginas/Consular/Condiciones-de-entrada-en-Espana.aspx>.

<sup>99</sup> “Hooper,” see above note 54, at 1.

<sup>100</sup> *Ibid.*, 2.

<sup>101</sup> *Ibid.*, 2.

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- <sup>102</sup> See Ministry of the Presidency, ‘Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social’, *Boletín Oficial del Estado*, no. 10 (12 January 2000), [www.boe.es/buscar/pdf/2000/BOE-A-2000-544-consolidado.pdf](http://www.boe.es/buscar/pdf/2000/BOE-A-2000-544-consolidado.pdf) [Ley Orgánica 4/2000]; Nieves Ortega Perez, *Spain: Forging an Immigration Policy*, Migration Policy Institute (February 1, 2003), <https://www.migrationpolicy.org/article/spain-forging-immigration-policy> [Forging an Immigration Policy].
- <sup>103</sup> See Garcés-Masareñas, *Labour Migration in Malaysia and Spain*, 150–51 [Labour Migration in Malaysia and Spain].
- <sup>104</sup> *Forging an Immigration Policy*, see above note 102; MPI 12.
- <sup>105</sup> International Labour Organization, *Direct Request (CEACR) - adopted 2016, published 106th ILC session (2017) Spain; Labour Inspection Convention, 1947 (No. 81) (Ratification: 1960) Labour Inspection (Agriculture) Convention, 1969 (No. 129) (Ratification:1971)* (2017), [https://www.ilo.org/dyn/normlex/en/F?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3297574](https://www.ilo.org/dyn/normlex/en/F?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3297574). See also, “Hooper,” see above note 54, at 12.
- <sup>106</sup> *Ibid.*, 12.
- <sup>107</sup> Ministry of the Presidency, ‘Real Decreto 2393/2004, de 30 de diciembre, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social’, *Boletín Oficial del Estado*, no. 6 (7 January 2015): 485–539, [www.boe.es/diario\\_boe/txt.php?id=BOE-A-2005-323#analisis](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2005-323#analisis) [Real Decreto 2393/2004].
- <sup>108</sup> “Hooper,” see above note 54, at 16.
- <sup>109</sup> *Ibid.*, 14; see also *Labour Migration in Malaysia and Spain*, see above note 103, at 250.
- <sup>110</sup> “Hooper,” see above note 54, at 16.
- <sup>111</sup> Real Decreto 2393/2004, see above note 107, at 485–539; “Hooper,” see above note 54, at 13-14.
- <sup>112</sup> “Hooper,” see above note 54, at 17; see also Order Tas/1713/2005, June 3, Which Regulates Composition, Powers And Functioning Of The Tripartite Labour Commission Of Immigration Regime.
- <sup>113</sup> European Commission, *Spain: Am I Eligible to apply for a Blue Card?* [https://ec.europa.eu/immigration/blue-card/spain\\_en](https://ec.europa.eu/immigration/blue-card/spain_en) [“Blue Card Eligibility”].
- <sup>114</sup> *El Salario y La Migración en España*, see above note 89.
- <sup>115</sup> “Hooper,” see above note 54, at 16.
- <sup>116</sup> The system’s full name is “Collective Management of Hiring in the Countries of Origin.”
- <sup>117</sup> “Hooper,” see above note 54, at 10; European Parliament, *The Vulnerability to Exploitation of Women Migrant Workers in Agriculture in the EU: the Need for a Human Rights and Gender Based Approach: Women’s Rights & Gender Equality*, 26 (2018), <https://16dayscampaign.org/wp-content/uploads/2019/07/European-Parliament.pdf> [The Vulnerability to Exploitation of Women Migrant Workers in Agriculture in the EU].
- <sup>118</sup> “Hooper,” see above note 54, at 16.
- <sup>119</sup> *Ibid.*, 17.
- <sup>120</sup> *Ibid.*, 17.
- <sup>121</sup> *Ibid.*, 1, 18.
- <sup>122</sup> Ministerio de Trabajo y Asuntos Sociales, ‘Resolución de 14 de noviembre de 2005, del Servicio Público de Empleo Estatal, por la que se establece un nuevo procedimiento de elaboración del Catálogo de Ocupaciones de Difícil Cobertura’, *Boletín Oficial del Estado*, no. 292 (7 December 2005): 40,130 - 40,132, <https://www.boe.es/eli/es/res/2005/11/14/1>.
- <sup>123</sup> Ministry of Labour and Immigration, *Managing Labor Migration in Spain* 12 (2010), [https://emn.ie/media/2010\\_06REM\\_ESP\\_PalomaIzualoaBravo19Nov1.pdf](https://emn.ie/media/2010_06REM_ESP_PalomaIzualoaBravo19Nov1.pdf).
- <sup>124</sup> “Hooper,” see above note 54, at 18.
- <sup>125</sup> Library of Congress, *Guest Worker Programs: Spain*, (July 13, 2015) <https://www.loc.gov/law/help/guestworker/spain.php>. In 2005, Spain carried out its last regularization program, where “irregular” workers were given residency permits for one year. The highest percentages of regularizations were in the domestic work, construction, agriculture and hotel sectors. See *Multilateral Framework on Labour Migration*, see above at note 96.
- <sup>126</sup> European Website on Integration, *Governance of Migrant Integration in Spain*, (2019), [https://ec.europa.eu/migrant-integration/country-governance/governance-migrant-integration-spain\\_en](https://ec.europa.eu/migrant-integration/country-governance/governance-migrant-integration-spain_en) [Governance of Migrant Integration in Spain]; Angeles Solanes Corella, *Rights, Immigration and Social Cohesion in Spain*, 8 MIGRATIONS INTERNACIONALES 9, 21 (July – December 2015), [https://www.comillas.edu/images/Rights\\_Immigration\\_and\\_Social\\_Cohesion\\_2015.pdf](https://www.comillas.edu/images/Rights_Immigration_and_Social_Cohesion_2015.pdf) [Rights, Immigration and Social Cohesion in Spain].
- <sup>127</sup> *Rights, Immigration and Social Cohesion in Spain*, see above note 126.
- <sup>128</sup> Global-Regulation, *Organic Law 2/2009 Of 11 December Amending The Organic Law 4/2000 of 11 January On The Rights And Freedoms Of Foreigners In Spain And Their Social Integration*, (2009), <https://www.global->

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[regulation.com/translation/spain/1441605/organic-law-2-2009-of-11-december-percent252c-amending-the-organic-law-4-2000-of-11-january-on-the-rights-and-freedoms-of-foreigners-in-spain-and-their-social-.html](https://regulation.com/translation/spain/1441605/organic-law-2-2009-of-11-december-percent252c-amending-the-organic-law-4-2000-of-11-january-on-the-rights-and-freedoms-of-foreigners-in-spain-and-their-social-.html).

<sup>129</sup> “Hooper,” *see above* note 54, at 15.

<sup>130</sup> Balcells’s Group, *The 3 Types of Arraigo in Spain: Temporary Residence Permit*, (May 22, 2020) <https://balcellsgroup.com/types-of-arraigo-in-spain/> [“The 3 Types of Arraigo in Spain”].

<sup>131</sup> *Ibid.*

<sup>132</sup> Secretary of State for Migration, ‘Autorización residencia temporal por circunstancias excepcionales. Arraigo familiar,’ updated January 2016, <https://www.inclusion.gob.es/en/web/migraciones/w/autorizacion-residencia-temporal-por-circunstancias-excepcionales-arraigo-familiar>; “Hooper,” *see above* note 54, at 14.

<sup>133</sup> “The 3 Types of Arraigo in Spain,” *see above* note 130.

<sup>134</sup> Royal Legislative Decree 2/2015, of 23 October, approving the consolidated text of the Workers' Statute Act (Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores), Art. 4 <https://www.boe.es/eli/es/rdlg/2015/10/23/2/con>.

<sup>135</sup> *Ibid.*, Article 1 and Article 15(c)(6). See also, *Employment and Employee Benefits in Spain*, *see above* note 94.

<sup>136</sup> While women in Spain are more qualified than men in observable labor market characteristics, they earn less. Guner, N., Kaya, E. & Sánchez-Marcos, V. Gender gaps in Spain: policies and outcomes over the last three decades. *SERIEs* 5, 61–103 (2014), <https://doi.org/10.1007/s13209-014-0104-z>. In 2018, the gender pay gap in Spain was 21 percent. Alyssa McMurty, *Spain Enacts Earnings Registry to Reduce Gender Pay Gap*, Anadolu Agency (2021), <https://www.aa.com.tr/en/economy/spain-enacts-earnings-registry-to-reduce-gender-pay-gap/2208821>. Female workers in Spain are more likely than men to be employed part time and with temporary contracts. Manuel V. Gomez & Christina Delgado, *The Gender No-Pay Gap: Women in Spain Do Twice as Much Unpaid Work as Men*, El País (2018), [https://english.elpais.com/elpais/2018/02/13/inenglish/1518514387\\_016558.html](https://english.elpais.com/elpais/2018/02/13/inenglish/1518514387_016558.html). Spain’s family policies are also significantly less expansive than other OECD countries. For example, their 16-week parental leave is about half the OECD average.

<sup>137</sup> European Commission, *European Network of Legal Experts in Gender Equality and Non-discrimination*, 1–3 (2019) <https://www.equalitylaw.eu/downloads/4865-spain-spain-approves-the-royal-decree-6-2019-of-01-march-2019-of-urgent-measures-to-guarantee-equality-of-treatment-and-opportunities-between-women-and-men-in-employment-and-occupation-pdf-104-kb> (Definition of work for equal value in Spain’s statute: “A work will have equal value related to other when the work or tasks effectively entrusted, the educational, professional or educational conditions, the training required for its exercise, the factors strictly related to its performance and the working conditions in which those activities are carried out are in fact equivalent.”) The law also extended paternity leave to 16 weeks, equal to maternity leave. See Latham & Watkins, *New Spanish Employment Law Imposes Equal Opportunity Regulations and the Working Day Record*, (April 26, 2019), <https://www.jdsupra.com/legalnews/new-spanish-employment-law-imposes-66412/>.

<sup>138</sup> *Ibid.*, 3.

<sup>139</sup> Dinah Wisenberg Brin, “Spain Adopts Decrees to Advance Gender Equality,” SHRM (Dec 2020), <https://www.shrm.org/resourcesandtools/hr-topics/global-hr/pages/spain-decrees-gender-equality.aspx>.

<sup>140</sup> *El Salario y La Migración en España*, *see above* note 89.

<sup>141</sup> Paola Rios, *SMI 2021, una subida a debate en los últimos meses del año (Salario Mínimo Interprofesional 2021)*, Audiolis (Sep 2021), <https://www.audiolis.com/blog/smi-2021-salario-minimo/>.

<sup>142</sup> Miriam Klügel, Working Hours and Public Holidays in Spain, (2019), <https://www.mariscal-abogados.com/working-hours-and-public-holidays-in-spain/>.

<sup>143</sup> Video Call Interview by IHRC with Elena Blasco, Raquel Gómez, and Paloma López, Confederación Sindical de Comisiones Obreras (CCOO), April 7, 2020 [“April 7 Video Call Interview, CCOO”].

<sup>144</sup> Oscar Molina, *Working Life in Spain*, Eurofound (2019), <https://www.eurofound.europa.eu/country/spain#collective-bargaining> [“Working Life in Spain”].

<sup>145</sup> *Ibid.*

<sup>146</sup> “April 7 Video Call Interview, CCOO,” *see above* note 143.

<sup>147</sup> “Working Life in Spain,” *see above* note 144.

<sup>148</sup> ILO. “Making Decent Work a Reality for Domestic Workers. Progress and prospects ten years after the adoption of the Domestic Workers Convention,” 2011 (No. 189), 273: In 2019 there were 615 479 domestic workers in Spain, 538 978 of whom are women, reflecting 3.3 percent of total employment (women domestic workers reflect 6.3 percent of total employment of women) [“Making Decent Work a Reality for Domestic Workers”].

<sup>149</sup> Sophie Davies, *Spain Starts Subsidy for Domestic Workers Hit By Coronavirus*, Reuters (2020), <https://www.reuters.com/article/us-health-coronavirus-domestic-workers/spain-starts-subsidy-for-domestic-workers-hit-by-coronavirus-idUSKBN21I2Q9> [“Spain Starts Subsidy for Domestic Workers Hit By Coronavirus”].

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- <sup>150</sup> “ILO Report,” *see above* note 2, at 61.
- <sup>151</sup> *Ibid.*, 61.
- <sup>152</sup> Margarita León. “Migration and Care Work in Spain: The Domestic Sector Revisited”, *Social Policy and Society*, Vol. 9, No. 3, 409 (2010).
- <sup>153</sup> Vera Pavlou, “Migrant domestic workers, vulnerability and the law: immigration and employment laws in Cyprus and Spain,” *Investigaciones Feministas*, Vol. 7, No. 1 (2016) <https://revistas.ucm.es/index.php/INFE/article/download/52130/48751>, 159 [“Pavlou”].
- <sup>154</sup> *Ibid.*
- <sup>155</sup> *Ibid.*
- <sup>156</sup> International Labor Office, “Spain approves new regulations for domestic employees,” Conditions of Work and Employment Branch (2012), [http://www.ilo.ch/wcmsp5/groups/public/@ed\\_protect/@protrav/@travail/documents/publication/wcms\\_173686.pdf\\_2](http://www.ilo.ch/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_173686.pdf_2) [“Spain approves new regulations for domestic employees”]; “Pavlou,” *see above* note 153, at 159.
- <sup>157</sup> “Spain approves new regulations for domestic employees,” *see above* note 156.
- <sup>158</sup> *Ibid.*
- <sup>159</sup> *Ibid.*
- <sup>160</sup> “Pavlou,” *see above* note 153, at 161.
- <sup>161</sup> *Ibid.*, 159.
- <sup>162</sup> “ILO Report,” *see above* note 2, at 80.
- <sup>163</sup> “Making Decent Work a Reality for Domestic Workers,” *see above* note 148, at 156.
- <sup>164</sup> “Pavlou,” *see above* note 153, at 161.
- <sup>165</sup> *Ibid.*; Ministry of Work and Immigration, ‘Royal Decree 1620/2011, de 14 de noviembre, por el que se regula la relación laboral de carácter especial del servicio del hogar familiar’, *Boletín Oficial del Estado*, no. 277 (17 November 2011), <https://www.boe.es/eli/es/rd/2011/11/14/1620> [Royal Decree 1620/2011].
- <sup>166</sup> Jefatura del Estado, ‘Ley 31/1995, de 8 de noviembre, de prevención de Riesgos Laborales’, *Boletín Oficial del Estado*, no. 269 (11 October 1995), <https://www.boe.es/eli/es/l/1995/11/08/31/con>; “Pavlou,” *see above* note 153, at 161.
- <sup>167</sup> Royal Decree 1620/2011, *see above* note 165; “Spain Starts Subsidy for Domestic Workers Hit By Coronavirus,” *see above* note 149.
- <sup>168</sup> At the national level, there is the National Court (*Audiencia Nacional*), Supreme Court (*Tribunal Supremo*), Central Criminal Investigation Courts (*Juzgados Centrales de Instrucción*), and the Central Contentious-Administrative Courts (*Juzgados Centrales de lo Contencioso*). Spanish autonomous communities have their own Courts of Appeal (*Audiencias Provinciales*) and High Courts of Justice (*Tribunales Superiores de Justicia*).
- <sup>169</sup> The Labor and Employment Disputes Review, *Spain*, March 2019, <https://www.lexology.com/library/detail.aspx?g=beacefb8-4e5d-4c4a-9055-912f8b28239f>.
- <sup>170</sup> European Union, *Judicial Systems in Member States – Spain*, (2020) [https://e-justice.europa.eu/content\\_judicial\\_systems\\_in\\_member\\_states-16-es-maximizeMS-en.do?member=1](https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-es-maximizeMS-en.do?member=1).
- <sup>171</sup> JDSUPRA, *Alerts on Employment Issues in Spain – May* (2019), <https://web.archive.org/web/20190411033631/https://www.jdsupra.com/legalnews/alerts-on-employment-issues-in-spain-20789/>.
- <sup>172</sup> OECD, *Combating the Illegal Employment of Foreign Workers*, 92 (2000), <https://books.google.com/books?id=dZ3WAgAAQBAJ&pg=PA92&lpq=PA92&dq=Labour+and+Social+Security+Investigation+spain+data&source=bl&ots=aPJCstDb27&sig=ACfU3U1YUpgD-4oV9GKN3GctPfkELiTjjw&hl=en&sa=X&ved=2ahUKEwiAgfTQ4-0AhXEK80KHRJZC0kQ6AEwBXoECAsQKA#v=onepage&q=Labour%20and%20Social%20Security%20Inspectorate%20spain%20data&f=false>.
- <sup>173</sup> *Ibid.*, 92.
- <sup>174</sup> Andalucia.com, *Health and Safety at Work*, (May 22, 2020) <https://www.andalucia.com/spain/business/health-and-safety.htm>.
- <sup>175</sup> Video Call Interview by IHRC with Luis Rodriguez Calles and Sergio Barciela Fernandez, Instituto Universitario de Estudios sobre Migraciones (IUEM, U.P. Comillas), April 24, 2020 (“Inspectors are not very helpful. They don’t come often and don’t do much. They will call before they come so it is easy to hide the abuses that are going on.”) [“April 24 Video Call Interview, IUEM”].
- <sup>176</sup> Carlos Martín Urriza, *The Impact of Immigration on the Spanish Labour Market*. Fundación Real Instituto Elcano, Sept. 2008, [http://www.realinstitutoelcano.org/wps/portal/rielcano\\_en/contenido?WCM\\_GLOBAL\\_CONTEXT=/elcano/elcano\\_in/zonas\\_in/demography+population/ari39-2008](http://www.realinstitutoelcano.org/wps/portal/rielcano_en/contenido?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/demography+population/ari39-2008) [“Urriza”].



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- <sup>177</sup> Ley Orgánica 4/2000, *see above* note 102, at 544, Art. 25. “April 24 Video Call Interview, IUEM,” *see above* note 175.
- <sup>178</sup> *Ibid.* See also, Migration Data Portal, “Migrant recruitment costs” (October 5, 2021), <https://www.migrationdataportal.org/themes/migrant-recruitment-costs>.
- <sup>179</sup> *The Vulnerability to Exploitation of Women Migrant Workers in Agriculture in the EU*, *see above* note 117, at 27.
- <sup>180</sup> European Coordination Via Campesina, *Sowing Injustice, Harvesting Dispain: Abuse and Exploitation of Foreign Agricultural Workers*, (2019), [https://www.eurovia.org/wp-content/uploads/2019/11/EN2.1\\_lowres.pdf](https://www.eurovia.org/wp-content/uploads/2019/11/EN2.1_lowres.pdf) [*Sowing Injustice*].
- <sup>181</sup> The system’s full name is “Collective Management of Hiring in the Countries of Origin.”
- <sup>182</sup> *The Vulnerability to Exploitation of Women Migrant Workers in Agriculture in the EU*, *see above* note 117, at 26.
- <sup>183</sup> *Ibid.*, 27.
- <sup>184</sup> International Labor Organization, *Promoting Fair Migration*, (2016), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_453898.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_453898.pdf) [*Promoting Fair Migration*].
- <sup>185</sup> Raúl Ramos, Migration Policy Institute, Turning a Corner? How Spain Can Help Immigrants Find Middle-Skilled Work, (October 2014), <https://www.migrationpolicy.org/research/turning-corner-how-spain-can-help-immigrants-find-middle-skilled-work> [“Ramos”].
- <sup>186</sup> Video Call Interview by IHRC with Carolina Elias and Edith Espinola, Servicio Doméstico Activo (SEDOAC), May 5, 2020 [“May 5 Video Call Interview, SEDOAC”].
- <sup>187</sup> *Ibid.*
- <sup>188</sup> *Ibid.*
- <sup>189</sup> Antonio Tapia and Amalia del Campo, *Regulation of the Legal Profession in Spain: Overview*, Thomson Reuters (2018) [https://uk.practicallaw.thomsonreuters.com/6-634-9270?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/6-634-9270?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1).
- <sup>190</sup> “May 5 Video Call Interview, SEDOAC,” *see above* note 186.
- <sup>191</sup> “April 22 Video Call Interview, IOM,” *see above* note 56.
- <sup>192</sup> “May 5 Video Call Interview, SEDOAC,” *see above* note 186.
- <sup>193</sup> European Commission, *Clandestino Project Final Report*, 130 (2009), <https://emnbelgium.be/sites/default/files/publications/clandestino-final-report.pdf>; Confederación Sindical de Comisiones Obreras, *Ocupación de la Población Extranjera*, 4 (2019), <https://www.ccoo.es/8991b94e327452513a1594572cbd5257000001.pdf>. This trend is backed up by data in the ILO Report, which shows that about 37 percent of migrant wage workers in Spain perform unskilled jobs (compared to 12 percent of national wage workers). Conversely, only about 11 percent of migrant wage workers (compared to 35 percent of national wage workers) serve in high-skilled occupations. “ILO Report,” *see above* note 2, at 38-39.
- <sup>194</sup> “ILO Report,” *see above* note 2, at 61.
- <sup>195</sup> “Ramos,” *see above* note 185.
- <sup>196</sup> International Labour Organization, *Observation (CEACR) - Adopted 2018, Published 108th ILC session (2019) Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Spain (Ratification: 1967)*, [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:39588663](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:39588663) [“2018 Observation CEACR”].
- <sup>197</sup> “April 22 Video Call Interview, IOM,” *see above* note 56.
- <sup>198</sup> “ILO Report,” *see above* note 2, at 54.
- <sup>199</sup> *Ibid.*, 54-55. These numbers are reflected in data from 2019, showing that only 24 percent of Spaniards held temporary work contracts while 38 percent of foreigners did. See “Employees Born Outside EU: 22 percent with Temporary Jobs.” Accessed December 11, 2020. <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20200618-1>.
- <sup>200</sup> “Ramos,” *see above* note 185.
- <sup>201</sup> *Ibid.*
- <sup>202</sup> Núria Rodríguez-Planas and Natalia Nollenberger. *A Precarious Position: The Labor Market Integration of New Immigrants in Spain*. Washington, DC and Geneva: Migration Policy Institute and International Labour Office, 2, (2014), [https://www.ilo.org/wcmsp5/groups/public/@ed\\_protect/@protrav/@migrant/documents/publication/wcms\\_313708.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@migrant/documents/publication/wcms_313708.pdf) [*A Precarious Position*].
- <sup>203</sup> *The Vulnerability to Exploitation of Women Migrant Workers in Agriculture in the EU*, *see above* note 117.
- <sup>204</sup> “April 24 Video Call Interview, IUEM,” *see above* note 175.
- <sup>205</sup> Berta Güell and Blanca Garcés-Mascareñas, “Agricultural seasonal workers in times of Covid-19 in Spain,” *Advancing Alternative Migration Governance* (December 2020) at 27

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[http://admigov.eu/upload/Deliverable\\_D33\\_Guell\\_Garces\\_Temporary\\_and\\_Circular\\_Migration\\_Spain.pdf](http://admigov.eu/upload/Deliverable_D33_Guell_Garces_Temporary_and_Circular_Migration_Spain.pdf) [“Agricultural seasonal workers in times of Covid-19 in Spain”].

<sup>206</sup> *Ibid.*, 39.

<sup>207</sup> *The Vulnerability to Exploitation of Women Migrant Workers in Agriculture in the EU*, see above note 117.

<sup>208</sup> “Agricultural seasonal workers in times of Covid-19 in Spain,” see above note 205. (For instance, it is very difficult for temporary migrant workers to participate in union elections, due to the difficulty of having a work contract of at least 6 months (requirement to be elected), which results in a lack of representation of the interests and demands of migrant temporary workers in agriculture.).

<sup>209</sup> *Ibid.*, 38.

<sup>210</sup> *El Salario y La Migración en España*, see above note 89.

<sup>211</sup> See, e.g., “Agricultural seasonal workers in times of Covid-19 in Spain,” see above note 205, at 27.

<sup>212</sup> Moreno-Fuentes, Francisco Javier. “Migrants’ Access to Social Protection in Spain.” In *Migration and Social Protection in Europe and Beyond (Volume 1): Comparing Access to Welfare Entitlements*, edited by Jean-Michel Lafleur and Daniela Vintila, 405–20. IMISCOE Research Series. Cham: Springer International Publishing, 2020. [https://doi.org/10.1007/978-3-030-51241-5\\_27](https://doi.org/10.1007/978-3-030-51241-5_27) [“Moreno-Fuentes”].

<sup>213</sup> Maria Kranendonk and Paul de Beer, *What Explains the Union Membership Gap between Migrants and Natives?*, 54 *British J. Industrial Relations*, 857 (2016), <https://onlinelibrary.wiley.com/doi/10.1111/bjir.12192>.

<sup>214</sup> “Ramos,” see above note 185.

<sup>215</sup> Miguel Martínez Lucio, Stefania Marino, & Heather Connolly, *Broadening and Reimagining Regulation: Trade unions, ‘Active Servicing’ And Immigration in Spain Since the Early 1990s*, 55 *J. Industrial Relations* 190, 198 (2013), <https://journals.sagepub.com/doi/pdf/10.1177/0022185612473219> [Broadening and Reimagining Regulation].

<sup>216</sup> “April 7 Video Call Interview, CCOO,” see above note 143.

<sup>217</sup> Video Call Interview by IHRC with Javier de Vincente, Pablo Trapero, and Dulce Moreno, Union Sindical Obrera (USO), April 23, 2020 [“April 23 Video Call Interview, USO”].

<sup>218</sup> “April 24 Video Call Interview, IUEM,” see above note 175.

<sup>219</sup> *The Vulnerability to Exploitation of Women Migrant Workers in Agriculture in the EU*, see above note 117; “Agricultural seasonal workers in times of Covid-19 in Spain,” see above note 205.

<sup>220</sup> *Sowing Injustice*, see above note 180.

<sup>221</sup> See, e.g., Ofelia de Pablo et al., “‘We pick your food’: migrant workers speak out from Spain’s ‘Plastic Sea,’” *The Guardian* (September 20, 2020), <https://www.theguardian.com/global-development/2020/sep/20/we-pick-your-food-migrant-workers-speak-out-from-spains-plastic-sea>; Delia McGrath, “Agricultural workers’ rights abuses in Spain,” *Ethical Consumer* (February 20, 2019), <https://www.ethicalconsumer.org/food-drink/agricultural-workers-rights-abuses-spain>; *Ibid.*

<sup>222</sup> *Sowing Injustice*, see above note 180; Emmanuelle Hedio, “‘They know that you’ll leave, like a dog moving on to the next bin’. Undocumented male and seasonal contracted female workers in agricultural labour market of Huelva, Spain,” in Alessandra Corrado, Carlos de Castro, Domenico Perrotta, *Migration and Agriculture*, Routledge, 2016.

<sup>223</sup> Felicity Lawrence, *A Gap in Perception on Migrant Workers in Spain*, *The Guardian* (Mar. 8, 2011), <https://www.theguardian.com/global-development/poverty-matters/2011/mar/08/spain-migrant-workers-agriculture-harsh-conditions> [“Lawrence”]; Cartas Española, *Vulneraciones de Derechos Laborales en el Sector Agrícola, la Hostelería, y los Empleos del Hogar*, (2018), <https://www.caritas.es/producto/vulneraciones-de-derechos-laborales-en-el-sector-agricola-la-hosteleria-y-los-empleos-del-hogar/> [“Cáritas Española”]; see also CEACR – Spain, Convention No. 111, Observation published in 2022, [https://www.ilo.org/dyn/normlex/en/?p=1000:13100:0:NO:13100:P13100.COMMENT\\_ID,P13100.COUNT\\_RY\\_ID:4118757,102847](https://www.ilo.org/dyn/normlex/en/?p=1000:13100:0:NO:13100:P13100.COMMENT_ID,P13100.COUNT_RY_ID:4118757,102847).

<sup>224</sup> *Sowing Injustice*, see above note 180.

<sup>225</sup> Emma Wallis, *Forgotten migrant workers in Southern Spain speak out about conditions*, *InfoMigrants* (Sept. 30, 2020), <https://www.infomigrants.net/en/post/27635/forgotten-migrant-workers-in-southern-spain-speak-out-about-conditions>.

<sup>226</sup> “Cáritas Española,” see above note 223.

<sup>227</sup> *Ibid.*

<sup>228</sup> *Ibid.*

<sup>229</sup> “May 5 Video Call Interview, SEDOAC,” see above note 186.

<sup>230</sup> “Cáritas Española,” see above note 223.

<sup>231</sup> “Lawrence,” see above note 223.

<sup>232</sup> “Urriza,” see above note 176.

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- <sup>233</sup> Fiona David, Katharine Bryant & Jacqueline Joudo Larsen, “Migrants and their Vulnerability to Human Trafficking, Modern Slavery and Forced Labour,” International Organization for Migration (Jul 2019) at 43, [https://publications.iom.int/system/files/pdf/migrants\\_and\\_their\\_vulnerability.pdf](https://publications.iom.int/system/files/pdf/migrants_and_their_vulnerability.pdf).
- <sup>234</sup> “April 24 Video Call Interview, IUEM,” *see above* note 175.
- <sup>235</sup> “May 5 Video Call Interview, SEDOAC,” *see above* note 186.
- <sup>236</sup> *Governance of Migrant Integration in Spain*, *see above* note 126.
- <sup>237</sup> “2018 Observation CEACR,” *see above* note 196.
- <sup>238</sup> *Governance of Migrant Integration in Spain*, *see above* note 126.
- <sup>239</sup> *Ibid.*
- <sup>240</sup> Jefatura del Estado, Ley Orgánica 2/2009, de 11 de diciembre, de Reforma de la Ley Orgánica 4/2000, de 11 de enero, sobre Derechos y Libertades de los Extranjeros en España y su Integración Social, (2009) <https://www.boe.es/boe/dias/2009/12/12/pdfs/BOE-A-2009-19949.pdf>.
- <sup>241</sup> *Governance of Migrant Integration in Spain*, *see above* note 126.
- <sup>242</sup> Ministry of Equality, *General Directorate for Equal Treatment and Ethnic Racial Diversity*, <https://www.igualdad.gob.es/ministerio/dgigualdadtrato/Paginas/index.aspx>.
- <sup>243</sup> EQUINET, *Council for the Elimination of Racial or Ethnic Discrimination* (2019), [https://equineteurope.org/author/spain\\_council/](https://equineteurope.org/author/spain_council/).
- <sup>244</sup> “April 7 Video Call Interview, CCOO,” *see above* note 143.
- <sup>245</sup> UGT, *Informe Sobre Discriminación Salarial De Género En La Región De Murcia*, (2020), <https://www.murcia.com/region/noticias/2023/02/16-informe-sobre-discriminacion-salarial-de-genero-en-la-region-de-murcia.asp>.
- <sup>246</sup> *Ibid.*
- <sup>247</sup> “April 23 Video Call Interview, USO,” *see above* note 217.
- <sup>248</sup> “April 7 Video Call Interview, CCOO,” *see above* note 143.
- <sup>249</sup> Josep Banyuls, Fausto Miguelez, & Albert Recio, *Job Quality: The Experience of the Construction and Care Sectors in Spain*, International Labour Organization 3, <https://www.ilo.org/legacy/english/protection/travail/pdf/rdwpaper37b.pdf>.
- <sup>250</sup> *Ibid.*; *Broadening and Reimagining Regulation*, *see above* note 215, at 190, 197.
- <sup>251</sup> *Broadening and Reimagining Regulation*, *see above* note 215.
- <sup>252</sup> *Ibid.*, 198.
- <sup>253</sup> “Ramos,” *see above* note 185.
- <sup>254</sup> “April 22 Video Call Interview, IOM,” *see above* note 56.
- <sup>255</sup> “April 24 Video Call Interview, IUEM,” *see above* note 175.
- <sup>256</sup> *Ibid.*
- <sup>257</sup> “May 5 Video Call Interview, SEDOAC,” *see above* note 186.
- <sup>258</sup> “ILO Report,” *see above* note 2, at 7.
- <sup>259</sup> *Ibid.*, Appendix IV, Figure A-7.
- <sup>260</sup> *Ibid.*, xvii, 71. According to the ILO Report, in the United States (U.S.), migrants comprised 9.06 percent of the population in 2018 and represented a proportionate share of all wage workers at 8.95 percent. See “ILO Report,” 11.
- <sup>261</sup> *Ibid.*
- <sup>262</sup> *Ibid.*, xx; “This may possibly reflect under representation of migrant workers in collective representation structures in the middle of the distribution because of difficulties organizing or because nationals dominate the overall representation, a phenomenon that could be exacerbated if migrants are perceived as a low-wage employment threat to nationals (see, e.g., Rubery, 2003),” *ibid.*, 86.
- <sup>263</sup> *Ibid.*, Appendix IV, Figure A-6.
- <sup>264</sup> *Ibid.*
- <sup>265</sup> *Ibid.*
- <sup>266</sup> *Ibid.*, 74.
- <sup>267</sup> *Ibid.*, 80.
- <sup>268</sup> *Ibid.*, 7.
- <sup>269</sup> Under U.S. law, temporary workers are referred to as “nonimmigrant workers,” a category that includes all workers without the means or intent to reside in the United States permanently. They can therefore be distinguished from the “immigrant population,” which refers to foreign nationals who enter the country for the purpose of permanently residing there and receive permanent resident status accordingly. See, *Temporary (Nonimmigrant) Workers | USCIS*, (September 7, 2011), <https://www.uscis.gov/working-in-the-united-states/temporary-nonimmigrant-workers> [*Temporary (Nonimmigrant) Workers*].

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<sup>270</sup> Daniel Martinez, *The Racialized Dimensions of Contemporary Immigration and Border Enforcement Policies and Practices*, *Public Administration Review* 82, no. 3 (2022).

<sup>271</sup> Southern Poverty Law Center, *Immigrant Justice*, <https://www.splcenter.org/issues/immigrant-justice>.

<sup>272</sup> *Foreign-born workers made up 17.4 percent of labor force in 2019*, U.S. Bureau of Labor Statistics, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics/monthly-nonimmigrant-visa-issuances.html>.

<sup>273</sup> *Ibid.*

<sup>274</sup> Dan Kosten, “Immigrants as Economic Contributors: They Are the New American Workforce,” *National Immigration Forum* (June 5, 2018), <https://immigrationforum.org/article/immigrants-as-economic-contributors-they-are-the-new-american-workforce/>.

<sup>275</sup> *Ibid.*

<sup>276</sup> *Ibid.*

<sup>277</sup> Francesc Ortega & Amy Hsin, “What Explains the Wages of Undocumented Workers?,” *Econofact* (July 24, 2019), <https://econofact.org/what-explains-the-wages-of-undocumented-workers> [“What Explains the Wages of Undocumented Workers?”].

<sup>278</sup> *Ibid.*

<sup>279</sup> Jeffrey Passel & D’Vera Cohn, “Occupations of unauthorized immigrant workers,” *Pew Research Center* (November 3, 2016), <https://www.pewresearch.org/hispanic/2016/11/03/occupations-of-unauthorized-immigrant-workers/>.

<sup>280</sup> “Immigrant Health-Care Workers in the United States,” *MIGRATION POLICY INSTITUTE* (April 7, 2023), [https://www.migrationpolicy.org/article/immigrant-health-care-workers-united-states#:~:text=For%20instance%2C%20the%20foreign%20born,aides%20\(see%20Table%201\)](https://www.migrationpolicy.org/article/immigrant-health-care-workers-united-states#:~:text=For%20instance%2C%20the%20foreign%20born,aides%20(see%20Table%201).).

<sup>281</sup> See *Permanent resident alien*, U.S. DEPARTMENT OF HOMELAND SECURITY (March 16, 2018), [https://www.dhs.gov/immigration-statistics/data-standards-and-definitions/definition-terms#permanent\\_resident\\_alien](https://www.dhs.gov/immigration-statistics/data-standards-and-definitions/definition-terms#permanent_resident_alien).

See also, *Temporary (Nonimmigrant) Workers*, see above note 269 (The “immigrant population” refers to foreign nationals who enter the country for the purpose of permanently residing there and receive permanent resident status accordingly).

<sup>282</sup> See *Nonimmigrant*, U.S. DEPARTMENT OF HOMELAND SECURITY (March 16, 2018),

<https://www.dhs.gov/immigration-statistics/data-standards-and-definitions/definition-terms#14>. See also, Bryan Baker, *Population Estimates of Nonimmigrants Residing in the United States: Fiscal Years 2017-2019*, U.S. DEPARTMENT OF HOMELAND SECURITY, OFFICE OF IMMIGRATION STATISTICS, (May 2021),

[https://www.dhs.gov/sites/default/files/publications/immigration-statistics/Pop\\_Estimate/NI/ni\\_population\\_estimates\\_fiscal\\_years\\_2017\\_-\\_2019v2.pdf](https://www.dhs.gov/sites/default/files/publications/immigration-statistics/Pop_Estimate/NI/ni_population_estimates_fiscal_years_2017_-_2019v2.pdf) (defining nonimmigrants as “foreign nationals admitted into the U.S. for specific, temporary purposes, not including tourism”) [*Population Estimates of Nonimmigrants Residing in the United States: Fiscal Years 2017-2019*]. Nonimmigrant workers can enter the United States by receiving a job offer and obtaining a temporary visa consistent with their job category, such as for seasonal labor, tourism, temporary work, or as a student. See, *Requirements for Immigrant and Nonimmigrant Visas*, U.S. CUSTOMS AND BORDER PROTECTION (January 3, 2018), <https://www.cbp.gov/travel/international-visitors/visa-waiver-program/requirements-immigrant-and-nonimmigrant-visas#:~:text=Immigrant%20visas%20are%20issued%20to,study%2C%20or%20other%20similar%20reasons>.

<sup>283</sup> Jeffrey S. Passel, D. Cohn, and Ana Gonzalez-Barrera, “Population decline of unauthorized immigrants stalls, may have reversed,” *Pew Research Center* 3 (2013), [https://domide.colmex.mx/Archivos/Doc\\_6018.pdf](https://domide.colmex.mx/Archivos/Doc_6018.pdf).

<sup>284</sup> Gabriel R. Sanchez and Carly Bennett, “Anti-immigrant campaign ads negatively impact Latinos’ mental health and make them feel unwelcome in the United States,” *Brookings Institute* (2022), <https://www.brookings.edu/blog/fixgov/2022/11/01/anti-immigrant-campaign-ads-negatively-impact-latinos-mental-health-and-make-them-feel-unwelcome-in-the-united-states/>.

<sup>285</sup> For instance, the Migration Policy Institute (MPI) in its 2020 Spotlight on Immigrants and Immigration in the United States, uses the term “foreign born” and “immigrant” interchangeably when referring to “persons with no U.S. citizenship at birth. This population includes naturalized citizens, lawful permanent residents, refugees and asylees, persons on certain temporary visas, and the unauthorized.” According to MPI estimates, as of 2019, 22.1 million migrants were living in the United States. This number was derived by subtracting the number of non-naturalized immigrants (22.6 million) by the total number of “immigrants” as defined by MPI (44.7 million). See, Jeanne Batlova, Brittany Blizzard, and Jessica Bolter, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, *MIGRATION POLICY INSTITUTE* (Feb 14, 2020), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-2019> [*Frequently Requested Statistics on Immigrants and Immigration in the United States*].

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<sup>286</sup> *Frequently Requested Statistics on Immigrants and Immigration in the United States*, see above note 285.

<sup>287</sup> *Ibid.*

<sup>288</sup> *Ibid.*

<sup>289</sup> *Population Estimates of Nonimmigrants Residing in the United States: Fiscal Years 2017-2019*, see above note 271; Elizabeth M. Grieco, *Estimates of the Nonimmigrant Population in the United States: 2004*, U.S. DEPARTMENT OF HOMELAND SECURITY, OFFICE OF IMMIGRATION STATISTICS (June 2006), [https://www.dhs.gov/sites/default/files/publications/Nonimmigrant\\_Population%20Estimates\\_2004.pdf](https://www.dhs.gov/sites/default/files/publications/Nonimmigrant_Population%20Estimates_2004.pdf).

<sup>290</sup> *Ibid.*

<sup>291</sup> Bryan Baker, *Nonimmigrants Residing in the United States: Fiscal Year 2016*, U.S. DEPARTMENT OF HOMELAND SECURITY, OFFICE OF IMMIGRATION STATISTICS (Mar. 2018), [https://www.dhs.gov/sites/default/files/publications/Nonimmigrant\\_Population%20Estimates\\_2016\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/Nonimmigrant_Population%20Estimates_2016_0.pdf) [*Nonimmigrants Residing in the United States: Fiscal Year 2016*].

<sup>292</sup> *Ibid.*

<sup>293</sup> *Population Estimates of Nonimmigrants Residing in the United States: Fiscal Years 2017-2019*, see above note 271; Robert Warren, *In 2019, the US Undocumented Population Continued a Decade-Long Decline and the Foreign-Born Population Nearing Zero Growth*, CENTER FOR MIGRATION STUDIES (March 8, 2021), <https://cmsny.org/publications/2019-undocumented-population-warren-030821/>.

<sup>294</sup> Randy Capps et al., *Unauthorized Immigrants in the United States Stable Numbers, Changing Origins*, MIGRATION POLICY INSTITUTE (December 2020), [https://www.migrationpolicy.org/sites/default/files/publications/mpi-unauthorized-immigrants-stablenumbers-changingorigins\\_final.pdf](https://www.migrationpolicy.org/sites/default/files/publications/mpi-unauthorized-immigrants-stablenumbers-changingorigins_final.pdf).

<sup>295</sup> *Ibid.*

<sup>296</sup> In 1992, there were 131,000 refugees admitted to the U.S., and in 2020, there were 11,814. The Trump administration reduced the FY 2017 cap from 85,000 in 2016 to 50,000 to 18,000 in 2020. In May 2021, President Biden increased the cap to 62,500 refugees and pledged a further increase to 125,000 in fiscal year 2022. Kira Monin, Jeanne Batlova, and Tianjian Lai, *Refugees and Asylees in the United States*, MIGRATION POLICY INSTITUTE (May 13, 2021), <https://www.migrationpolicy.org/article/refugees-and-asylees-united-states-2021>; *Statement by President Joe Biden on Refugee Admissions*, WHITE HOUSE BRIEFING ROOM (May 3, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/03/statement-by-president-joe-biden-on-refugee-admissions/>.

<sup>297</sup> *Nonimmigrants Residing in the United States: Fiscal Year 2016*, see above note 280.

<sup>298</sup> *Ibid.*

<sup>299</sup> *Ibid.*

<sup>300</sup> Video Call Interview by IHRC with Mike Carlton, Director of Labor Relations, Florida Fruit and Vegetable Association (May 8, 2020) [“May 8 Video Call Interview, FFVA”]; Video Call Interview by IHRC with Michael Kravitz, Associate Administrator for the Office of Performance and Communication, Department of Labor Wage and Hour Division (May 14, 2020) [“May 14 Video Call Interview, WHD”].

<sup>301</sup> Miriam Jordan, *8 Million People Are Working Illegally in the U.S. Here’s Why That’s Unlikely to Change*, THE NEW YORK TIMES (Dec. 11, 2018), <https://www.nytimes.com/2018/12/11/us/undocumented-immigrant-workers.html>.

<sup>302</sup> *H-1B Authorized-to-Work Population Estimate*, U.S. Citizenship and Immigration Services, OFFICE OF POLICY & STRATEGY, <https://www.uscis.gov/sites/default/files/document/reports/USCIS%20H-1B%20Authorized%20to%20Work%20Report.pdf>.

<sup>303</sup> *Monthly Nonimmigrant Visa Issuance Statistics*, U.S. Dept. of State, Bureau of Consular Affairs <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics/monthly-nonimmigrant-visa-issuances.html>.

<sup>304</sup> *Worldwide NIV Workload by Visa Category FY 2018*, U.S. Department of State, <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVWorkload/FY2018NIVWorkloadbyVisaCategory.pdf>.

<sup>305</sup> Julia Wolfe et al., *Domestic Workers Chartbook*, Economic Policy Institute (May 14, 2020), <https://files.epi.org/pdf/194214.pdf> [“Wolfe”].

<sup>306</sup> “United States Immigration,” National Geographic, <https://education.nationalgeographic.org/resource/resource-library-united-states-immigration/>.

<sup>307</sup> Congressional Research Service, *Central American Migration: Root Causes and U.S. Policy* (April 22, 2021), <https://fas.org/sgp/crs/row/IF11151.pdf> [*Central American Migration: Root Causes and U.S. Policy*].

<sup>308</sup> *Ibid.*

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- <sup>309</sup> UNICEF, *Death Threats and Gang Violence Forcing More Families to Flee Northern Central America – UNHCR and UNICEF survey* (December 17, 2020), <https://www.unicef.org/press-releases/death-threats-and-gang-violence-forcing-more-families-flee-northern-central-america>.
- <sup>310</sup> *Central American Migration: Root Causes and U.S. Policy*, see above note 296.
- <sup>311</sup> USA Facts, *Why Do People Migrate to the US?* (September 28, 2020), <https://usafacts.org/articles/why-do-people-immigrate-us/>.
- <sup>312</sup> Agreement Concerning Cooperation in Maritime Migration Law Enforcement, Dominican Republic-U.S., May 20, 2003, T.I.A.S. No. 03, 520.
- <sup>313</sup> Agreement Concerning Temporary Agricultural And Non-Agricultural Worker Programs, Guatemala-U.S., Sept. 17, 2020, T.I.A.S. No. 20, 917.
- <sup>314</sup> U.S. Department of Homeland Security, *Fact Sheet: DHS Agreements with Guatemala, Honduras, and El Salvador*, <https://www.dhs.gov/publication/fact-sheet-dhs-agreements-guatemala-honduras-and-el-salvador>.
- <sup>315</sup> *North American Free Trade Agreement* (NAFTA), Preamble (signed Dec. 17, 1992, entry into force Jan. 1994), <https://www.congress.gov/bill/103rd-congress/house-bill/3450/text>.
- <sup>316</sup> *United States-Mexico-Canada Agreement* (USMCA) (Office of the United States Trade Representative, Dec. 13, 2019), available at <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.
- <sup>317</sup> John C. Henegan, Brian C. Kimball & Caroline Smith, *Legal Systems in the United States: Overview*, Thompson Reuters (Jan. 1, 2021), [https://uk.practicallaw.thomsonreuters.com/w-019-5918?transitionType=Default&contextData=\(sc.Default\)&firstPage=true#co\\_anchor\\_a425810](https://uk.practicallaw.thomsonreuters.com/w-019-5918?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a425810).
- <sup>318</sup> National Archives, *The Constitution of the United States* (June 17, 2022), <https://www.archives.gov/founding-docs/constitution>.
- <sup>319</sup> International Labour Organization, *Ratifications for United States of America*, [https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102871](https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102871).
- <sup>320</sup> The U.S. has also ratified: the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Racial Discrimination; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. See United Nations Human Rights Office of the High Commissioner, *Ratification Status for United States of America*, (2020), [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=163&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=163&Lang=EN).
- <sup>321</sup> There are other ways to enter the United States as well. For example, persons can obtain a green card or get citizenship through marriage. These persons are then able to enter the labor market as Lawful Permanent Residents.
- <sup>322</sup> 8 U.S.C. § 1101.
- <sup>323</sup> Nonimmigrant Visas Issued by Classification, U.S. Dept. of State, <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2018AnnualReport/FY18AnnualReport%20-%20TableXVIB.pdf>.
- <sup>324</sup> *Ibid.*
- <sup>325</sup> Path2USA, *H1B Visa Application Process – A Step-By-Step Guide*, <https://www.path2usa.com/h1b-visa-guide>.
- <sup>326</sup> 65,000 initial cap plus exception for the first 20,000 with masters degrees. See H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models, U.S. Dept. of Citizenship and Immigration Services, <https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion-models>.
- <sup>327</sup> Video Call Interview by IHRC with Stan Sorscher, Labor Representative (retired), International Federation of Professional and Technical Engineers (May 8, 2020) [“May 8 Video Call Interview, IFPTE”].
- <sup>328</sup> “May 8 Video Call Interview, FFVA,” see above note 300. Explaining that over 80 percent of workers return to the same employer every year.
- <sup>329</sup> Explaining that in 2010, 4,500 H-2A workers admitted and in 2019 39,000 were admitted. *Ibid.*
- <sup>330</sup> *Ibid.*
- <sup>331</sup> *Ibid.*
- <sup>332</sup> *Ibid.*
- <sup>333</sup> Although the work is typically the same, migrants recruited by farm labor contractors tend to change employers more often, while those recruited by a specific farm generally work for the same employer or a small group of employers. *Ibid.*
- <sup>334</sup> *Ibid.*
- <sup>335</sup> Video Call Interview by IHRC with Cindy Brown Barnes, Director of Education, Workforce and Income Security (May 12, 2020) [“May 12 Video Call, GAO”].



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<sup>336</sup> Daniel Costa, *As the H-2B visa program grows, the need for reforms that protect workers is greater than ever*, Economic Policy Institute (August 18, 2022), <https://www.epi.org/publication/h-2b-industries-and-wage-theft/>.

<sup>337</sup> *H-2B Know Your Rights*, U.S. Dept. of State, <https://travel.state.gov/content/dam/visas/LegalRightsandProtections/Wilberforce/Wilberforce-ENG-100116.pdf> [*H-2B Know Your Rights*].

<sup>338</sup> 20 C.F.R. § 655.20.

<sup>339</sup> *Facts and Figures: J-1 Visa*, U.S. Department of State, <https://j1visa.state.gov/basics/facts-and-figures/>.

<sup>340</sup> Higher skilled participants typically work as teachers, professor and researchers, and are required to have equivalent educational training as nationals in the same positions. Lower skilled participants work in restaurants and amusement parks, among other sectors. See, *Ibid.*; *Exchange Visitor Program: Teacher Program*, U.S. Dept. of State, Bureau of Educational and Cultural Affairs, <https://j1visa.state.gov/programs/teacher/#participants> [*Exchange Visitor Program: Teacher Program*]. See also, International Labor Recruitment Working Group, *The American Dream Up For Sale: A Blueprint for Ending International Labor Recruitment Abuse*, FAIR LABOR RECRUITMENT 1, 9 (Feb. 2013) [*The American Dream Up For Sale*], <https://fairlaborrecruitment.files.wordpress.com/2013/01/final-e-version-ilrwg-report.pdf>. Additionally, 20,678 J-1 visa holders worked as au pairs and 24,919 worked as camp counselors in 2018. See, Participant and Sponsor Totals, U.S. Dept. of State, <https://j1visa.state.gov/basics/facts-and-figures/participant-and-sponsor-totals-2018/>.

<sup>341</sup> *The American Dream Up For Sale*, see above note 340.

<sup>342</sup> *Exchange Visitor Program: Teacher Program*, see above note 340.

<sup>343</sup> Legitimate purposes include: consulting with business associates, settling an estate, negotiating a contract, participating in short-term training, and traveling for a scientific, educational, professional or business conference on specific dates. See, *Temporary (Nonimmigrant) Workers*, see above note 269.

<sup>344</sup> *Ibid.*

<sup>345</sup> 8 U.S.C. § 1101

<sup>346</sup> *Visas for Diplomats and Foreign Government Officials*, U.S. Department of State, <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/visas-diplomats.html>.

<sup>347</sup> *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States*, Human Rights Watch (June 1, 2001), <https://www.hrw.org/report/2001/06/01/hidden-home/abuse-domestic-workers-special-visas-united-states>.

<sup>348</sup> Steven A. Camarota and Karen Zeigler, *Estimating the Illegal Immigrant Population Using the Current Population Survey*, Center for Immigration Studies, (Mar. 29, 2022), <https://cis.org/Report/Estimating-Illegal-Immigrant-Population-Using-Current-Population-Survey>.

<sup>349</sup> 8 U.S.C. § 1324a.

<sup>350</sup> *The American Dream Up For Sale*, see above note 340.

<sup>351</sup> Office of Workforce Investment, *Fact Sheet; National Farmworker Jobs Program*, Employment and Training Administration (March 2021), [https://www.dol.gov/sites/dolgov/files/ETA/Farmworker/pdfs/NFJP\\_Fact\\_Sheet.pdf](https://www.dol.gov/sites/dolgov/files/ETA/Farmworker/pdfs/NFJP_Fact_Sheet.pdf).

<sup>352</sup> Employment and Training Administration, *Monitor Advocate System*, <https://www.dol.gov/agencies/eta/agriculture/monitor-advocate-system/>.

<sup>353</sup> National Center for Farmworker Health, Inc., *Farmworker Health Network*, <http://www.ncfh.org/farmworker-health-network.html>.

<sup>354</sup> Centers for Disease Control and Prevention, *CDC Support of Migrant Farmworker Stream Forums*, <https://www.cdc.gov/minorityhealth/migrantfarmworkers/index.html>.

<sup>355</sup> *Summary of the Major Laws of the Department of Labor*, U.S. Dept. of Labor, <https://www.dol.gov/general/aboutdol/majorlaws> [*Summary of the Major Laws of the Department of Labor*].

<sup>356</sup> *Ibid.*

<sup>357</sup> *State Minimum Wage Laws*, U.S. Dept. of Labor (Jan. 1, 2021), <https://www.dol.gov/agencies/whd/minimum-wage/state>.

<sup>358</sup> H-2A agricultural workers, A-3 and G-5 domestic workers, and J-1 Au Pairs. *Fact Sheet #12: Agricultural Employers Under the Fair Labor Standards Act (FLSA)*, U.S. Dept. of Labor (Jan. 2020), <https://www.dol.gov/agencies/whd/fact-sheets/12-flsa-agriculture> [*Fact Sheet #12: Agricultural Employers Under the Fair Labor Standards Act (FLSA)*]; *Fact Sheet: Application of the Fair Labor Standards Act to Domestic Service, Final Rule*, U.S. Dept. of Labor (Sept. 2013), <https://www.dol.gov/agencies/whd/fact-sheets/flsa-domestic-service> [*Fact Sheet: Application of the Fair Labor Standards Act to Domestic Service, Final Rule*].

<sup>359</sup> *Home Care*, U.S. Dept. of Labor, <https://www.dol.gov/whd/homecare/faq.htm#sleep> [*Home Care*].

<sup>360</sup> “May 8 Video Call Interview, FFVA,” see above note 300; *Adverse Effect Wage Rates*, U.S. Dept. of Labor, <https://www.dol.gov/agencies/eta/foreign-labor/wages/adverse-effect-wage-rates>.

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<sup>361</sup> The prevailing wage rate is calculated by the U.S. Department of Labor based on the description of the job provided by the employer and wage data collected annually for jobs with similar duties in the same location. *See Department of Labor Wage Requirements*, University of Washington, <https://ap.washington.edu/ahr/visas/h1b/wage-requirements/>.

<sup>362</sup> *See H-1B Program*, U.S. Dept. of Labor Wage and Hour Division <https://www.dol.gov/agencies/whd/immigration/h1b>; U.S. Department of Labor Wage and Hour Division, *Fact Sheet #62G: Must an H-1B Worker Be Paid a Guaranteed Wage?* (July 2008), <https://www.dol.gov/agencies/whd/fact-sheets/62g-h1b-required-wage> [*Must an H-1B Worker Be Paid a Guaranteed Wage?*].

<sup>363</sup> *Must an H-1B Worker Be Paid a Guaranteed Wage?*, *see above* note 362.

<sup>364</sup> Daniel Costa and Ron Hira, *H-1B Visas and Prevailing Wage Levels*, Economic Policy Institute (May 4, 2020), <https://www.epi.org/publication/h-1b-visas-and-prevailing-wage-levels/>.

<sup>365</sup> *Ibid.* *See also* George Avalos, *Workers Paid \$1.21 an Hour to Install Fremont Tech Company's Computers*, Mercury News (Oct. 22, 2014), <https://www.mercurynews.com/2014/10/22/workers-paid-1-21-an-hour-to-install-fremont-tech-companys-computers/>.

<sup>366</sup> 29 C.F.R. § 1910. The Occupational Health and Safety Administration, the agency that enforces OSHA, conducts nearly 30,000-40,000 inspections each year out of its eighty area offices. Conference Call Interview by IHRC with Sanji Kanth and Reginald Jackson, Occupational Safety and Health Association, Office of General Industry and Agriculture Enforcement (May 1, 2020) [“May 1 Conference Call, OSHA”].

<sup>367</sup> *Ibid.*

<sup>368</sup> “May 12 Video Call, GAO,” *see above* note 335.

<sup>369</sup> *Workplace Safety and Health: Better Outreach, Collaboration, and Information Needed*. The Government Accountability Office (Dec. 2017) (noting that workers complained mostly about a lack of access to bathrooms); *see also* “May 12 Video Call, GAO,” *see above* note 335.

<sup>370</sup> “May 1 Conference Call, OSHA,” *see above* note 366.

<sup>371</sup> 42 U.S.C. § 2000e.

<sup>372</sup> *Ibid.*

<sup>373</sup> *Ibid.*

<sup>374</sup> Video Call Interview by IHRC with Anna Park, Regional Attorney, Los Angeles Office, Equal Employment Opportunity Commission (May 12, 2020) [“May 12 Video Call Interview, EEOC”].

<sup>375</sup> *Reyes-Gaona v. NCGA*, 250 F.3d 681 (4th Cir.2001) (ruled that foreign recruiters can openly discriminate in hiring decisions against migrant workers seeking employment due to non-extraterritoriality of discrimination statute).

<sup>376</sup> 8 U.S.C. § 1342b (note: does not prevent discrimination based on other protected classes, *See Title VII*).

<sup>377</sup> *Types of Discrimination*, U.S. Dept. of Justice (April 30, 2019), <https://www.justice.gov/crt/types-discrimination>.

<sup>378</sup> *See* 29 U.S.C. §§ 1801-1872.

<sup>379</sup> Kati L. Griffith, *U.S. Migrant Worker Law: The Interstices of Immigration Law and Labor and Employment Law*, 31 *Comp. Lab. L. & Pol'y J.* 125, 149 (2009).

<sup>380</sup> 29 U.S.C. § 1802.

<sup>381</sup> *Employee Rights*, National Labor Relations Board, <https://www.nlrb.gov/rights-we-protect/rights/employee-rights> [*Employee Rights*].

<sup>382</sup> *See, e.g.*, Cal. Labor Code §§1140-1166.3.

<sup>383</sup> *See About Floc*, Farm Labor Organizing Committee, <http://www.floc.com/wordpress/about-floc/>.

<sup>384</sup> *See Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002) [*Hoffman Plastic Compounds, Inc. v. NLRB*].

<sup>385</sup> *Blood, Sweat, and Fear: Workers' Rights in U.S. Meat and Poultry Plants*, Human Rights Watch (2004) 119, <https://www.hrw.org/sites/default/files/reports/usa0105.pdf>.

<sup>386</sup> *Promoting Fair Migration*, *see above* note 184, at 92.

<sup>387</sup> United States Courts, *Comparing Federal & State Courts*, <https://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts>.

<sup>388</sup> *Handy Reference Guide to the Fair Labor Standards Act*, U.S. Dept. of Labor Wage and Hour Division, <https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa>.

<sup>389</sup> U.S. Office of Personnel Management, *Alternate Dispute Resolution Handbook* 1, <https://www.opm.gov/policy-data-oversight/employee-relations/employee-rights-appeals/alternative-dispute-resolution/handbook.pdf>.

<sup>390</sup> *Ibid.*

<sup>391</sup> Aaron Halegua, *United States*, in *RESOLVING INDIVIDUAL LABOUR DISPUTES* 311, 316 (Minawa Ebisui, Sean Cooney & Colin Fenwick eds., 2016), <https://static1.squarespace.com/static/53960c86e4b010f46523d1fc/t/588fb3403a04117aa05687f1/148581254540>

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[6/Halegua+-+United+States+-+Individual+dispute+resolution+%28ILO%2C+2016%29.pdf](#); U.S. Equal Employment Opportunity Commission, *Chapter 3 Alternative Dispute Resolution for EEO Matters*, <https://www.eeoc.gov/federal-sector/management-directive/chapter-3-alternative-dispute-resolution-eco-matters>.

<sup>392</sup> *Filing a Lawsuit*, U.S. Equal Employment Opportunity Commission, <https://www.eeoc.gov/filing-lawsuit> [*Filing a Lawsuit*].

<sup>393</sup> National Labor Relations Board, *About NLRB*, <https://www.nlr.gov/about-nlr/what-we-do/investigate-charges>.

<sup>394</sup> *Ibid.*

<sup>395</sup> U.S. Department of Labor, *Enforcement*, <https://www.dol.gov/general/topic/youthlabor/enforcement>.

<sup>396</sup> *Ibid.*

<sup>397</sup> “May 14 Video Call Interview, WHD,” *see above* note 300.

<sup>398</sup> United States Department of Labor, *About OSHA*, <https://www.osha.gov/aboutosha>; United States Department of Labor, *Federal OSHA Complaint Handling Process*, <https://www.osha.gov/as/opa/worker/handling.html>.

<sup>399</sup> U.S. Immigration and Customs Enforcement, *Homeland Security Investigations*, <https://www.ice.gov/about-ice>.

<sup>400</sup> U.S. Citizenship and Immigration Services, *I-129, Petition for a Nonimmigrant Worker* (April 23, 2021) <https://www.uscis.gov/i-129>.

<sup>401</sup> Although recruitment fees are prohibited for H-2A and H-2B workers, the practice is still widespread, and courts have failed to provide relief under the FLSA unless the worker can prove that the employer was aware of such fees. Lance Compa, *Migrant Workers in the United States: Connecting Domestic Law with International Labor Standards*, <https://heinonline.org/HOL/P?h=hein.journals/chknt92&i=225>. Meanwhile, many J-1 visa holders have high program costs, including Department of Homeland Security fees and program-specific fees, which are eerily similar to prohibited recruitment fees for H-2 workers. *Eligibility and Fees*, U.S. Dept. of State <https://j1visa.state.gov/participants/how-to-apply/eligibility-and-fees/>. See also *Close to Slavery: Guest Worker Programs in the United States*, Southern Poverty Law Center (Feb. 19, 2013) <https://www.splcenter.org/20130218/close-slavery-guestworker-programs-united-states#.UbdvoefD6MU> [*Close to Slavery*].

<sup>402</sup> *Close to Slavery*, *see above* note 401; *U.S. Equal Employment Opportunity Comm'n v. Glob. Horizons, Inc.*, 915 F.3d 631, 633 (9th Cir. 2019) [*U.S. Equal Employment Opportunity Comm'n v. Glob. Horizons, Inc.*].

<sup>403</sup> *Close to Slavery*, *see above* note 401.

<sup>404</sup> *Ibid.*; *U.S. Equal Employment Opportunity Comm'n v. Glob. Horizons, Inc.*, *see above* note 402.

<sup>405</sup> “May 12 Video Call, GAO,” *see above* note 335.

<sup>406</sup> “May 14 Video Call Interview, WHD,” *see above* note 300.

<sup>407</sup> United States Government Accountability Office, *H-2A and H-2B Visa Programs Increased Protections Needed for Foreign Workers* 34 (March 2015), <https://www.gao.gov/assets/gao-15-154.pdf> [*H-2A and H-2B Visa Programs Increased Protections Needed for Foreign Workers*].

<sup>408</sup> *Ibid.*, 36.

<sup>409</sup> *Ibid.*

<sup>410</sup> *Ibid.*

<sup>411</sup> *Ibid.*, 37.

<sup>412</sup> *2021 Trafficking in Persons Report*, U.S. Department of State, <https://www.state.gov/reports/2021-trafficking-in-persons-report/>.

<sup>413</sup> *Ibid.*, 36.

<sup>414</sup> *Ibid.*, 32.

<sup>415</sup> U.S. Department of Labor Wage and Hour Division, *Agriculture*, <https://www.dol.gov/agencies/whd/data/charts/agriculture>.

<sup>416</sup> Centro de los Derechos del Migrante, Inc., *Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program* 4-5, <https://cdmigrante.org/wp-content/uploads/2020/04/Ripe-for-Reform.pdf>.

<sup>417</sup> See *David v. Signal Int'l, LLC*, 588 F. Supp. 2d 718 (E.D. La. 2008).

<sup>418</sup> American Civil Liberties Union, *David, Et al. V. Signal International, LLC, Et al* (May 29, 2013), <https://www.aclu.org/cases/david-et-al-v-signal-international-llc-et-al>.

<sup>419</sup> *H-2A and H-2B Visa Programs Increased Protections Needed for Foreign Workers*, *see above* note 407.

<sup>420</sup> United States Government Accountability Office, *H-2B Visa Program Closed Civil and Criminal Cases Illustrate Instances of H-2B Workers Being Targets of Fraud and Abuse* 4 (September 2010), <https://www.gao.gov/assets/gao-10-1053.pdf>.

<sup>421</sup> *United States v. Svibel*, No. 15CR19024DSDLIB, 2016 WL 1212364 (D. Minn. Feb. 25, 2016), report and recommendation adopted, No. CR 15-190 (DSD/LIB), 2016 WL 1222231 (D. Minn. Mar. 28, 2016).

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- <sup>422</sup> See Columbia Legal Services, *H-2A Farm Workers Settle Retaliation Case Against Larson Orchards and Labor Contractors* (Oct. 11, 2018), <https://columbialegal.org/h-2a-farm-workers-settle-retaliation-case-against-larson-orchards-and-labor-contractors/>.
- <sup>423</sup> See U.S. Department of Labor, *Judge Orders New Jersey Farm to Pay \$57,057 In Back Wages And Penalties Following U.S. Department of Labor Investigation* (Aug. 24, 2020), <https://www.dol.gov/newsroom/releases/whd/whd20200824-1>.
- <sup>424</sup> Nicola Delvino, *Safe Reporting of Crime for Victims and Witnesses with Irregular Migration Status in the United States*, Global Exchange on Migration & Diversity (September 2019), <https://www.compas.ox.ac.uk/wp-content/uploads/SR19-US-country-report-1.pdf>.
- <sup>425</sup> 29 U.S.C. § 152(3) (1978).
- <sup>426</sup> “May 8 Video Call Interview, IFTPE,” *see above* note 327.
- <sup>427</sup> Paige Coomer, *Organizing in the Shadows: Limits on Union Organization of Undocumented Day Laborers*, 4 Ind. J. L. & Social Equality 145, 154 (2017), <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1060&context=ijlse> [“Coomer”]; U.S. Department of Labor, *Employee Rights Under the National Labor Relations Act*, [https://www.dol.gov/sites/dolgov/files/olms/regs/compliance/eo\\_posters/employeerightsposter11x17\\_2019final.pdf](https://www.dol.gov/sites/dolgov/files/olms/regs/compliance/eo_posters/employeerightsposter11x17_2019final.pdf).
- <sup>428</sup> Gosia Wozniacka, *Less Than 1 Percent of US Farmworkers Belong to a Union. Here’s Why*, Civil Eats (May 7, 2019), <https://civileats.com/2019/05/07/less-than-1-percent-of-us-farmworkers-belong-to-a-union-heres-why/> [“Wozniacka”].
- <sup>429</sup> “Coomer,” *see above* note 427, at 145, 159.
- <sup>430</sup> “Wozniacka,” *see above* note 428.
- <sup>431</sup> Daniel Costa, *Agricultural Employers are Asking the Supreme Court to Make it Harder for Farmworkers Suffering from Poor Pay and Working Conditions to Unionize*, Economic Policy Institute (Mar. 23, 2021) <https://www.epi.org/blog/agricultural-employers-are-asking-the-supreme-court-to-make-it-harder-for-farmworkers-suffering-from-poor-pay-and-working-conditions-to-unionize/> [“*Agricultural Employers are Asking the Supreme Court to Make it Harder for Farmworkers Suffering from Poor Pay and Working Conditions to Unionize*”]; “Wozniacka,” *see above* note 428.
- <sup>432</sup> *Ibid.*; Marcus Kahmann, *Trade Unions and Migrant Workers: Examples from the United States, South Africa and Spain* (Feb. 3, 2002), <https://library.fes.de/pdf-files/gurn/00316.pdf> [“Kahmann”].
- <sup>433</sup> *Agricultural Employers are Asking the Supreme Court to Make it Harder for Farmworkers Suffering from Poor Pay and Working Conditions to Unionize*, *see above* note 431.
- <sup>434</sup> Nina Totenberg and Eric Singerman, *Supreme Court Hands Farmworkers Union A Major Loss*, NPR (Jun. 24, 2021), <https://www.npr.org/2021/06/23/1000129827/in-a-narrow-ruling-supreme-court-hands-farmworkers-union-a-loss>.
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- <sup>438</sup> “ILO Report,” *see above* note 2, at 61, 40.
- <sup>439</sup> Ninety percent of domestic workers in the United States are women. *See* “Wolfe,” *see above* note 305, at 6.
- <sup>440</sup> *Ibid.*, 61, 46.
- <sup>441</sup> *Ibid.* at §152(3) (“the term ‘employee’ . . . shall not include any individual employed . . . in the domestic service of any family or person at his home.”).
- <sup>442</sup> Petitioner’s Final Observations on the Merits Petition No. 1418-07, Siti Aisah and others v. United States of America, <https://chicagounbound.uchicago.edu/ghrc/2/>.
- <sup>443</sup> John Schmitt, *Unions and Upward Mobility for Immigrant Workers*, Center for Economic and Policy Research (March 2010), <https://cepr.net/documents/publications/unions-immigrants-2010-03.pdf>.
- <sup>444</sup> Economic Policy Institute, *Union workers are paid 11.2% more and have greater access to health insurance and paid sick days than their nonunion counterparts* (Aug. 25, 2020), <https://www.epi.org/press/union-workers-are-paid-11-2-more->

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and-have-greater-access-to-health-insurance-and-paid-sick-days-than-their-nonunion-counterparts-policy-makers-must-strengthen-workers-ability-to-form-unions/.

<sup>445</sup> UNESCO World Education Blog, *What does the 'feminization of migration' mean for migrant women and their education?* (Mar. 11, 2019), <https://gemreportunesco.wordpress.com/2019/03/11/what-does-the-feminization-of-migration-mean-for-migrant-women-and-their-education/>; Jeanne Batalova, Michael Fix, & James D. Bachmeier, *The Costs of Brain Waste among Highly Skilled Immigrants in the United States*, Migration Policy Institute (Dec. 2016), <https://files.eric.ed.gov/fulltext/ED586143.pdf> [*The Costs of Brain Waste among Highly Skilled Immigrants in the United States*].

<sup>446</sup> “ILO Report,” *see above* note 2, at 50.

<sup>447</sup> *Ibid.*, 37.

<sup>448</sup> *Ibid.*, 38.

<sup>449</sup> *Ibid.*, 39.

<sup>450</sup> Madeleine Sumption, “Tackling Brain Waste: Strategies to Improve the Recognition of Immigrants' Foreign Qualifications,” Migration Policy Institute (July 2013), <https://www.migrationpolicy.org/sites/default/files/publications/Sumption-Credentialing-FINAL.pdf>.

<sup>451</sup> U.S. Department of Education, *Recognition of Foreign Qualifications* Feb. 26, 2008),

<https://www2.ed.gov/about/offices/list/ous/international/usnei/us/edlite-visitus-forrecog.html>.

<sup>452</sup> *Ibid.*

<sup>453</sup> *The Costs of Brain Waste among Highly Skilled Immigrants in the United States*, *see above* note 445.

<sup>454</sup> “What Explains the Wages of Undocumented Workers?,” *see above* note 277.

<sup>455</sup> *Ibid.*

<sup>456</sup> *Ibid.*

<sup>457</sup> Matthew Hall and Emily Greenman, *The Occupational Cost of Being Illegal in the United States: Legal Status, Job Hazards, and Compensating Differentials*, Author Manuscript \*1, published in final edited form at 49 Social Forces 406 (2015) [*The Occupational Cost of Being Illegal in the United States*].

<sup>458</sup> Matthew Hall, Emily Greenman, and George Farkas, *Legal Status and Wage Disparities for Mexican Immigrants*, 89 Social Forces 491, 491, 492 (Oxford University Press, 2010).

<sup>459</sup> Alison Bowen and Alexia Elejalde-Ruiz, *Skilled Immigrants Often Struggle to Put Degrees, Credentials to Use in U.S.*, The Chicago Tribune (Mar 27, 2017), <https://www.chicagotribune.com/business/ct-merit-immigration-brain-waste-20170326-story.html>.

<sup>460</sup> *Ibid.*

<sup>461</sup> “How Can We Work Without Wages?,” Human Rights Watch (August 24, 2020), <https://www.hrw.org/report/2020/08/24/how-can-we-work-without-wages/salary-abuses-facing-migrant-workers-ahead-qatars>.

<sup>462</sup> “May 8 Video Call Interview, IFPTE,” *see above* note 327; Ray Marshall, *Immigration for Shared Prosperity: A framework for Comprehensive Reform*, Economic Policy Institute, 40 [*Immigration for Shared Prosperity*]. In one such case, WatchMark reduced employee wages from \$80,000 a year to \$5,000 by hiring migrants from India.

<sup>463</sup> *Ibid.*, 40.

<sup>464</sup> “Misclassification of Employees as Independent Contractors | U.S. Department of Labor.” Accessed December 11, 2020. <https://www.dol.gov/agencies/whd/flsa/misclassification> [“Misclassification of Employees as Independent Contractors”]; Sharon Thomas, “DOL Roundup: IC Misclassifications, Work Visa Violations.” *Contingent Workforce Strategies 3.0* (blog). Accessed December 11, 2020. <http://cwstrategies.staffingindustry.com/dol-roundup-ic-misclassifications-work-visa-violations/> [“DOL Roundup”].

<sup>465</sup> Video Call Interview by IHRC with Maya Pinto, Senior Researcher and Policy Analyst, National Employer Law Project (May 8, 2020) [“May 8 Video Call Interview, NELP”].

<sup>466</sup> *Close to Slavery*, *see above* note 401.

<sup>467</sup> *Ibid.*

<sup>468</sup> David Cooper and Teresa Kroeger, *Employers steal billions from workers' paychecks each year*, Economic Policy Institute (May 10, 2017) <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>; Françoise Carré, (In)dependent Contractor Misclassification, Economic Policy Institute (June 8, 2015), <https://www.epi.org/publication/independent-contractor-misclassification/> [“Carré”].

<sup>469</sup> “Misclassification of Employees as Independent Contractors,” *see above* note 464; “DOL Roundup,” *see above* note 464.

<sup>470</sup> “Coomer,” *see above* note 427, at 145, 154.

<sup>471</sup> “Carré,” *see above* note 468.

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<sup>472</sup> I-9, *Employment Eligibility Verification*, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/i-9> [I-9, *Employment Eligibility Verification*].

<sup>473</sup> “May 8 Video Call Interview, FFVA,” *see above* note 300.

<sup>474</sup> Indeed, some employers may use this loose enforcement regime to their advantage by verifying authorization only when workers attempt to increase their bargaining power, such as by attempting to organize a union or to file a wage claim. *Immigration for Shared Prosperity*, *see above* note 462, at a30.

<sup>475</sup> *Ibid.*, 26.

<sup>476</sup> *Ibid.*, 30.

<sup>477</sup> *Ibid.*, 30.

<sup>478</sup> “May 14 Video Call Interview, WHD” *see above* note 300.

<sup>479</sup> *See Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA)*, U.S. Dept. of Labor Wage and Hour Division, <https://www.dol.gov/whd/regs/compliance/whdfs26.pdf>.

<sup>480</sup> “May 14 Video Call Interview, WHD,” *see above* note 300.

<sup>481</sup> For example, when speaking with employers, there is no requirement to report additional labor violations to the proper agency. Investigators can simply refer workers to an anti-retaliation tip line or provide their personal card. No oversight or formal process is in place to protect against retaliation. This is in contrast to the EEOC’s ability to bring an anti-retaliation charge in addition to the labor violation charges.

<sup>482</sup> “May 12 Video Call Interview, EEOC,” *see above* note 374.

<sup>483</sup> Wozniacka, *see above* note 428.

<sup>484</sup> Rebecca Smith and Eunice Hyunhye Cho, *Workers’ Rights on ICE*, National Employment Law Project (Feb. 2013), <http://stage.nelp.org/wp-content/uploads/2015/03/Workers-Rights-on-ICE-Retaliation-Report.pdf>.

<sup>485</sup> *Fair Labor Standards Act; Tracking Additional Complaint Data Could Improve DOL’s Enforcement*, U.S. Government Accountability Office (Dec. 9, 2020), <https://www.gao.gov/products/gao-21-13>.

<sup>486</sup> Fiscal Year 2024 Congressional Budget Justification, U.S. Equal Employment Opportunity Commission (March 2023), <https://www.eeoc.gov/fiscal-year-2024-congressional-budget-justification#:~:text=The%20FY%202024%20Budget%20requests,enacted%20budget%20level%20of%20%24455%2C000%2C000>.

<sup>487</sup> *FY 2024 Budget*, United States Equal Protection Agency, <https://www.epa.gov/planandbudget/cj#:~:text=The%20proposed%20FY%202024%20budget,our%20partners%20across%20the%20Nation>.

<sup>488</sup> *How to File a Charge of Employment Discrimination*, U.S. Equal Employment Opportunity Commission; *see also* 29 C.F.R. § 1626.5.

<sup>489</sup> 29 C.F.R. § 1626.11.

<sup>490</sup> 29 C.F.R. § 1626.15.

<sup>491</sup> U.S. Equal Employment Opportunity Commission, *What You Can Expect After You File a Charge*, <https://www.eeoc.gov/what-you-can-expect-after-you-file-charge>.

<sup>492</sup> Maryam Jameel, *More and more workplace discrimination cases are being closed before they’re even investigated*, Vox (June 14, 2019), <https://www.vox.com/identities/2019/6/14/18663296/congress-eeoc-workplace-discrimination>.

<sup>493</sup> *Filing a Lawsuit*, *see above* note 392; *see also* 29 C.F.R. § 1626.18.

<sup>494</sup> 29 C.F.R. § 1626.18(c).

<sup>495</sup> And many have been denied a second visa to return to the United States in order to adjudicate their claim. Inter-American Commission on Human Rights, “Report No. 50/16 Case 12.834” (November 30, 2016), <https://www.oas.org/en/iachr/decisions/2016/USPU12834EN.pdf>. Although some whistleblower visas are available, it requires migrants to obtain law enforcement sponsorship for the visa, which rarely occurs.

<sup>496</sup> Jonathan Bilyk, *How much do lawsuits cost you? \$3,300 per household, \$429B nationwide, study says*, Texans for Lawsuit Reform (October 24, 2018), <https://www.tortreform.com/news/how-much-do-lawsuits-cost-you-3300-per-household-429b-nationwide-study-says/>.

<sup>497</sup> *See Hoffman Plastic Compounds, Inc. v. NLRB*, *see above* note 384.

<sup>498</sup> International Labour Organization, *Observation (CEACR) - adopted 2020, published 109th ILC session (2021) Abolition of Forced Labour Convention, 1957 (No. 105) - United States of America*, [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:4046588](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4046588).

<sup>499</sup> United States Government Accountability Office, *Working Children, Federal Injury Data and Compliance Strategies Could Be Strengthened* (Nov. 2018), <https://www.gao.gov/assets/gao-19-26.pdf>.

<sup>500</sup> International Labour Organization, *Observation (CEACR) - adopted 2011, published 101st ILC session (2012) Shipowners’ Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) - United States of America*, [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:2698309](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2698309).

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- <sup>501</sup> “May 8 Video Call Interview, IFPTE,” *see above* note 327; *see also* H.R. 670 – High-Skilled Integrity and Fairness Act of 2017, 115<sup>th</sup> Congress (2017) <https://www.congress.gov/bill/115th-congress/house-bill/670> [“High-Skilled Integrity and Fairness Act of 2017”].
- <sup>502</sup> “High-Skilled Integrity and Fairness Act of 2017,” *see above* note 501.
- <sup>503</sup> Poorvi Chothani, *Will Indians Soon See Light at the End of the Long Green Card Tunnel?*, The Economic Times (Mar. 13, 2021), <https://economictimes.indiatimes.com/nri/migrate/will-indians-soon-see-light-at-the-end-of-the-long-green-card-tunnel/articleshow/80983854.cms?from=mdr>; Danilo Zak, *Explainer: Amendments to the Fairness for High-Skilled Immigrants Act, S.386*, National Immigration Forum (April 2, 2020), <https://immigrationforum.org/article/explainer-amendments-to-the-fairness-for-high-skilled-immigrants-act-s-386/>.
- <sup>504</sup> American Immigration Lawyers Association, *Featured Issue: Legislation Impacting the Per-Country Numerical Limitation* (June 3, 2021), <https://www.aila.org/advo-media/issues/all/featured-issue-legislation-impacting-per-country>.
- <sup>505</sup> National Immigration Forum, *Bill Summary: The Eagle Act* (July 8, 2021), <https://immigrationforum.org/article/bill-summary-the-eagle-act/>.
- <sup>506</sup> National Resource Center for Refugees, Immigrants, and Migrants, *What We Do* (2021), <https://nrcrim.org/about-us/what-we-do>.
- <sup>507</sup> Pineros Y Campesinos Unidos del Noroeste, *About Us* (2021), <https://pcun.org/about-us/>; Farm Labor Organizing Committee, *About FLOC*, <http://www.floc.com/wordpress/about-floc/>; United Farm Workers, *Our Vision* (2021), <https://ufw.org/about-us/our-vision/>.
- <sup>508</sup> Wozniacka, *see above* note 428.
- <sup>509</sup> Jazmine Ulloa and John Myers, *In historic move, Gov. Jerry Brown expands overtime pay for California farmworker*, Los Angeles Times (Sept. 12, 2016), <https://www.latimes.com/politics/la-pol-sac-farmworkers-overtime-signed-20160912-snap-story.html>; Jocelyn Sherman, *Bill will end discriminatory exclusion of farm workers from overtime pay 80 years after nearly all other U.S. workers won it*, United Farm Workers (June 25, 2018), <https://ufw.org/overtime62518/>.
- <sup>510</sup> United Farm Workers, *Better enforcement of farm-worker heat rules as UFW and Brown administration settle lawsuit* (June 11, 2015), <https://ufw.org/Better-enforcement-of-farm-worker-heat-rules-as-UFW-and-Brown-administration-settle-lawsuit/>.
- <sup>511</sup> Wozniacka, *see above* note 428.
- <sup>512</sup> *Ibid.*
- <sup>513</sup> Reuters, *Biden administration strikes deal to offer 22,000 extra seasonal guestworker visas - Bloomberg Law* (April 19, 2021), <https://www.reuters.com/world/us/biden-administration-strikes-deal-offer-22000-extra-seasonal-guestworker-visas-2021-04-20/>.
- <sup>514</sup> Letter from Laborers’ International Union of North America (LIUNA) et al., to the Honorable Alejandro Mayorkas, Secretary U.S. Dept. Homeland Security, and the Honorable Marty Walsh, Secretary U.S. Dept. Labor (April 20, 2021), <https://aboutblaw.com/WYW>.
- <sup>515</sup> Centro de los Derechos del Migrante, *Our Programs*, <https://cdmigrante.org/our-programs/> [“Centro de los Derechos del Migrante”].
- <sup>516</sup> Rural Migrant Ministry, *Justice for Farmworkers Campaign*, <https://www.ruralmigrantministry.org/programs/programs/justice-for-farmworkers-campaign>.
- <sup>517</sup> “Centro de los Derechos del Migrante,” *see above* note 515.
- <sup>518</sup> Campaign for Migrant Worker Justice, *Our Work*, <http://www.cmwj.org/wordpress/index.php/our-programs/>.
- <sup>519</sup> Migrant Justice, *About Migrant Justice*, <https://www.cata-farmworkers.org/impact>.
- <sup>520</sup> *Ibid.*
- <sup>521</sup> Migrant Legal Aid, *About*, <https://migrantlegalaid.org/>; The Refugee and Immigrant Center for Education and Legal Services, *What We Do*, <https://www.raicestexas.org/what-we-do/>.
- <sup>522</sup> National Domestic Workers Alliance, *We Organize Domestic Workers and Develop Leaders*, <https://www.domesticworkers.org/programs-and-campaigns/organizing-domestic-workers-and-developing-leaders/>.
- <sup>523</sup> National Domestic Workers Alliance, *Why Join*, <https://membership.domesticworkers.org/>.
- <sup>524</sup> Migrant Justice, *Milk with Dignity Campaign*, <https://migrantjustice.net/milk-with-dignity-campaign>.
- <sup>525</sup> “ILO Report,” *see above* note 2, at , xvii, 71.
- <sup>526</sup> *Ibid.*, 91, 94 and Appendix IV, Figure A-6.
- <sup>527</sup> *Ibid.*, 91, 94 and Appendix IV, Figure A-6.
- <sup>528</sup> *Ibid.*, xxii. Additionally, the ILO Report finds that the proportion of low-paid workers among all migrant workers would decrease from about 26.1 percent to 14.9 percent in Belgium if the unexplained migrant pay penalty were eliminated. *See ibid.*, 101.



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<sup>529</sup> *Ibid.*, xxi; “This may possibly reflect under representation of migrant workers in collective representation structures in the middle of the distribution because of difficulties organizing or because nationals dominate the overall representation, a phenomenon that could be exacerbated if migrants are perceived as a low-wage employment threat to nationals (see, e.g., Rubery, 2003);” *ibid.*, 86.

<sup>530</sup> *Ibid.*, 74.

<sup>531</sup> The case study findings were derived from extensive desk research as well as six virtual interviews with relevant stakeholders including employees in the federal government, union representatives, non-governmental organizations, and academics.

<sup>532</sup> “ILO Report,” *see above* note 2, at 11.

<sup>533</sup> The term “migrant” here may be a misnomer under the ILO definition of “migrant worker,” given that some first- and second-generation migrants may be Belgian nationals.

<sup>534</sup> National Bank of Belgium, Working Paper Research No. 381, The Heterogeneous Employment Outcomes of First- and Second-generation Immigrants in Belgium, 1 (January 2020).

<sup>535</sup> *Ibid.*

<sup>536</sup> The Law of 15 December 1980 (a.k.a., the Aliens Act of 1980), <https://emnbelgium.be/publication/aliens-act-law-15-december-1980>.

<sup>537</sup> *Ibid.*

<sup>538</sup> *See* International Migrant Stock 2019, UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, [https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationStock2019\\_TenKeyFindings.pdf](https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationStock2019_TenKeyFindings.pdf).

<sup>539</sup> The distribution of persons of foreign origin varies across Belgian regions. In 2019, Brussels had a high proportion of residents of foreign origin (74.1%), whereas Wallonia had 40.1%, the German-Speaking Community had 43.5%, and Flanders had 28.3%. See Service Public Fédéral, Emploi, Travail et Concertation Sociale & UNIA, *Monitoring Socio-Économique 2019: Marché du Travail et Origine* 10 (2019) [*Monitoring Socio-Économique*]. Among Belgian residents with a foreign origin, 42.5 percent came from EU-14 States, 16 percent from the Maghreb area, 9.6 percent from EU-13 States, 7.6 percent from other areas of Africa, 7.5 percent from Montenegro, North Macedonia, Serbia, and Turkey (candidate EU States), 4.9 percent from other parts of Europe, 2.7 percent from the Middle East, and the rest from Asia, North America, and South America. See *Promoting Integration for Migrant Domestic Workers in Belgium*, INTERNATIONAL LABOUR OFFICE – GENEVA 10, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_222293.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_222293.pdf) [*Promoting Integration for Migrant Domestic Workers in Belgium*].

<sup>540</sup> Itinera Institute, *La Belgique est une nation d’immigrants*, May 15, 2012, <https://www.itinera.team/fr/nouvelles-et-presse/la-belgique-est-une-nation-dimmigrants>.

<sup>541</sup> *Monitoring Socio-Économique*, *see above* note 539, at 213.

<sup>542</sup> Family account for those seeking entry for purposes of reunification, cohabitation, and adoption.

<sup>543</sup> *Monitoring Socio-Économique*, *see above* note 539, at 213. It should be noted that “migrants” in this database include “those who were either born outside of Belgium or to parents born outside of Belgium.”

<sup>544</sup> Milica Petrovic, Belgium: A Country of Permanent Immigration, Migration Policy Institute (November 15, 2012), <https://www.migrationpolicy.org/article/belgium-country-permanent-immigration>.

<sup>545</sup> *Ibid.*

<sup>546</sup> *Ibid.* Those seeking legal protection include: Persons who have been granted international or subsidiary protection (98% of cases), or so-called temporary protection, persons with the status of victims of trafficking in human, UAMs (unaccompanied foreign minors), and persons who are not considered nationals of any state in the world (stateless persons).

<sup>547</sup> Philippe Vanden Broeck, Illegal Employment of Third Country Nationals in Belgium, European Migration Network 6 (July 2017) [“Vanden Broeck”].

<sup>548</sup> Irregular migrants in Belgium include those who have entered Belgium illegally or that have overstayed their residence permit. *Promoting Integration for Migrant Domestic Workers in Belgium*, *see above* note 539.

<sup>549</sup> “Vanden Broeck,” *see above* note 547, at 11.

<sup>550</sup> *Ibid.*, 13.

<sup>551</sup> “ILO Report,” *see above* note 2, at 45.

<sup>552</sup> *Ibid.*, 61.

<sup>553</sup> *Ibid.* 38.

<sup>554</sup> *Ibid.*, 22, 24-26.

<sup>555</sup> *See generally Monitoring Socio-Économique*, *see above* note 539.

<sup>556</sup> Belgium has concluded bilateral agreements with 25 countries: Albania, Algeria, Argentina, Australia, Bosnia-Herzegovina, Canada (also a separate agreement with Québec), Brazil, Chile, DR Congo, the Philippines, India,

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Israel, Japan, Kosovo, FYR Macedonia, Moldova, Morocco, San Marino, Montenegro, Serbia, Tunisia, Turkey, Uruguay, the United States and South Korea. Coming2Belgium, International.SocialSecurity.Be, [https://www.socialsecurity.be/CMS/en/coming\\_to\\_belgium/FODSZ\\_Convention#toc-the-countries-belgium-has-concluded-a-bilateral-agreement-with](https://www.socialsecurity.be/CMS/en/coming_to_belgium/FODSZ_Convention#toc-the-countries-belgium-has-concluded-a-bilateral-agreement-with).

<sup>557</sup> E.g., Treaty No. 305, Belgium and Italy, 19 Treaty Series 65, UNITED NATIONS, <https://treaties.un.org/doc/Publication/UNTS/Volume%2019/v19.pdf>.

<sup>558</sup> See, e.g., Portugal-Belgium, Bilateral agreement results in improved conditions for Portuguese workers, International Labour Organisation (1979), [https://labordoc.ilo.org/discovery/fulldisplay/alma992058793402676/41ILO\\_INST:41ILO\\_V2](https://labordoc.ilo.org/discovery/fulldisplay/alma992058793402676/41ILO_INST:41ILO_V2).

<sup>559</sup> E.g., European social security regulations. See Social Security: Everything you have always wanted to know (in Belgium), <https://socialsecurity.belgium.be/sites/default/files/content/docs/en/publications/everything-social-security-en.pdf>.

<sup>560</sup> E.g., Treaty No. 1789, Belgium and Sweden, 133 Treaty Series 187, UNITED NATIONS, <https://treaties.un.org/doc/Publication/UNTS/Volume%20133/v133.pdf>.

<sup>561</sup> Country Report, Non-Discrimination: Belgium, EUROPEAN COMMISSION (2020), <https://www.equalitylaw.eu/downloads/5269-belgium-country-report-non-discrimination-2020-2-09-mb> at 7 [“Country Report, Non-Discrimination: Belgium”].

<sup>562</sup> Constitution of Belgium (English translation), available at [https://www.constituteproject.org/constitution/Belgium\\_2014.pdf?lang=en](https://www.constituteproject.org/constitution/Belgium_2014.pdf?lang=en).

<sup>563</sup> *Ibid.*

<sup>564</sup> Specifically, Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the “Racial Equality Directive”) and Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (the “Employment Framework Directive”).

<sup>565</sup> Loi tendant à lutter contre certaines formes de discrimination (10 Mai 2007), [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=2007051035&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2007051035&table_name=loi).

<sup>566</sup> Loi tendant à lutter contre la discrimination entre les femmes et les hommes (10 Mai 2007), [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=2007051036&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2007051036&table_name=loi).

<sup>567</sup> The Law of April 22, 2012 To Combat the Wage Gap Between Men and Women, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/91020/105312/F-742470787/BEL-91020.pdf>.

<sup>568</sup> Decree of 19 March 2012 to combat certain forms of discrimination, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/90258/103936/F583098344/BEL-90258.pdf>.

<sup>569</sup> Loi tendant à réprimer certains actes inspirées par le racisme ou la xénophobie, [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=1981073035&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1981073035&table_name=loi).

<sup>570</sup> “Country Report, Non-Discrimination: Belgium,” *see above* note 561, at 3.

<sup>571</sup> Jean-Michel Lafleur & Abdeslam Marfouk, *A Common Home: Migration and Development in Belgium*, CARITAS, 41 (May 2019), <https://www.caritas.eu/wordpress/wp-content/uploads/2019/06/CommonHomeBelgiumEN.pdf> [*A Common Home*].

<sup>572</sup> See, e.g., International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>.

<sup>573</sup> For an explanation of Belgian’s state structure and jurisdictional divisions, *see* Structure of Belgium, FLEMISH PARLIAMENT, <https://www.flemishparliament.eu/about-the-flemish-parliament/structure-belgium>.

<sup>574</sup> Decree of 7 June 2013 Concerning Flemish Integration Policy, <https://cor.europa.eu/en/engage/studies/Documents/Migration%20and%20Integration.pdf>; The Walloon Code for Social Action and Health, <https://wallex.wallonie.be/contents/acts/0/117/1.html?doc=21579>; Decree of the French Community Commission, [https://www.etaamb.be/fr/decret-du-18-juillet-2013\\_n2013031655.html](https://www.etaamb.be/fr/decret-du-18-juillet-2013_n2013031655.html); Ordinance of the Common Community Commission, [https://www.etaamb.be/fr/ordonnance-du-11-mai-2017\\_n2017020366.html](https://www.etaamb.be/fr/ordonnance-du-11-mai-2017_n2017020366.html).

<sup>575</sup> The Circulaire of March 8, 2013, [https://www.etaamb.be/fr/circulaire-du-08-mars-2013\\_n2013009118.html](https://www.etaamb.be/fr/circulaire-du-08-mars-2013_n2013009118.html); the Belgian Nationality Code, [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg\\_2.pl?language=nl&nm=1984900065&la=N#:~:text=Voor%20de%20toepassing%20van%20de,verzoek%20of%20verklaring%20als%20gedurende](http://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=nl&nm=1984900065&la=N#:~:text=Voor%20de%20toepassing%20van%20de,verzoek%20of%20verklaring%20als%20gedurende).

<sup>576</sup> Office des Etrangers, *Le Droit de Sejourner + de 3 mois* (Sep 20, 2017), <https://dofi.ibz.be/fr/themes/citizens-european-union/right-entry-and-residence/right-entry-and-residence-belgium-eu-1>. See also Expatica, *Guide for EU/EEA/Swiss citizens moving to Belgium* (June 2, 2021), <https://www.expatica.com/be/moving/visas/eea-citizens-visas-belgium-443311/> [*Guide for EU/EEA/Swiss citizens moving to Belgium*]; *Your Europe* (an official site of the

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European Union), « Documents and formalities », [https://europa.eu/youreurope/citizens/residence/documents-formalities/index\\_en.htm](https://europa.eu/youreurope/citizens/residence/documents-formalities/index_en.htm).

<sup>577</sup> *Guide for EU/EEA/Swiss citizens moving to Belgium*, see above note 576.

<sup>578</sup> Federal Public Service Interior, *Right to Permanent Residence of EU Citizens and their Family Members*, <https://ibz.be/en/right-of-permanent-residence-of-eu-citizens-and-their-family-members>.

<sup>579</sup> For a breakdown of permits by region, see *Permis Unique De Durée Illimité, Emploi et Formation Professionnelle en Wallonie*, <https://emploi.wallonie.be/en/home/travailleurs-etrangers/permis-de-travail/vous-etes-travailleur.html> [“Emploi et Formation Professionnelle en Wallonie”]; *Work Permits, Brussels Economy and Employment*, <https://economy-employment.brussels/single-permit-work-permit>.

<sup>580</sup> See *Limosa – Working in Belgium*, [International.socialsecurity.be](https://www.international.socialsecurity.be/working_in_belgium/fr/limosa.html), [https://www.international.socialsecurity.be/working\\_in\\_belgium/fr/limosa.html](https://www.international.socialsecurity.be/working_in_belgium/fr/limosa.html) [“Working in Belgium”].

<sup>581</sup> Office des Etrangers, *Transposition de la Directive 2011/98/CE*, <https://dofi.ibz.be/fr/themes/ressortissants-dun-pays-tiers/travail/permis-unique>.

<sup>582</sup> *Working in Belgium: A fixed-term single permit*, [https://www.international.socialsecurity.be/working\\_in\\_belgium/en/single-permit.html](https://www.international.socialsecurity.be/working_in_belgium/en/single-permit.html).

<sup>583</sup> *Single Permit with Indefinite Term, Flanders.be*, <https://www.vlaanderen.be/en/single-permit-with-indefinite-term>.

<sup>584</sup> “Emploi et Formation Professionnelle en Wallonie,” see above note 579.

<sup>585</sup> See *Unlimited Single Permit Application, Brussels Economy and Employment*, <https://economy-employment.brussels/single-permit-unlimited>.

<sup>586</sup> ShieldGeo, *Immigration & Work Permits*, <https://shieldgeo.com/belgium-immigration-and-work-permits/>; Expatica, *Belgian Work Visas and Permits* (June 2, 2021), <https://www.expatica.com/be/moving/visas/belgium-work-visas-422637/> [Belgian Work Visas and Permits].

<sup>587</sup> *Essential Information, European Commission*, [https://ec.europa.eu/immigration/blue-card/essential-information\\_en](https://ec.europa.eu/immigration/blue-card/essential-information_en).

<sup>588</sup> “Working in Belgium,” see above note 580. In certain regions, migrants wishing to engage in self-employed work must also apply for other documentation. For example, in the Flanders region, foreigners wishing to engage in self-employed work must apply for a “professional card.” See *Professional Card – Conditions, Flanders.be*, <https://www.vlaanderen.be/en/professional-card-for-foreign-entrepreneurs/professional-card-conditions>.

<sup>589</sup> *Promoting Integration for Migrant Domestic Workers in Belgium*, see above note 539, at 8.

<sup>590</sup> “Vanden Broeck,” see above note 547, at 15; Article 183/1 of the Social Criminal Code, which was introduced by the Law of 29 February 2016 complementing and modifying the Social Criminal Code and containing various provisions of social criminal law, *Belgian Official Gazette*, April 21, 2016.

<sup>591</sup> *Ibid.*, 18.

<sup>592</sup> *Code of Welfare at Work, Federal Public Service Employment, Work, and Social consultation*, [https://emploi.belgique.be/fr/themes/bien-etre-au-travail/principes-generaux/code-du-bien-etre-au-travail#toc\\_heading\\_3](https://emploi.belgique.be/fr/themes/bien-etre-au-travail/principes-generaux/code-du-bien-etre-au-travail#toc_heading_3).

<sup>593</sup> *Ibid.*

<sup>594</sup> For a comprehensive list of Belgian laws relating to hours of work, weekly rest and paid leave, see [https://www.ilo.org/dyn/natlex/natlex4.listResults?p\\_lang=en&p\\_country=BEL&p\\_count=3223&p\\_classification=13.01&p\\_classcount=113&p\\_first=1&p\\_show\\_abstract=N&p\\_pagelength=50](https://www.ilo.org/dyn/natlex/natlex4.listResults?p_lang=en&p_country=BEL&p_count=3223&p_classification=13.01&p_classcount=113&p_first=1&p_show_abstract=N&p_pagelength=50).

<sup>595</sup> Video Call Interview by IHRC with Service Public Fédéral, *Emploi, Travail et Concertation Sociale* (April 2, 2020) [“April 2 Video Call Interview, SPF”].

<sup>596</sup> *Law of 5 December 1968 on collective labor agreements and joint committees*, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/18252/60713/F537563594/BEL-18252.pdf>.

<sup>597</sup> “April 2 Video Call Interview, SPF” see above note 595.

<sup>598</sup> Video Call Interview by IHRC, Issam Belani, Federal Secretary, ABBV (April 3, 2020) [“April 3 Video Call Interview, ABBV”].

<sup>599</sup> Video Call Interview by IHRC, Grace Papa, Regional Secretary, ACV (April 16, 2020) [“April 16 Video Call, ACV”].

<sup>600</sup> *Ibid.*

<sup>601</sup> “April 3 Video Call Interview, ABBV,” see above note 598.

<sup>602</sup> “April 16 Video Call, ACV,” see above note 599; “April 3 Video Call Interview, ABBV,” see above note 598.

<sup>603</sup> “April 16 Video Call, ACV,” see above note 599.

<sup>604</sup> *The Law of 29 May 1952, Organic Law of the National Labor Council*, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/73625/88987/F586540087/BEL-73625.pdf>.

<sup>605</sup> “April 16 Video Call, ACV,” see above note 599; “April 3 Video Call Interview, ABBV,” see above note 598.

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<sup>606</sup> Video Call Interview by IHRC, Werner Buelen, Political Secretary, European Federation of Building and Woodworkers (April 7, 2020) [“April 7 Video Call Interview, European Federation of Building and Woodworkers”].

<sup>607</sup> “April 2 Video Call Interview, SPF” *see above* note 595; Video Call Interview by IHRC, Hannah Vermaut, Policy Advisor, UNIA (April 9, 2020) [“April 9 Video Call Interview, Hannah Vermaut”].

<sup>608</sup> Posted Workers – Employment, Social Affairs & Inclusion, European Commission, <https://ec.europa.eu/social/main.jsp?catId=471>.

<sup>609</sup> *See* European Union, *Your Europe: Help and Advice for EU Nationals and their Families*, [https://europa.eu/youreurope/citizens/work/work-abroad/posted-workers/index\\_en.htm](https://europa.eu/youreurope/citizens/work/work-abroad/posted-workers/index_en.htm).

<sup>610</sup> “From 30 July 2020, in case of postings the duration of which actually exceeds 12 months, a special scheme determines the Belgian working conditions (including pay and employment conditions) which must be complied with in the case of posting in Belgium in respect of the work performed by those workers after the first 12 months and provided also that those work performances take place from 30 July 2020.” SPF, *Working Conditions to be Complied with in the Case of Posting in Belgium*, <https://employment.belgium.be/en/themes/international/posting/working-conditions> (last accessed May 3, 2021).

<sup>611</sup> *Ibid.* (The application of the Belgian laws is “without prejudice” to application of more favorable laws of the country of origin.)

<sup>612</sup> *Ibid.*

<sup>613</sup> Belgian Act of 5 March 2002 concerning working conditions, remuneration and employment in the event of posting of workers in Belgium and compliance with these, Art. 5 § 1 (2002, amended 2016).

<sup>614</sup> Xavier Norman, *New Rules on Posted Workers to Belgium*, Business Belgium.be (Feb. 8, 2020), <https://www.businessbelgium.be/news/new-rules-on-posted-workers-to-belgium/>.

<sup>615</sup> Belgian Act of 5 March 2002, Art. 8bis.

<sup>616</sup> SPF, *Liaison Offices and Labour Inspectorate*, <https://employment.belgium.be/en/themes/international/posting/liaison-offices-and-labour-inspectorate> [*Liaison Offices and Labour Inspectorate*].

<sup>617</sup> *See* “April 7 Video Call Interview, European Federation of Building and Woodworkers,” *see above* note 606.

<sup>618</sup> SPF, Joint Committee for Construction (JC 124) 1 (October 10, 2019) <https://employment.belgium.be/sites/default/files/content/documents/International/Limosafiche%20fiches%20EN/Limosafiche%20PC%20124%20EN.pdf> [“Joint Committee for Construction”].

<sup>619</sup> The different categories are Category I (those responsible for very “simple work”, such as cleaning, and those activities not requiring specialization); Category IA (blue collar workers with more than average ability, often with a construction diploma); Category II (“blue collar workers who demonstrate a certain degree of ability in the performance of their ordinary work”); Category IIA (those “demonstrating a more than average ability”); Category III (those workers who acquire skills through a serious apprenticeship, construction site, or in a vocational school and practice these skills for at least three years); and Category IV (those with skills higher than Category III).

<sup>620</sup> As of October 2019, the minimum hourly salary (for a forty-hour work week) for Cat. I is 14.590 euros; 15.314, 15.552, and 16.328 euros for Cat. IA, II, and IIA, respectively; 16.540 euros for Cat. III; and 17.557 euros for Cat. IV. Within categories III and IV, the head of the team must receive that category’s minimum wage plus at least 10 percent, bringing the current wages to 18.194 euros for Cat. III team heads, 19.313 euros for Cat. IV team heads. A foreman receives the Cat. IV minimum wage plus at least 20 percent (currently 21.068 euros). Additionally, if the workers on a team have varying professional qualifications (i.e. are in different categories), then their team head’s wage must not be less than that of the workers with the highest qualifications, plus 10 percent. Students and trainees also have their own set minimum wages. *See* “Joint Committee for Construction,” *see above* note 618, at 6, 8,

<https://employment.belgium.be/sites/default/files/content/documents/International/Limosafiche%20fiches%20EN/Limosafiche%20PC%20124%20EN.pdf>.

<sup>621</sup> FIEC & Fédération Européenne des Travailleurs du Bâtiment et du Bois, *Posting Report Belgium* 11 (December 2014), <http://legacy.fiec.eu/en/cust/documentview.aspx?UID=7076c783-97bb-465b-9092-58a986745f03> [*Posting Report Belgium*].

<sup>622</sup> *Ibid.*

<sup>623</sup> *Ibid.*

<sup>624</sup> *Ibid.*

<sup>625</sup> Night work must be compensated at 125 percent of normal pay, while Saturday work requires 50 percent extra pay.

<sup>626</sup> *Posting Report Belgium*, *see above* note 621, at 14, 15.

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<sup>627</sup> *Ibid.*, 22, 24.

<sup>628</sup> *Ibid.*, 80.

<sup>629</sup> “ILO Report,” *see above* note 2, at 61.

<sup>630</sup> *Ibid.*

<sup>631</sup> Beatriz Camargo Magalhaes, *The Influence of Labor Market Policies on Gender and Migration in Belgium: The Case of Domestic Work*, KNOMAD 10 (July 2017).

<sup>632</sup> Royal Decree of 12 December 2001 Concerning The Service Cheques,

<https://www.ilo.org/dyn/travail/docs/2540/Arrêté%20royal%20concernant%20les%20titres-services.pdf> [“Royal Decree of 12 December 2001”].

<sup>633</sup> *Ibid.*

<sup>634</sup> *Ibid.*

<sup>635</sup> *Promoting Integration for Migrant Domestic Workers in Belgium*, *see above* note 539, at 17.

<sup>636</sup> *Employees in service vouchers by origin, region and gender*, SERVICE PUBLIC FÉDÉRAL EMPLOI, TRAVAIL ET CONCERTATION SOCIALE, <https://emploi.belgique.be/fr/statistiques>.

<sup>637</sup> Anna Safuta & Beatriz Camargo, *The More Things Change, the More They Stay The Same? The impact of formalizing policies on personalization in paid domestic work – the case of the service voucher in Belgium*, Abstract (2019).

<sup>638</sup> “April 16 Video Call, ACV,” *see above* note 599; “April 3 Video Call Interview, ABBV,” *see above* note 598.

<sup>639</sup> *Monitoring Socio-Économique*, *see above* note 539, at 75.

<sup>640</sup> 3 Juillet 1978 Loi Relative aux Contrats de travail,

<http://www.ejustice.just.fgov.be/eli/loi/1978/07/03/1978070303/justel#LNK0023>.

<sup>641</sup> Colombi, *Domestic Workers: Time for a Fair Collective Agreement for 140,000 in Belgium* (Nov 28, 2019),

<https://www.effat.org/featured/domestic-workers-time-for-a-fair-collective-agreement-for-140-000-in-belgium/> [*Domestic Workers: Time for a Fair Collective Agreement for 140,000 in Belgium*].

<sup>642</sup> International Labour Organization, *Belgium*, [https://www.ilo.org/labadmin/info/WCMS\\_150912/lang-en/index.htm](https://www.ilo.org/labadmin/info/WCMS_150912/lang-en/index.htm) [*Belgium*].

<sup>643</sup> Beatriz Camargo Magalhaes, *Mind the protection (policy) gap: Trafficking and Labour Exploitation in Migrant Domestic Work in Belgium*, 15 J. Immigrant & Refugee Studies, 122 127 (April 2017), <https://doi.org/10.1080/15562948.2017.1305472>.

<sup>644</sup> Heavy penalties may be imposed in response to any obstruction of investigations. See

[https://www.ilo.org/global/topics/safety-and-health-at-work/country-profiles/europe/belgium/WCMS\\_150912/lang-en/index.htm](https://www.ilo.org/global/topics/safety-and-health-at-work/country-profiles/europe/belgium/WCMS_150912/lang-en/index.htm).

<sup>645</sup> *Liaison Offices and Labour Inspectorate*, *see above* note 616. When inspectors encounter infringements of the law, they may forgo formal reporting to the court in favor of measures that will expediently rectify the illegal situation, such as a warning to the employer and deadlines for rectification. See *Belgium*, *see above* note 642. For example, the inspector may implement a deadline by which wages are due in arrears for wage violations. For wage violations, inspectors will systematically ask for proof of payment and pay slips. Lack of employer compliance results in a formal report to the public prosecution service, which may lead to judicial prosecution or fines. See Federal Public Service Employment, Labour and Social Dialogue, *Supervision of Social Legislation*, <https://employment.belgium.be/en/themes/international/posting/liaison-offices-and-labour-inspectorate/supervision-social-legislation>.

<sup>646</sup> *Liaison Offices and Labour Inspectorate*, *see above* note 616.

<sup>647</sup> Summary of findings in Belgium and the Czech Republic on the implementation of the Employers’ Sanctions Directive, Platform for International Cooperation (November 2017), [https://picum.org/wp-content/uploads/2017/11/PICUM\\_Summary-EmployerSanctionsDirective-implementation\\_BEandCZ\\_EN.pdf](https://picum.org/wp-content/uploads/2017/11/PICUM_Summary-EmployerSanctionsDirective-implementation_BEandCZ_EN.pdf).

<sup>648</sup> Paul de Hert, Ines Gallala & Ramon Prey, *Severe Forms of Labour Exploitation*, Social Fieldwork Research (FRANET) 18-19, [https://fra.europa.eu/sites/default/files/fra\\_uploads/severe-labour-exploitation-country\\_be.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_be.pdf) [*Severe Forms of Labour Exploitation*].

<sup>649</sup> *Ibid.*, 19-20.

<sup>650</sup> UNIA, *What Happens With Your Report?*, <https://www.unia.be/en/about-unia/what-happens-with-your-report#What-are-the-possible-steps>.

<sup>651</sup> Institute for the Equality of Women and Men, *How Can the Institute Help You?*, <https://igvm-iefh.belgium.be/en>.

<sup>652</sup> Video Call Interview by IHRC, Laurent Fastrez, Legal Officer, UNIA and Alexandra Buchler, Lawyer and Policy Advisor, Myria (May 20, 2020) [“May 20 Video Call Interview, UNIA & Myria”].

<sup>653</sup> *Ibid.*

<sup>654</sup> *Ibid.*

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- <sup>655</sup> Onderzoek naar de waardering van gelijkwaardigheidsbeslissingen op de arbeidsmarkt, Naric Vlaanderen, <https://www.naricvlaanderen.be/nl/onderzoek-naar-de-waardering-van-gelijkwaardigheidsbeslissingen-op-de-arbeidsmarkt>; De gepercipieerde waarde van diploma-erkenning op de arbeidsmarkt, Saena Chakkar & Peter De Cuyper, [https://www.steunpuntwerk.be/files/publications/OW/OW\\_2019\\_2/overwerk\\_2019\\_2\\_10.pdf](https://www.steunpuntwerk.be/files/publications/OW/OW_2019_2/overwerk_2019_2_10.pdf) at 15.
- <sup>656</sup> *Ibid.*
- <sup>657</sup> Equivalence of Diplomas, Belgium.be, [https://www.belgium.be/en/education/equivalence\\_of\\_diplomas](https://www.belgium.be/en/education/equivalence_of_diplomas).
- <sup>658</sup> UNIA, *The Employment Rate of People of Foreign Origin is Improving but Lagging Behind* (2020), <https://www.unia.be/fr/articles/le-taux-demploi-des-personnes-dorigine-etrangere-sameliore-mais-reste-a-la-traine> [*The Employment Rate of People of Foreign Origin is Improving but Lagging Behind*].
- <sup>659</sup> *A Common Home*, see above note 571, at 43.
- <sup>660</sup> *Ibid.*, 42.
- <sup>661</sup> “April 7 Video Call Interview, European Federation of Building and Woodworkers,” see above note 606.
- <sup>662</sup> *Ibid.*
- <sup>663</sup> Video Call Interview by GHRC, Peter de Cuyper, Researcher, HIVA/KU Leuven (April 7, 2020) [“April 7 Video Call Interview, HIVA/KU”].
- <sup>664</sup> “April 9 Video Call Interview, Hannah Vermaut,” see above note 607.
- <sup>665</sup> “April 7 Video Call Interview, HIVA/KU,” see above note 663.
- <sup>666</sup> *Ibid.*
- <sup>667</sup> Alvaro Pina, Vincent Corluy, and Gerlinde Verbist, Improving the Labour Market Integration of Immigrants, Belgium, Economics Department Working Papers No. 1195, OECD, 19 (March 25, 2015).
- <sup>668</sup> Nihad Bunar, *Promoting Effective Integration of Migrants and Refugees in Education*, European Trade Union Committee for Education 68 (October 2019).
- <sup>669</sup> “April 9 Video Call Interview, Hannah Vermaut,” see above note 607.
- <sup>670</sup> Emmanuelle Bribosia & Isabelle Rorive, Country Report Non-Discrimination, Belgium, European Commission 81 (2018), <https://www.equalitylaw.eu/downloads/4741-belgium-country-report-non-discrimination-2018-pdf-2-92-mb>.
- <sup>671</sup> *A Common Home*, see above note 571, at 10.
- <sup>672</sup> “ILO Report,” see above note 2 at 38.
- <sup>673</sup> *Ibid.*, 55.
- <sup>674</sup> According to a study, “for other foreign origins too, apart from people from North America and the EU-14, there is still a large wage gap when compared to people of Belgian origin.” *Monitoring Socio-Économique*, see above note 539, at 58.
- <sup>675</sup> *Ibid.*
- <sup>676</sup> *Promoting Integration for Migrant Domestic Workers in Belgium*, see above note 539, at 27.
- <sup>677</sup> “April 2 Video Call Interview, SPF,” see above note 595.
- <sup>678</sup> *Ibid.*
- <sup>679</sup> UNIA, *Employment*, <https://www.unia.be/en/areas-of-action/work>.
- <sup>680</sup> *A Common Home*, see above note 571, at 10.
- <sup>681</sup> See Service Public Fédéral Emploi, Travail, et Concertation Sociale, *Discrimination en Raison de L’Origine Ethnique*, <https://emploi.belgique.be/fr/themes/egalite-et-non-discrimination/discrimination-en-raison-de-lorigine-ethnique> [*Discrimination en Raison de L’Origine Ethnique*].
- <sup>682</sup> *Ibid.*
- <sup>683</sup> A case that the Brussels Court of Appeal eventually condemned in 2015 centered around Addeco, a temporary work agency “which had given instructions to its agents to exclusively send workers without immigrant origin at the request of its customers.” *A Common Home*, see above note 571, at 44.
- <sup>684</sup> “Vanden Broeck,” see above note 547, at 10.
- <sup>685</sup> “April 7 Video Call Interview, HIVA/KU,” see above note 663.
- <sup>686</sup> “April 7 Video Call Interview, European Federation of Building and Woodworkers,” see above note 606.
- <sup>687</sup> “May 20 Video Call Interview, UNIA & Myria,” see above note 652.
- <sup>688</sup> *Ibid.*
- <sup>689</sup> *Ibid.*
- <sup>690</sup> *Ibid.*
- <sup>691</sup> “Vanden Broeck,” see above note 547, at 11.
- <sup>692</sup> ORCA, Travailleurs Sans Papiers Report Annuel, 27 (2018), <https://www.fairworkbelgium.be/wp-content/uploads/2020/12/FAI-jaarverslag-2018-NL-site.pdf>.
- <sup>693</sup> “Vanden Broeck,” see above note 547, at 75.

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- <sup>694</sup> Michele LeVoy and Nele Verbruggen, *Ten Ways to Protect Undocumented Migrant Workers*, Platform for International Cooperation on Undocumented Migrants 44 (2005), [http://picum.org/Documents/Public/2005/10\\_Ways\\_EN.pdf](http://picum.org/Documents/Public/2005/10_Ways_EN.pdf) [*Ten Ways to Protect Undocumented Migrant Workers*].
- <sup>695</sup> Bethany Staunton, “A worker is a worker”: the trade unions organising migrants, ETUI (2019), <https://www.etui.org/topics/health-safety-working-conditions/hesamag/migrant-workers-in-fortress-europe/a-worker-is-a-worker-the-trade-unions-organising-migrants> [“Staunton”].
- <sup>696</sup> *Ten Ways to Protect Undocumented Migrant Workers*, see above note 694, at 44; “April 7 Video Call Interview, European Federation of Building and Woodworkers,” see above note 606.
- <sup>697</sup> *Ibid.*
- <sup>698</sup> “Staunton,” see above note 695.
- <sup>699</sup> “April 3 Video Call Interview, ABBV,” see above note 598.
- <sup>700</sup> *Ten Ways to Protect Undocumented Migrant Workers*, see above note 694, at 45.
- <sup>701</sup> “Staunton,” see above note 695.
- <sup>702</sup> “April 7 Video Call Interview, European Federation of Building and Woodworkers,” see above note 606.
- <sup>703</sup> “April 3 Video Call Interview, ABBV,” see above note 598.
- <sup>704</sup> *Ibid.*
- <sup>705</sup> Federal Migration Centre, *Annual Evaluation Report 2020 Trafficking and Smuggling of Human Beings; Behind Closed Doors* 34 (2020), [https://www.myria.be/files/2020\\_Annual\\_report\\_trafficking\\_and\\_smuggling\\_of\\_human\\_beings-Part\\_1.pdf](https://www.myria.be/files/2020_Annual_report_trafficking_and_smuggling_of_human_beings-Part_1.pdf) [*Annual Evaluation Report 2020 Trafficking and Smuggling of Human Beings*].
- <sup>706</sup> “April 3 Video Call Interview, ABBV,” see above note 598.
- <sup>707</sup> *Severe Forms of Labour Exploitation*, see above note 648, at 47. [https://fra.europa.eu/sites/default/files/fra\\_uploads/severe-labour-exploitation-country\\_be.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_be.pdf).
- <sup>708</sup> “April 7 Video Call Interview, European Federation of Building and Woodworkers,” see above note 606.
- <sup>709</sup> “May 20 Video Call Interview, UNIA & Myria,” see above note 652.
- <sup>710</sup> *Severe Forms of Labour Exploitation*, see above note 648, at 47.
- <sup>711</sup> Kadri Soova, Lilana Keith and Michele LeVoy, *Employers’ Sanctions: Impacts on Undocumented Migrant Workers’ Rights in Four EU Countries*, Platform for International Cooperation on Undocumented Migrants 6 (April 2015), <https://www.ilo.org/dyn/migpractice/docs/312/EmployerSanctions.pdf>.
- <sup>712</sup> *Ibid.*
- <sup>713</sup> International Labour Organization, *Access to protection and remedy for human trafficking victims for the purpose of labour exploitation; The role of labour inspectors in Belgium and the Netherlands*, 8 (April 2021) [https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-brussels/documents/publication/wcms\\_783908.pdf](https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-brussels/documents/publication/wcms_783908.pdf) [*Access to protection and remedy for human trafficking victims for the purpose of labour exploitation*]; “May 20 Video Call Interview, UNIA & Myria,” see above note 652.
- <sup>714</sup> *Access to protection and remedy for human trafficking victims for the purpose of labour exploitation*, see above note 713, at 73.
- <sup>715</sup> Lilana Keith and Michele LeVoy, *A Worker is a Worker: How to Ensure that Undocumented Migrant Workers Can Access Justice*, Platform for International Cooperation on Undocumented Migrants 25 (2020), <https://picum.org/wp-content/uploads/2020/03/A-Worker-is-a-Worker-full-doc.pdf>.
- <sup>716</sup> “April 9 Video Call Interview, Hannah Vermaut,” see above note 607.
- <sup>717</sup> “April 7 Video Call Interview, European Federation of Building and Woodworkers,” see above note 606.
- <sup>718</sup> *Annual Evaluation Report 2020 Trafficking and Smuggling of Human Beings*, see above note 705.
- <sup>719</sup> In Flanders, it is the Agency for Civic Integration. Wallonia has the Directorate General, and Brussels has the French Community Commission.
- <sup>720</sup> European Web Site on Integration, *Governance of Migrant Integration in Belgium*, [https://ec.europa.eu/migrant-integration/country-governance/governance-migrant-integration-across-europe\\_en](https://ec.europa.eu/migrant-integration/country-governance/governance-migrant-integration-across-europe_en) [*Governance of Migrant Integration in Belgium*].
- <sup>721</sup> CBAI, *Parcours D’Accueil Pour Primo-Arrivants Rapport Annuel* (Mars 2016) [http://www.cbai.be/resource/docsenstock/cohesion\\_sociale/Parcours%20d'accueil%20-%20Rapport%202016.pdf](http://www.cbai.be/resource/docsenstock/cohesion_sociale/Parcours%20d'accueil%20-%20Rapport%202016.pdf).
- <sup>722</sup> *Governance of Migrant Integration in Belgium*, see above note 720.
- <sup>723</sup> “April 7 Video Call Interview, HIVA/KU,” see above note 663.
- <sup>724</sup> “Vanden Broeck,” see above note 547, at 6.
- <sup>725</sup> Ahmad Wali Ahmad-Yar and Nadzeya Laurentsyeva, *Migrant Integration Policies at the Local Level in Belgium*, Mercator Dialogue on Asylum and Migration 14 (September 2020), [https://www.medam-migration.eu/fileadmin/Dateiverwaltung/MEDAM-Webseite/Publications/Policy\\_Papers/CEPS\\_Migrant\\_integration\\_policies\\_at\\_the\\_local\\_level\\_in\\_Belgium/PI2020-23\\_Migrant-integration-policies-Belgium\\_a\\_1.pdf](https://www.medam-migration.eu/fileadmin/Dateiverwaltung/MEDAM-Webseite/Publications/Policy_Papers/CEPS_Migrant_integration_policies_at_the_local_level_in_Belgium/PI2020-23_Migrant-integration-policies-Belgium_a_1.pdf).



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<sup>726</sup> “April 3 Video Call Interview, ABBV,” *see above* note 598.

<sup>727</sup> *Ibid.*

<sup>728</sup> *Access to protection and remedy for human trafficking victims for the purpose of labour exploitation*, *see above* note 713, at 3.

<sup>729</sup> “April 7 Video Call Interview, European Federation of Building and Woodworkers,” *see above* note 606.

<sup>730</sup> *Access to protection and remedy for human trafficking victims for the purpose of labour exploitation*, *see above* note 713, at 3.

<sup>731</sup> Federal Public Service Employment, Labour and Social Dialogue, *Good Offices Commission – Embassy staff*, <https://employment.belgium.be/en/about-us/good-offices-commission-embassy-staff>.

<sup>732</sup> ABVV, *Regulariseer mensen zonder wettig verblijf* (April 28, 2019), [https://www.abvv.be/-/regulariseer-mensen-zonder-wettig-verblijf?redirect=https%3A%2F%2Fwww.abvv.be%2Fsearch%3Fp\\_p\\_id%3D3%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-1%26p\\_p\\_col\\_count%3D1%26\\_3\\_keywords%3Dmigrant%26\\_3\\_redirect%3D%252Finternationaal%26\\_3\\_struts\\_action%3D%252Fsearch%252Fsearch&inheritRedirect=true](https://www.abvv.be/-/regulariseer-mensen-zonder-wettig-verblijf?redirect=https%3A%2F%2Fwww.abvv.be%2Fsearch%3Fp_p_id%3D3%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1%26_3_keywords%3Dmigrant%26_3_redirect%3D%252Finternationaal%26_3_struts_action%3D%252Fsearch%252Fsearch&inheritRedirect=true).

<sup>733</sup> ABVV, *Actie aan het Justitiepaleis voor mensen zonder papieren!* (February 19, 2019), <https://www.abvv.be/actie-aan-het-justitiepaleis-voor-mensen-zonder-papieren>.

<sup>734</sup> *Annual Evaluation Report 2020 Trafficking and Smuggling of Human Beings*, *see above* note 705 at 27; “April 3 Video Call Interview, ABBV,” *see above* note 598.

<sup>735</sup> *Domestic Workers: Time for a Fair Collective Agreement for 140,000 in Belgium*, *see above* note 641.

<sup>736</sup> *Annual Evaluation Report 2020 Trafficking and Smuggling of Human Beings*, *see above* note 705, at 27.

<sup>737</sup> ABVV, *Persbericht ACV – ABVV – CIRE – Coördinatie mensen zonder papieren – Fairwork Belgium | Samen voor de bescherming van arbeidsmigranten* (Dec. 18, 2018), <https://www.abvv.be/persbericht-acv-abvv-cire-coordinatie-mensen-zonder-papieren-fairwork-belgium-samen-voor-de>.

<sup>738</sup> La Libre, *Donnons aux sans-papiers l'accès légal aux métiers en pénurie* (August 6, 2021), <https://www.lalibre.be/debats/opinions/2021/07/13/donnons-aux-sans-papiers-lacces-legal-aux-metiers-en-penurie-WX6RA5JYYNAG3OWHFHFQLCZZQA/>; Confederation Syndicat European Trade Union, *Unions back work permits for undocumented migrant hunger strikers* (July 13, 2021), <https://www.etuc.org/en/pressrelease/unions-back-work-permits-undocumented-migrant-hunger-strikers>.

<sup>739</sup> “April 16 Video Call, ACV,” *see above* note 599.

<sup>740</sup> *Ibid.*

<sup>741</sup> Home, *Picum*, <https://picum.org>.

<sup>742</sup> *Severe Forms of Labour Exploitation*, *see above* note 648, at 11.

<sup>743</sup> “April 9 Video Call Interview, Hannah Vermaut,” *see above* note 607.

<sup>744</sup> “May 20 Video Call Interview, UNIA & Myria,” *see above* note 652.

<sup>745</sup> *A Common Home*, *see above* note 571, at 52.

<sup>746</sup> “April 7 Video Call Interview, HIVA/KU,” *see above* note 663.

<sup>747</sup> *Ibid.*

<sup>748</sup> The ILO Report analyzes the migrant pay gap at different points in the hourly wage distribution, which encompasses equally-sized ten deciles of wage distribution (from the bottom 10 percent wage earners up to the top 10 percent earners).

<sup>749</sup> “ILO Report,” *see above* note 2, at 138.

<sup>750</sup> “Ramos,” *see above* note 185. *See also* “May 5 Video Call Interview, SEDOAC,” *see above* note 186.

<sup>751</sup> *A Precarious Position*, *see above* note 202 (2014 study found 6 percent of national workers are engaged in low-skill work compared to 20 percent of migrants).

<sup>752</sup> A migrant must have already signed a contract for specific employment and employers must have unsuccessfully searched for national workers, EU citizens, or third-country nationals already legally residing in Spain prior to receiving a permit. “Blue Card Eligibility,” *see also* note 113.

<sup>753</sup> In Spain, foreign workers are more likely than nationals to occupy temporary and informal positions, which are known to offer less benefits and pay. “April 22 Video Call Interview, IOM,” *see above* note 56. *See, for example*, *A Precarious Position*, *see above* note 202, at 2 (the construction sector is third largest employer of migrant workers, but has one of the lowest shares of permanent contracts, meaning that migrants in construction are more likely to have temporary contracts than nationals in construction).

<sup>754</sup> Cases of underpayment for worked performed are especially common in the domestic work and tourism sectors. In the tourism sector, 32.3 percent of migrant workers said they were not paid for their overtime hours worked, and 46 percent migrants working in seasonal jobs reported pay below their legally corresponding wages. “Cáritas Española,” *see above* note 223.

<sup>755</sup> “ILO Report,” *see above* note 2, at 138.

<sup>756</sup> “ILO Report,” *see above* note 2, at xvii, 71, xx, 86, 7.

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<sup>757</sup> For example, although such workers – entering through the H-1B visa classification – must be paid the actual wage rate, employers often classify these workers as “entry-level” to avoid paying the premium that comes with certain skill levels and expertise. Employers often also misclassify their workers as B1 or L1 workers to avoid any required pay rate at all. “May 8 Video Call Interview, IFPTE,” *see above* note 327. Indeed, a 2008 U.S. Citizenship and Immigration Services (USCIS) report showed that 13 percent of high-skilled visa petitions contained incorrect information about the position and working conditions, or even contained companies that did not exist.

*Immigration for Shared Prosperity*, *see above* note 462, at 40. In addition, many H-2B workers are often misclassified as independent contractors. “Misclassification of Employees as Independent Contractors,” *see above* note 464.

<sup>758</sup> “ILO Report,” *see above* note 2, at 136.

<sup>759</sup> *Monitoring Socio-Économique*, *see above* note 539, at 58.

<sup>760</sup> “ILO Report,” *see above* note 2, at 37-39.

<sup>761</sup> *Ibid.*

<sup>762</sup> *Ibid.*

<sup>763</sup> Each case-study country prohibits employers from offering jobs to migrants if other workers already in the country are able and willing to do the work. Indeed, certain work visas in these three countries require employers to conduct labor market tests prior to offering the job to migrants. Under Belgium’s work permit B, for example, the migrant’s sponsoring employer must show that “a labour market test indicates that no suitable candidate could be found on the Belgian or EEA labour market within a reasonable term.” *Belgian Work Visas and Permits*, *see above* note 586. Similarly, in the US, employment-based visas such as the EB-2 (Second preference) and EB-3 (Third preference) require the sponsoring employer, prior to submitting an immigration petition to USCIS, to obtain an approved labor certification from the DOL which confirms that “there are insufficient available, qualified, and willing US workers to fill the position being offered at the prevailing wage” and “hiring foreign worker will not adversely affect the wages and working conditions of similarly employed US workers.” *Permanent Workers | USCIS*, (March 29, 2023), <https://www.uscis.gov/working-in-the-united-states/permanent-workers>. However, no such labor market test is required for highly skilled individuals, nor for migrants who enter the US as Lawful Permanent Residents (green card holders). In Spain, the employer must ensure that no national or EU workers were available to complete the job before offering it to third-country nationals. “Blue Card Eligibility,” *see also* note 113.

<sup>764</sup> In the United States, for example, employers are required to demonstrate no national worker is available to fill a temporary non-agricultural position before they hire a worker via the H-2B program. While such positions are paid prevailing (or market) wages, they are temporary, infamously difficult and rigorous work, under spare living conditions, features which are unattractive to national workers. *H-2B Know Your Rights*, *see above* note 337. In Belgium, employers are subjected to the “labor market test.” Like in the United States, however, this test does not apply to highly qualified workers or technical experts. “Blue Card Eligibility,” *see also* note 113.

<sup>765</sup> There are several exceptions to this rule. For example, in Belgium and Spain, migrants from within the EU, the European Economic Area (EEA-EU), and Switzerland do not require a work visa. However, migrants from countries outside of the EU will usually have to apply for a work visa and in most cases, these visas are conditional on finding a job prior to application. *Belgian Work Visas and Permits*, *see above* note 586; “Blue Card Eligibility,” *see also* note 113. In the United States and Belgium, employers need not conduct a labor market test prior to hiring highly skilled migrant workers (H-1B workers), and in some cases, these workers are already in the country prior to obtaining a work visa due to the practice of hiring these workers studying at a U.S. university. *See* “May 8 Video Call Interview, IFPTE,” *see above* note 327. *Belgian Work Visas and Permits*, *see above* note 586.

<sup>766</sup> In the US, for example, migrants are given “take-it-or-leave-it” job offers without the opportunity to negotiate wages; migrants often accept whatever is offered, even if that means substandard wages simply for the opportunity to enter the host country and begin working. Migrants are also made to pay exorbitant fees to labor recruiters to secure employment before they arrive in the U.S. Daniel Costa, *Employers increase their profits and put downward pressure on wages and labor standards by exploiting migrant workers*, Economic Policy Institute (Aug. 27, 2019), <https://www.epi.org/publication/labor-day-2019-immigration-policy/>.

<sup>767</sup> Belgium’s work permit B, requiring an offer of employment prior to the migrant entering the country and a labor market test, is only valid for 12 months, but may be renewable. *Belgian Work Visas and Permits*, *see above* note 586. The blue card visa for third-country nationals in Spain, also requiring an employment offer and a labor market test, is only valid for one year with the option of renewing biannually. “Blue Card Eligibility,” *see also* note 113. In the US, H-2A (agricultural workers) or H-2B (non-agricultural workers) visas are usually only valid for one year and may be renewed for a maximum of three years, after which the migrant must remain outside the US for three months before seeking readmission. *H-2A Temporary Agricultural Workers | USCIS*, (November 9, 2022), <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers>.

<sup>768</sup> “ILO Report,” *see above* note 2, at 54.

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<sup>769</sup> A foreigner arriving in Spain to work “must do so for the positions authorized for this purpose, have a valid passport, present the necessary documents that justify the object and the conditions of stay and, finally, prove that he has sufficient means of living for the period of time you want to stay in Spain or be able to obtain them legally.” *El Salario y La Migración en España*, see above note 89. For a US example, see employment-based visas EB-2 or EB-3, both of which require employment sponsorship and an offer to apply. Non-EU/EEA-EU/Swiss nationals seeking to work in Belgium are normally required to obtain a work permit B which is issued for a specific job for a specific employer for a maximum period of 12 months, with the option for renewal upon continued fulfillment of the permit requirements. *Belgian Work Visas and Permits*, see above note 586.

<sup>770</sup> “April 22 Video Call Interview, IOM,” see above note 56; American Immigration Council, *Why Don’t Immigrants Apply for Citizenship?* (Nov. 25, 2019), <https://www.americanimmigrationcouncil.org/research/why-dont-e2-80-99t-they-just-get-line>; Bart Biesemans and Johnny Cotton, *Hundreds of Migrants Stage Hunger Strike in Brussels for Legal Status*, Reuters (June 30, 2021), <https://www.reuters.com/world/europe/undocumented-migrants-hunger-strike-brussels-fight-legal-status-2021-06-30/>.

<sup>771</sup> “April 24 Video Call Interview, IUEM,” see above note 175.

<sup>772</sup> *The Vulnerability to Exploitation of Women Migrant Workers in Agriculture in the EU*, see above note 117, at 27.

<sup>773</sup> *Frequently Requested Statistics on Immigrants and Immigration in the United States*, see above note 285. Additionally, a migrant worker who overstayed their work visa in the US and then sought to adjust status or re-admission may have to wait longer: if the migrant’s “unlawful presence” was for more than 180 days but less than 1 year during a single stay, then they must fulfill a three year bar prior to being re-admitted (INA §212(a)(9)(B)(i)(I)); if the migrant accrued one year or more of “unlawful presence” during a single stay, then they must wait ten years (INA §212(a)(9)(B)(i)(II)); and if the migrant accrued more than one year of “unlawful presence” during more than one stay, then they are likely barred from re-admission permanently (INA §212(a)(9)(C)(i)(I)). *Unlawful Presence and Bars to Admissibility | USCIS*, (June 25, 2022), <https://www.uscis.gov/laws-and-policy/other-resources/unlawful-presence-and-bars-to-admissibility>.

<sup>774</sup> Although it is illegal for employers to hire unauthorized workers, US law places enforcement in the hands of the employers without regular oversight. See *The American Dream Up For Sale*, see above note 340.

<sup>775</sup> Employers often avoid liability for hiring unauthorized workers either by claiming the authenticity of documentation or by using a labor broker to avoid employment verification responsibilities altogether. *Immigration for Shared Prosperity*, see above note 462, at 30.

<sup>776</sup> “Vanden Broeck,” see above note 547, at 19.

<sup>777</sup> *Promoting Integration for Migrant Domestic Workers in Belgium*, see above note 539, at 8.

<sup>778</sup> For example: Canada requires employers to provide a labor market assessment before offering a job to migrant workers. *Find Out if You Need a Labour Market Impact Assessment (LMIA) and How to Hire a Temporary Foreign Worker*, the Government of Canada, <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/hire-foreign-worker/temporary/find-need-labour-market-impact-assessment.html>; Canada’s Temporary Foreign Worker Program also requires a job offer from a Canadian employer for a migrant to apply for a work permit. *Apply for a Work Permit*, the Government of Canada, <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/work-permit.html>; Switzerland requires employers to conduct a labor market assessment before giving jobs to migrant workers. Alexander Misic and Nicole Töpperwien, *Constitutional Law in Switzerland* (2018). Argentina requires migrants applying for employment-based visas outside of the MERCOSUR (Common Market of South America) system to show that they have a job offer to work in Argentina. International Labor Organization (ILO) and the Organization for Economic Co-operation and Development (OECD), *How Immigrants Contribute to Argentina’s Economy* 42, 53 (2018); In Jordan, prospective employers of migrant workers must obtain work permits from the Ministry of Labour prior to the migrants’ entry and must prove that there are no Jordanians to fill the position. Labour Code (No. 8 of 1996), Al-Jarida Al-Rasmiya, 1996-04-16, No. 4113, pp. 1173-1219, art. 12.

<sup>779</sup> “ILO Report,” see above note 2, at 26.

<sup>780</sup> Anke Schuster, Maria Vincenza Desiderio and Giuliana Urso Edited, *Recognition of Qualifications and Competences of Migrants* (2013). 27, 91 [*Recognition of Qualifications and Competences of Migrants*].

<sup>781</sup> “May 5 Video Call Interview, SEDOAC,” see above note 186; see also “April 7 Video Call Interview, European Federation of Building and Woodworkers,” see above note 606; *A Common Home*, see above note 571, at 43; *The Employment Rate of People of Foreign Origin is Improving but Lagging Behind*, see above note 658.

<sup>782</sup> See *A Common Home*, see above note 571, at 42 (Studies show that about 33 percent of migrants are overqualified compared to 20 percent of Belgian-born workers). See also “May 5 Video Call Interview, SEDOAC,” see above note 186 (“judges from Venezuela and gynecologists from Cuba” integrating into the Spanish labor force as domestic workers out of necessity). See also *The Occupational Cost of Being Illegal in the United States*, see above note 457 (2015 study showed low-skilled Mexican and Central American migrant men received lower returns on their previous

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work experience and educational attainments; 2010 study showed that Mexican migrant workers received lower wages despite similar educational levels).

<sup>783</sup> In Spain, for example, there is a qualification recognition framework for higher education, but not for lower education certificates, which are more likely to be in a foreign language or format. The barriers to degree and qualification recognition in Spain include costs and a lengthy transfer process that may require years of additional study. “Ramos,” *see above* note 185; “May 5 Video Call Interview, SEDOAC,” *see above* note 186. Belgium delegates authority for qualification recognition to local governments, often adding to the complexity of the procedures. *Recognition of Qualifications and Competences of Migrants*, *see above* note 780, at 27. In the United States, the recognition of foreign qualifications is even more decentralized and obscure, as it may be determined by a combination of international agreements, practices in the U.S. education system, and the labor market.

<https://www2.ed.gov/about/offices/list/ous/international/usnei/us/edlite-visitus-forrecog.html#:~:text=There%20is%20no%20single%20authority,foreign%20degrees%20and%20other%20qualifications.&text=State%20or%20territorial%20licensing%20boards,or%20other%20qualifications%20earned%20abroad>. Recognition of foreign credentials may be determined by the employers, state licensing authorities, or even federal immigration authorities. <https://sites.ed.gov/international/recognition-of-foreign-qualifications/>. Additionally, migrants may be required to obtain a credential evaluation, completed by a private organization, to compare the foreign credentials to a U.S.-based credential. *Ibid.*

<sup>784</sup> “ILO Report,” *see above* note 2, at 94. The “unexplained gap” in Spain was particularly large, at 48.65 percent.

<sup>785</sup> In Canada, more than 400 regulatory bodies share the responsibility for credentials assessment. *See Recognition of Qualifications and Competences of Migrants*, *see above* note 780, at 27. While some states have entered into multinational and bilateral agreements for the recognition of degrees (such as between France and Quebec), these agreements are not comprehensive.

<sup>786</sup> For example, in the United States, agricultural workers, domestic workers and independent contractors are all excluded from overtime wage provisions. Migrant workers are disproportionately likely to fill these job positions. In fact, the United States has special visa categories specifically for agricultural workers (H-2A). *Summary of the Major Laws of the Department of Labor*, *see above* note 355. See, e.g. Harmony Goldberg, *The Long Journey Home: The Contested Exclusion and Inclusion of Domestic Workers from Federal Wage and Hour Protections in the United States*, International Labor Organization [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/--travail/documents/publication/wcms\\_396235.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/--travail/documents/publication/wcms_396235.pdf). In Belgium, employers are exempted from paying social security contributions for domestic workers who work for less than four hours a day or less than 24 hours a week. *See* “Royal Decree of 12 December 2001,” *see above* note 632.

<sup>787</sup> For example, the FLSA exempts certain types of migrants from overtime protections that are available to other types of workers. Excluded migrants include those on H-2A visas (temporary agricultural workers), A-3 and G-5 visas (domestic workers), and J-1 visas (au pairs). *Home Care*, *see above* note 359.

<sup>788</sup> *Migration for Employment Convention*, *see above* note 93 (noting the exclusion of domestic workers from maternity protections in the Occupational Risk Prevention Act 1995 (No. 31)); “Pavlou,” *see above* note 153, at 159.

<sup>789</sup> For e.g., in the United Kingdom, domestic workers are excluded from working time protection. *See* *The Working Time Regulations 1998*, 1998 No. 1833, art. 19; In Canada, most migrant care workers labor under employer-restricted work permits, meaning they cannot switch jobs and keep their status. Further, migrant care workers who apply for a permit or residency have to wait without the security of their original permit, health cards and Social Insurance number. The Caregivers’ Action Centre, *Behind Closed Doors, Exposing Migrant Care Worker Exploitation During Covid-19* 11-12 (Oct. 2020), [https://migrantrights.ca/wp-content/uploads/2020/10/Behind-Closed-Doors\\_Exposing-Migrant-Care-Worker-Exploitation-During-COVID19.pdf](https://migrantrights.ca/wp-content/uploads/2020/10/Behind-Closed-Doors_Exposing-Migrant-Care-Worker-Exploitation-During-COVID19.pdf).

<sup>790</sup> “April 22 Video Call Interview, IOM,” *see above* note 56.

<sup>791</sup> For example, agricultural workers and domestic workers do not have the right to overtime pay. *Fact Sheet #12: Agricultural Employers Under the Fair Labor Standards Act (FLSA)*, *see above* note 358; *Fact Sheet: Application of the Fair Labor Standards Act to Domestic Service, Final Rule*, *see above* note 358.

<sup>792</sup> “Moreno-Fuentes,” *see above* note 212.

<sup>793</sup> For example, in the United States, migrants in back-of-house restaurant positions are sometimes wrongly classified as tipped workers, whose minimum hourly wages are reduced, and the reason for this misclassification is sometimes rooted in national-origin discrimination. “May 8 Video Call Interview, NELP,” *see above* note 465. “2018 Observation CEACR,” *see above* note 196.

<sup>794</sup> *See Discrimination en Raison de L’Origine Ethnique*, *see above* note 681 (Study on the discrimination of foreign workers in Brussel revealed that almost 50 percent of people with foreign origin will face discrimination at least once during their job search).

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<sup>795</sup> According to data from 2008-2016, migrants to Belgium from Asian States, Central and South America, and EU-13 States were overrepresented in sectors with low salaries: “for other foreign origins too, apart from people from North America and the EU-14, there is still a large wage gap when compared to people of Belgian origin.” Meanwhile, Belgian nationals were overrepresented in the three highest salary deciles throughout Belgium and under-represented in the lowest three salary categories. *See Monitoring Socio-Économique*, *see above* note 539.

<sup>796</sup> For example, seasonal migrant agricultural workers in the United States are frequently hired year after year by the same employer but are almost never promoted to higher paid positions. Meanwhile, managerial positions are almost exclusively held by national workers. “May 8 Video Call Interview, FFVA,” *see above* note 300.

<sup>797</sup> For example, highly skilled migrant employees in the United States are often misclassified into entry-level positions despite performing the same work duties as more experienced (and better paid) employees at the same worksite. “May 8 Video Call Interview, IFPTE,” *see above* note 327. US employers may additionally attempt to misclassify H-2B workers as independent contractors, thereby excluding them from many US labor law protections such as overtime wages. “Misclassification of Employees as Independent Contractors,” *see above* note 464; “DOL Roundup,” *see above* note 464; Hiring discrimination likely plays a major factor in labor market segmentation. “April 2 Video Call Interview, SPF,” *see above* note 595.

<sup>798</sup> “May 8 Video Call Interview, NELP,” *see above* note 465.

<sup>799</sup> In the United States, barriers to unionization have been documented, in particular for migrant farmworkers, independent contractors and domestic workers. “May 8 Video Call Interview, IFPTE,” *see above* note 327. For the barriers to collective bargaining in Spain, *see* “Urriza,” *see above* note 176. The relatively high rate of union membership among migrants in Switzerland may provide a partial explanation for the wage gap in favor of migrants in that country, <https://www.unia.ch/de/ueber-uns>.

<sup>800</sup> The types of workers whose right to collectively bargain is not protected under US labor laws overlap with the industries primarily populated by migrant workers, such as agricultural and domestic work. *Employee Rights*, *see above* note 381; NLRA, 29 U.S.C. § 152(3); Preston Huennkens, Unlimited Cheap Farm Labor: Evaluating H-2A Disclosure Data (Aug. 06, 2018), <https://cis.org/Report/Unlimited-Cheap-Farm-Labor-Evaluating-H2A-Disclosure-Data>; New American Economy, *Immigrants and the Growth of America's Largest Cities* (July 10, 2019), <https://research.newamericaneconomy.org/report/immigrants-and-the-growth-of-americas-largest-cities/>.

<sup>801</sup> Spanish unions also note the temporary nature of migrant work, fear of deportation if assert workplace rights, lack of language fluency, and lack of information about workers’ rights in general. *2022 Country Reports on Human Rights Practices: Spain*, U.S. Department of State (March 20, 2023), <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/spain/>. In the United States, migrant workers who have an employer-contingent immigration status, such as an H-2A visa, might also feel that if their employer retaliates, they could lose their job and become subject to deportation. *Agricultural Employers are Asking the Supreme Court to Make it Harder for Farmworkers Suffering from Poor Pay and Working Conditions to Unionize*, *see above* note 431; Wozniacka, *see above* note 428.

<sup>802</sup> Despite migrant workers reaping some of the general workplace benefits from union activity, such as access to unemployment and legal aid, migrant workers’ rights are by no means the focus of union organization in Belgium. *See* “April 3 Video Call Interview, ABBV,” *see above* note 598; “April 16 Video Call, ACV,” *see above* note 599.

<sup>803</sup> “April 7 Video Call Interview, CCOO,” *see above* note 143 (lack of union membership and difficulty organizing). Similarly to the case in Spain, US migrant workers that are not excluded from collective action are difficult to organize because of physical and linguistic isolation. “May 8 Video Call Interview, IFPTE,” *see above* note 327.

<sup>804</sup> For example, in Spain, labor brokers act as a barrier to bargaining, meaning that migrant workers subjected to these middlemen have less opportunity to negotiate for higher wages. “April 24 Video Call Interview, IUEM,” *see above* note 175. *The Vulnerability to Exploitation of Women Migrant Workers in Agriculture in the EU*, *see above* note 117, at 26. In the United States, workers in the agriculture industry are frequently employed by labor contractors and brokers who shift employees from post to post. “May 12 Video Call, GAO,” *see above* note 335.

<sup>805</sup> “Lawrence,” *see above* note 223; *See also* “Cáritas Española,” *see above* note 223. “April 24 Video Call Interview, IUEM,” *see above* note 175 (lack of institutional capacity may be a contributing factor to lack of workplace inspections in Spain). Agencies in the United States have poor oversight of employment conditions such as wages paid, hours worked, and employment eligibility. *I-9, Employment Eligibility Verification*, *see above* note 472. Inspection systems in some States, such as Namibia, Portugal and Spain, have insufficient human and financial resources to exercise their mandates. In Jordan’s labor inspection practices, inspectors care more about combatting illegal employment than about safeguarding workers’ rights. *See* Human Rights Watch, *Domestic Plight - How Jordanian Laws, Officials, Employers, and Recruiters Fail Abused Migrant Domestic Workers* (Sept. 27, 2011), <https://www.hrw.org/report/2011/09/27/domestic-plight/how-jordanian-laws-officials-employers-and-recruiters-fail-abused#>. In Pakistan, labor inspectors systematically fail to enforce garment worker’s rights. *See* Human Rights Watch, “No Room to Bargain” *Unfair and Abusive Labor Practices in Pakistan* (Jan. 23, 2019),

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<https://www.hrw.org/report/2019/01/24/no-room-bargain/unfair-and-abusive-labor-practices-pakistan>. Beyond harsh practices and negligent oversight, countries across Europe have struggled to maintain high numbers of labour inspections. Over the last decade, total labor inspection visits in Europe fell from 2.2 million annual visits to 1.7 million. During that period, visits in Portugal were cut in half, and the EU sustained a loss of 1,000 labor inspectors. Confederation Syndicat European Trade Union, *Huge fall in labour inspections raises Covid risk* (April 28, 2021), <https://www.etuc.org/en/pressrelease/huge-fall-labour-inspections-raises-covid-risk>.

<sup>806</sup> In Spain, inadequate enforcement of labor laws results in non-compliance regarding working hours, wages due, and rest days. *See Sowing Injustice*, *see above* note 180. In the United States, interviewed staff at the Department of Labor admitted that the agency lacks sufficient resources to properly monitor for compliance. “May 14 Video Call Interview, WHD,” *see above* note 300.

<sup>807</sup> In Belgium, even when migrant workers are aware that they are receiving lesser wages, or otherwise experience workplace discrimination, many choose not to complain due to language barriers, lack of support, or fear of losing their job or being deported. “May 20 Video Call Interview, UNIA & Myria,” *see above* note 652.

<sup>808</sup> *See, for example, in Belgium*, “Vanden Broeck,” *see above* note 547, at 10; *in the U.S.* “Coomer,” *see above* note 427, at 145, 159; *and in Spain*, “April 23 Video Call Interview, USO,” *see above* note 217.

<sup>809</sup> “May 20 Video Call Interview, UNIA & Myria,” *see above* note 652; *see also* “May 12 Video Call Interview, EEOC,” *see above* note 374 (Reliance on individual complaints is especially difficult for migrant workers due to deficiencies in legal resources, community support, and fluency in the host country language).

<sup>810</sup> One study showed that, despite most of the workers experiencing a workplace violation, only 5 percent sought recourse; in fact, almost 70 percent of those who didn’t file a complaint cited fear of losing their jobs. “Cáritas Española,” *see above* note 223. Even with information and support, both documented and undocumented workers in Belgium are unlikely to report violations due to fear of losing their job or being deported. *See* “May 20 Video Call Interview, UNIA & Myria,” *see above* note 652.

<sup>811</sup> “ILO Global Estimates on International Migrant Workers,” *see above* note 42, at 5.

<sup>812</sup> International Labor Organization, *Fair Migration: Setting an ILO Agenda*, Par. 18 (2014), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_242879.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_242879.pdf).

<sup>813</sup> Article 3 of Annex I and Article 3 of Annex II of Convention No. 97.

<sup>814</sup> Article 5 of Annex I and Article 6 of Annex II of Convention No. 97.