



Working Paper Series

Number 24, Summer 2015

The Recruitment Mechanism in Spanish and U.S. Guest Worker Programs:

Preventing fraud and abuse in worker selection and hiring

Mariana Minaya

mariana.minaya@fulbrightmail.org

Grup de Recerca Interdisciplinari en Immigració - UPF
Departament de Ciències Polítiques i Socials
Universitat Pompeu Fabra
www.upf.edu/gritim
gritim@upf.edu

The **purpose of the *GRITIM-UPF Working Paper Series*** is to disseminate academic research work-in-progress that contributes to the European approach on immigration and diversity. The main framework is related to GRITIM-UPF three main priorities: multidisciplinary, innovation, and transfer of knowledge. Its contents are related to its research areas: immigration and governance, immigration and society, immigration and law, economics of migration, immigration and the dynamics of diversity, immigration and communication and immigration and humanities. *GRITIM-UPF Working Papers* will be published quarterly (at least one per term, four per year).

GRITIM-UPF Editorial Board:

Gema Rubio Carbonero (Editor)	Department of Political and Social Sciences
Ricard Zapata-Barrero	Department of Political and Social Sciences
Sílvia Morgades	Department of Law
Teun van Dijk	Department of Translation and Philology
Elena Sánchez Montijano	CIDOB Foundation Social Sciences
Blanca Garcés-Mascareñas	Department of Political and
Héctor Cebolla	Department of Sociology - UNED
Lorenzo Gabrielli	Department of Political and Social Sciences

Publishing Editor:

Núria Franco-Guillén Department of Political and Social Sciences

Further information and requests can be addressed to gritim@upf.edu

Working Paper Series, as well as other information related to research on immigration can be received by subscribing at GRITIM Distribution List: www.upf.edu/gritim/distribució

Abstract

Fraudulent recruitment of authorized, temporary “guest workers” is a growing concern among international policy makers. Recruitment in many countries is regulated through a combination of immigration, criminal, and administrative laws. This paper will compare how two countries, Spain and the United States, regulate the recruitment of agricultural and low-skilled guest workers, a population generally vulnerable to fraud, based on a review of each country’s laws and relevant literature. The conclusion is that both countries could benefit from a unified national plan to combat this problem, and that the United States in particular could draw inspiration from Spain’s collaboration with several of its top migrant-sending countries. Spain’s present-day model mirrors in some respects prior U.S. successes in recruitment policy.

Keywords

Fraudulent recruitment, Guest worker, Human trafficking, Labor trafficking, Spain, United States, Bracero

Author’s biographical note

Mariana Minaya completed her JD at the University of Maryland in 2012. She was awarded a Fulbright U.S. Student Program grant to study how Spain recruits foreign workers through bilateral agreements with migrant-sending countries. Since September 2014, Mariana is a visiting researcher at GRITIM, Universitat Pompeu Fabra.

Introduction¹

Fraudulent recruitment of guest workers is a growing concern internationally. This paper compares how two countries, Spain and the United States, recruit foreign agricultural and other “low-skilled” workers, a population frequently vulnerable to fraud. In the United States, recruitment is left to private actors who are bound by several administrative rules. In Spain, the government signed bilateral migratory agreements with several countries to directly administer the selection of workers. A comparison reveals that several aspects of the Spanish model could benefit the United States, where commentators have called for measures similar to the ones Spain has enacted, and which has had past successes with a state-controlled model. The Spanish experience can yield insights for U.S. lawmakers who shall undoubtedly be again confronted with the recruitment question in debates over any future immigration reform proposals.

1. Purpose and Methodology

To compare how these two countries recruit and attempt to protect workers from fraud, I will compare the relevant legal instruments in each one. The fraudulent recruitment of agricultural and low-skilled guest workers implicates at least three bodies of law: the specific population of subject immigrants is defined by immigration law; the act of fraudulent recruitment is defined and penalized by the criminal law; and attendant conduct—such as charging of illegal fees or failing to inform workers of their rights—is regulated by administrative law. This paper will compare and contrast these bodies of law in each country. First, I will describe the problem of fraudulent recruitment plaguing this population.

2. Fraudulent Recruitment

The fraudulent recruitment of migrant workers has gained substantial attention from international actors in recent years. The International Labour Organization (ILO)

¹ The author would like to thank the Fulbright U.S. Student Program, Santiago Ripol Carulla, Ricard Zapata-Barrero, and all the members of GRITIM for their helpful suggestions when I presented a preliminary version of this paper during a group discussion session.

reports that millions of workers across the globe are increasingly crossing borders to find employment. As the ranks of migrant workers grow, so does the number of reports of abuse and deceit among this population. In 2014, the ILO Director General announced a “Fair Recruitment Initiative” to address the issue of exploitative and fraudulent recruitment among migrant workers and its relation to human trafficking and forced labor. The ILO has found that existing measures to regulate recruitment are typically “embedded in labour and administrative laws and/or criminal laws” and are “often inadequate, complicated and weakly enforced.” (ILO - Regulating Recruitment). Through its initiative, the ILO intends to study different regulatory models to gain insight into existing policy flaws and good practices.

Exploitative recruitment can take many forms, according the ILO, including: “deception about the nature and conditions of work, retention of passports, deposits and illegal wage deductions, debt bondage linked to the repayment of recruitment fees, threats if workers want to leave their employers and in some instances physical violence.” (ILO - Forced Labor). This crime can affect many populations, including both undocumented migrants and those who migrate legally on work visas.

Migrant workers are vulnerable to abuse and human trafficking due to several factors, including their transience, linguistic differences, and inexperience with their destination country’s laws and employment norms. Legalized guest workers are only one subset of the migrant worker population. A guest worker is a temporary labor migrant who works legally in another country for a delimited period of time and then returns to the origin country. This section will attempt to shed light on the nature of fraudulent recruitment in the context of legalized guest worker programs by taking the example of the United States, where instances of abuse are well-documented.

First, it must be noted that recruitment in itself is a legal and necessary step in linking workers with employers. Recruitment is an “act of free contractual agreement” through which one party agrees to pay a fee in exchange for another party to perform agreed-upon recruitment tasks, according to the ILO’s Trafficking for Forced Labour Training Manual. Recruitment is “the first step in a relation of employment,” and may include advertising, candidate canvassing and selection, job brokerage, and direct hiring or hiring by delegation. Once elements of coercion, fraud, force or deception are introduced, however, recruitment becomes illegal, and is considered a human trafficking-related offense by international bodies and under U.S. criminal law. Illicit recruitment refers to the advertisement or provision of false or deceitful job offers to

migrant workers, as well as the selection and transportation of these workers by means of deceit, coercion, force or fraud.

To understand fraudulent recruitment in the context of a guest worker program, it is helpful to consider the necessary steps for an employer to obtain a guest worker. These include: the scouting for and identification of potential candidates, the job offer, the hiring, the visa processing, and transportation to the destination country and worksite. I will occasionally refer to these discrete steps collectively as the “recruitment phase” of employment throughout the course of this paper. In many countries, it is typical for employers to rely on private employment agencies to assist with these tasks. In some instances, these agencies rely on subcontractors that are more difficult to monitor. The United States is one such country where employers frequently hire intermediaries to conduct recruitment. The web of contractors and subcontractors creates confusion for employers who may not know who is ultimately performing the service they purchased, as well as for workers, who may not understand who has hired them. Mexican workers traveling to the United States report feeling such confusion (CDM, 2013).

Deception is a critical component of any illicit recruitment scheme (Van Der Linden, 2005). In the most basic terms, this amounts to lies designed to entice someone to accept employment abroad. The subject of these lies may be the essential terms of employment—such as where or who one will be working for, and under what immigration status—or the actual conditions of the work itself—such as the kind of the work, or the hours and compensation. These initial lies effectively nullify a worker’s freedom of choice to accept or reject an offer of employment. Early deception handicaps workers at the onset and makes them more vulnerable to further abuses such as forced labor at latter stages of employment. Three examples from the U.S. literature serve to demonstrate the kinds of lies workers are told and their consequences.

The first example is that of a Mexican man named Elizardo who told a worker organization that in 2007 a recruiter offered him a construction job on an H-2B visa at a salary of \$15.00 per hour. He was led to believe the job was located in California. He paid \$200 in a recruitment fee only to learn that in fact the employment was on a carnival in Georgia at a salary of \$250 per week. The second example is that of an El Salvadoran man, Miguel Angel Jovel Lopez, who told Congress in 2009 that recruiters offered him demolition work in Louisiana for 40 hours per week at \$9.50 per hour. He paid \$4,000 to secure his employment and obtain an H-2B visa that listed a Louisiana

company as his employer. Recruiters kept his paperwork until minutes before the check-in for his flight. He then learned that he would be performing asbestos-removal work in Tennessee. He waited for weeks without work, was leased out to various contractors, and was ultimately not fairly paid because the company extracted bogus deductions from his earnings. The third example is that of an Indian welder, Aby Karickathara Raju, who testified at the same Congressional hearing. Recruiters offered him and others work and permanent residence in the United States, and charged up to \$20,000 in fees from individual workers, compelling many to take on loans. Instead, they were granted H-2B visas and subjected to more abuses that formed the basis for forced labor and human trafficking charges.

These three examples, though different, share common elements. A worker accepts a job offer on certain terms only to find out that these terms are false and the reality is quite different than what was promised. After this initial deception, the situation can degrade rapidly. In the most extreme cases, these lies can set workers up for labor exploitation, such as severe wage theft at the actual work phase of employment, or even human trafficking and forced labor. Under U.S. law, these are distinct crimes, yet as the examples show, they are often closely interrelated.

The thread that runs in common between the crimes—as the examples illustrate—is the gradual deprivation of a worker’s liberty. A worker who pays for a recruiter’s services willingly enters this arrangement. His liberty is superficially intact, although compromised given that the terms are false. Once baited, however, his liberty may be severely constrained. High fees and loans make it effectively impossible to turn back and forfeit the employment—many individuals from impoverished backgrounds are simply not in a position to do so. A victim is likely ignorant of whether or not such fees or loans are legal. If a victim’s immigration status is invalid because he was given the wrong visa or forged paperwork, his freedom of movement is severely curtailed because he has no legal entitlement to be present on U.S. territory. Thus, brute force is not always necessary to subjugate a worker—only in the worst cases are workers locked up and threatened with violence. Often, these varied and overlapping methods are enough to progressively but effectively abolish an individual’s freedoms. This deprivation of liberty by one private actor of another is the purview of the criminal law to define and punish.

The conduct of intermediaries during the recruitment phase is regulated by administrative law. States typically employ one of four models to regulate employment:

laissez-faire, whereby states take no action; the regulated system wherein states set minimum standards for work contracts; the state-managed system wherein states create a foreign employment office by employing multi-lateral agreements and labor attachés to monitor employers and working conditions; and finally a state monopoly system most common in post-socialist countries (Van Der Linden, 2005).

Spain and the United States are two countries that adopt different models. Recruitment in the United States is left to the free market. Administrative regulations merely prohibit certain conduct for employers and recruiters. Despite this, recruitment-related abuses are known to flourish among low-skilled and agricultural workers. Commentators broadly suggest regulating the use of intermediary recruiters; reducing opportunities for profit-making at the expense of migrant workers; educating migrants about their contractual and legal rights; collaborating internationally; and improving oversight measures, such as the investigation and punishment of bad actors. Some argue for a bilateral deal with Mexico, which was the States' top sending country until a historic shift in 2013 (Chishti & Hipsman, 2015). By contrast, the Spanish government collaborates with employers and origin countries to select candidates and prepare workers for their term of employment abroad. Spain's experience with recruiting foreign labor is relatively new and short-lived—migration became an issue in the 2000s and effectively ended with the economic downturn of 2008. (The U.S. program was in effect since the 1950s.) Thus, it is more difficult to evaluate the effectiveness of these measures. Nonetheless, studying the Spanish system is instructive for demonstrating how a government-controlled system is structured.

3. Immigration Laws

Each country's immigration laws and attendant regulations establish what workers will be recruited and how. This section will describe how Spain and the United States structure its recruitment mechanisms. In the United States, the two "H-2" visas are the primary vehicle for importing legal, foreign agricultural and "low-skilled" labor. H-2A visas are available to foreigners who travel to the United States to perform agricultural labor or services on a temporary basis (8 U.S.C. § 1101(a)(15)(H)(ii)(a)). H-2B visas are meant for foreigners who travel to the United States to perform other temporary service or labor on a temporary basis (8 U.S.C. § 1101(a)(15)(H)(ii)(b)). The H-2B visa is not restricted to workers of a particular skill-level, but they are largely

considered “low-skilled” workers in industries such as landscaping and forestry (Bruno, 2012). Thousands of foreign workers enter the United States under these two visa schemes. In 2013, the State Department issued 57,600 H-2B visas and 74,192 H-2A visas. The H-2B program is statutorily capped at 66,000 workers (8 U.S.C. § 1184(g)(1)(B)).

The process for obtaining workers is the same under either visa (Bruno, 2012). The employer must first apply for certification from the U.S. Department of Labor. The employer must demonstrate that there are not enough able, willing and qualified domestic workers to perform the labor or services the employer needs, and that the employment of foreign workers will not “adversely affect the wages and working conditions of workers in the United States similarly employed” (8 U.S.C. § 1188(a), USCIS). Once the Labor Department grants certification, the employer may petition the Department of Homeland Security to import nonimmigrant workers (USCIS).

Simultaneously, the employer must seek foreign candidates to fill these positions (Global Workers). Often, the employer will employ an intermediary recruiter to do this; however, the employer may travel abroad itself or ask one of its previous employees to recruit on its behalf (Global Workers). If an intermediary is employed, he may be hired not only to select workers, but also act as a facilitator with the visa process (GAO, 2015). Agents based in Monterrey, Mexico, reported making visa appointments, assisting workers with online visa applications, explaining contracts, assisting with other employment paperwork, and returning passports once the visa is awarded (GAO, 2015). Once the employer has found and selected its prospective employees, the employees apply for a visa with the Department of State at a U.S. embassy or consulate abroad, and then seek admission at a port of entry (Bruno, 2012).

By contrast, the Spanish process is comprised of many more steps. Article 39 of the Ley de Extranjería governs the “gestión colectiva de contratación en origen” — or the processing of collective hiring in an origin country. (Spanish employers had other avenues to hire foreign workers; however, the “gestión colectiva” system is the mechanism for formal hiring of workers abroad on a large scale).

Article 39 states that the Ministry of Employment and Immigration, while considering the national employment situation, may approve an annual provision of the jobs that may be covered via the “gestión colectiva” during a determined period; jobs that only those who do not reside, nor are located, in Spain may access. Job offers shall preferably be directed to countries that have signed agreements regarding the regulation

of migration flows.

Spain entered six such agreements in the years between 2001 and 2009 with Colombia, Ecuador, Morocco, the Dominican Republic, Mauritania and Ukraine. The agreements (with the exception of Colombia's, which relies on an existing agency) create joint selection committees where public authorities and employers together select prospective workers. In the case of the Dominican Republic and Ecuador, advocates or "agentes sociales", intergovernmental agencies, and migration-related non-governmental organizations (NGOs) may participate as advisors upon invitation of both parties. The committees are tasked with selecting the best candidates, determining the course of any training, and assisting the workers during the process.

In 2014, the Ministry restricted the use of "gestión colectiva" to temporary agricultural workers from the signatory countries. This is due to waning demand for foreign labor as a result of the economic downturn in Spain. Before, it could be used to recruit both temporary and permanent workers. In the 2012-2013 reporting period, the Ministry of Employment issued 9,613 employment authorizations for foreigners via the "gestión colectiva" system. In 2008 (the first year for which statistics are available), the Ministry granted a total of 42,719 authorizations; the vast majority (41,339) went to temporary workers.

The primary difference between the U.S. and Spanish mechanism is quite obviously that while a U.S. employer is left to his or her own devices to find willing candidates, the Spanish government and its partners assume this task. The implications for workers are enormous. The following sections will detail the difference in protections afforded to workers by each country during the recruitment phase. The U.S. framework affords far fewer than the Spanish one.

4. Administrative Laws

The Department of Labor regulations differ slightly for each visa. Traditionally, more regulations existed under the H-2A visa (Bruno, 2012). The Obama administration intended to change that in 2012 by adding measures designed to protect H-2B workers, however, employers and interest groups sued the Department of Labor and a federal court enjoined the new rules. As a result, the Department operated under the existing 2008 rules (Bruno, 2012). These older rules were *also* challenged and temporarily enjoined under a different case (Chishti, *et al.*, 2015). On April 30, 2015, the

Departments of Labor and Homeland Security jointly issued new interim regulations. These newly-minted regulations are nearly identical to the ones the Obama administration intended to enact in 2012. These interim rules will become final after a 60-day comment period (80 F.R. 24041).

4.2. U.S. Regulations

a) H-2A Regulations

Employers must provide an H-2A worker a copy of the work contract in a language understood by the worker either when the worker applies for the visa or on the first day of employment (20 C.F.R. § 655.122(q)). The contract must contain references to all of the worker protections mandated by the regulations. In the absence of a written contract, the certification application shall serve as the contract.

Recruitment fees are banned for workers. An employer must assure that it has neither sought nor received payment from a worker for recruitment-related activities, including certification or application costs (20 CFR § 655.135(j)). Payment includes wage deductions, kickbacks, bribes, in-kind payments, and free labor. However, employers are permitted to be reimbursed for costs that are “primarily for the benefit of the worker” such as passport fees. An employer must also contractually prohibit any foreign labor contractor or recruiter (or their agents) that it hires to seek or receive payments or compensation from prospective employees (20 C.F.R. § 655.135(k)).

The employer must also pay for subsistence and transportation from the origin country to the place of employment (20 C.F.R. § 655.122(h)(1)). The employer may advance the costs or directly provide transportation and subsistence (20 C.F.R. § 655.122(h)(1)). If it does not, then the employer must pay the worker for these costs, provided that the worker completes half of the work contract period (20 C.F.R. § 655.122(h)(1)).

The employer is permitted to deduct the costs of transportation and subsistence costs, provided that the job offer states the employer will reimburse the worker in full for these deductions upon completion of half the work contract period (20 C.F.R. § 655.122(p)(1)). However, the employer may not make any deductions that would violate the Fair Labor Standards Act (FLSA) (20 C.F.R. § 655.122(p)(1)).

Once employment begins, additional obligations are imposed on H-2A employers. The employer must pay for daily transportation between the housing—which is provided or secured by the employer—and the work site at no cost to the worker (20 C.F.R. § 655.122(d), (h)(3)). The employer must provide the tools and

equipment necessary to perform the labor (20 C.F.R. § 655.122(f)). The employer must provide a “three-fourths guarantee” that he will offer workers “employment for a total number of work hours equal to at least three-fourths of the workdays” of the contracted work period (20 C.F.R. § 655.122(i)). The employer must also provide workers’ compensation insurance coverage (20 C.F.R. § 655.122(e)), three meals per day or kitchen facilities ((20 C.F.R. § 655.122(g)), and guarantee a certain minimum wage (20 C.F.R. § 655.120). Employers must also keep accurate earnings records and provide these to workers in writing on or before each payday ((20 C.F.R. § 655.122(j),(k)). Retaliation in the form of intimidation, threats, restraints, coercion, blacklisting or discharged is prohibited (20 C.F.R. § 655.135(h)).

a) H-2B Regulations

The 2008 rules banned recruitment fees and obligated employers to contractually prohibit any recruiters from charging such fees. They also imposed certain obligations on employers once the work began—such as a minimum wage, disclosure of deductions, and outbound travel when a worker was dismissed—but nothing approaching the H-2A program. Unlike the H-2A program, the old H-2B rules included nothing regarding the disclosure of job order, employer-provided items, the three-fourths guarantee, earnings statements, retaliation and unfair treatment. The newly-minted rules impose these obligations and more.

First, employers must provide a copy of the job order, in a language the worker understands; either when they apply for the visa or on the day work begins (20 C.F.R. § 655.20(l)). Next, there are several requirements related to recruitment and related costs.

Employers or their agents must provide with the application a copy of all agreements with recruiters whom it hires to conduct international recruitment, and these agreements must contain the contractual prohibition against charging recruitment fees (20 C.F.R. § 655.9(a)). Employers and agents must also provide the identity and location of the agents and employees the *recruiters* have hired, and *their* agents or employees (20 C.F.R. § 655.9(b)). The Department of Labor shall publish a list of these recruiters and agents (20 C.F.R. § 655.9(c)).

The employer, its agents and employees must not seek or receive payment of any kind from the worker for activities related to certification or employment, including attorneys’ fees, application and petition fees, or recruitment costs (20 C.F.R. § 55.9(o)). Payment includes wage deductions, kickbacks, bribes, in-kind payments, and free labor (20 C.F.R. § 655.9(o)). However, employers may receive reimbursement for costs that

are primarily for the worker's benefit, such as passport fees (20 C.F.R. § 655.9(o)). Moreover, employers must contractually prohibit their recruiters (and agents and employees of the recruiters) whom it hires, either directly or indirectly, to recruit H-2B workers from seeking or receiving payments and other compensation from candidates (20 C.F.R. § 655.9(p)).

As for transportation and subsistence expenses, the employer must provide or reimburse the worker for these costs from the origin country to the place of employment if the worker completes half of the work period. (20 C.F.R. § 655.20(j)(1)). It may either directly make the payments, advance the costs to the worker, or reimburse the worker (20 C.F.R. § 655.20(j)(1)). When it is customary, the employer must advance these costs for workers traveling to the worksite (20 C.F.R. § 655.20(j)(1)). When the employer reimburses the worker it must keep accurate cost and payment records (20 C.F.R. § 655.20(j)(1)). If the worker completes the work period or is dismissed before it ends, then the employer must pay for the worker's return trip (20 C.F.R. § 655.20(j)(1)). The employer must disclose whatever he intends to pay in the job order (20 C.F.R. § 655.20(j)(1)).

Additionally, the employer must pay or reimburse the worker in the first work week for all visa and visa-related fees—but not for charges primarily for the benefit of the worker, such as passport fees (20 C.F.R. § 655.20(j)(2)).

Once employment has begun, the employer must abide by additional regulations. The employer must pay a certain minimum wage (20 C.F.R. § 655.20(a), (b)); disclose deductions, which should comply with the FLSA (20 C.F.R. § 655.20(c)); provide free of charge the tools and equipment necessary to perform the labor (20 C.F.R. § 655.20(k)); provide a “three-fourths guarantee” (20 C.F.R. § 655.20(f)); keep and provide earnings statements on each pay day (20 C.F.R. § 655.20(i)); and post and maintain in a conspicuous location a Department of Labor workers' rights poster in English and other common languages (20 C.F.R. § 655.20(m)). Retaliation in the form of intimidation, threats, restraints, coercion, blacklisting, discharge or discrimination are prohibited (20 C.F.R. § 655.20(n)).

4.3. Spanish Regulations

The provisions designed to protect workers are outlined in: the bilateral agreements; the immigration statute, the “Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social”; the regulation, the “Real Decreto 557/2011, de 20 de abril, por el que se aprueba el

Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009”; and the ministerial order, the “Orden ESS/1/2012, de 5 de enero, por la que se regula la gestión colectiva de contrataciones en origen para 2012”. The ministerial order was extended through 2015, and its substantive provisions shall continue to govern (Rojo, 2015).

The second chapters of the six agreements govern the selection of workers. There are some important differences between first four agreements signed with Colombia, Ecuador, the Dominican Republic, and Morocco in 2001, and the last two signed with Mauritania and Ukraine in 2007 and 2009. Chapter two of the first four agreements are substantially similar; they refer to the “evaluation, travel, and welcome of the workers” and contain two articles that outline the basic role and function of the selection committee. The second chapters of the last two agreements refer to the “communication of employment offers” and contain three articles that, while similar to the first agreements, describe in greater detail the process for communicating offers from Spain to the origin country, the required content of the offers, and also explicitly note that the origin country shall communicate in advance the date and arrival location of the workers, so that employers may have enough time to arrange for their welcome and housing.

The second chapters of the first set of agreements are similar except for one notable provision. Ecuador and the Dominican Republic permit the parties to invite social advocates and NGOs as advisors during the selection process. Because this is layer of additional oversight is particularly interesting, and because Ecuador is one of the top migrant-sending countries to Spain, I shall select the Ecuador agreement to analyze in further detail.

Article 4 contains three sections. The first establishes the recruitment mechanism. The second and third sections govern the worker contract and visa processing. Selected workers shall sign a contract no later than thirty days, and shall receive travel documentation should they request it. A copy of the contract shall be provided to the Ecuadorian authorities. The contract may be substituted by an analogous document if it is the industry standard, provided that the coordinating committee allows it.

Article 5 states that both countries’ authorities shall facilitate the selection committee’s role as much as possible and shall reasonably contribute to any course of training and the workers’ travel to Spain. The workers shall assume the administrative

costs inherent to travel. Should they fail to do so, the employers shall pay the costs. Before traveling, workers shall receive the information necessary to arrive at their destination, and necessary information concerning the conditions of their stay, their work, their housing, and salary.

Other protections are granted by the regulation and ministerial order. The regulation provides that the worker contracts must comply with another regulation that mandates an employer inform a worker in writing regarding the essential elements of the contract, such as (at a minimum): the parties' identities; the start date and duration in the case of temporary work; place of business; category or professional group; salary and payment schedule; duration of the work day; notification deadlines for canceling the contract, or where impossible, the method for setting them; and the applicable collective bargaining agreement (Real Decreto 557/2011, Art. 170).

The order makes additional provisions for the job offer and selection phases. The job offer must describe with precision the labor conditions offered; this cannot be substituted with a mere generic reference to labor laws or collective bargaining agreements (Orden ESS/1/2012, Art. 6.2). Authorities shall review the offer to ensure it complies with applicable laws (Orden ESS/1/2012, Art. 7.1). The offer shall match the employment contract, and employers must comply with the terms of work contract (Orden ESS/1/2012, Art. 3.1(b)).

Participation in all phases of the selection process shall be completely free of charge for the candidates (Orden ESS/1/2012, Art. 8.6). The selection committee shall ensure that the candidates learn precisely the conditions of the offer, and the geographic region and industry of the corresponding work authorization (Orden ESS/1/2012, Art. 8.6). Employers must submit along with their visa solicitations three documents signed by the workers: the work contracts, a ministerial document briefly outlining their rights, and a promise to return to their origin country at the end of the employment period (Orden ESS/1/2012, Art. 9, 7). The ministerial document includes the employers' obligations to provide adequate housing, to organize the trip to Spain and the return trip, to pay for the first of these, and to pay for the transportation costs to their housing site upon arrival (Orden ESS/1/2012, Anexo V). It also makes specific reference to the governing statute, regulation, and ministerial order, and the applicable collective bargaining agreement.

Once employment begins, employers must guarantee a period of "continuous activity," which in the case of temporary agricultural work means at least 75 percent of

the customary amount of work (Orden ESS/1/2012, Art. 3.1(a)). Employers must also guarantee adequate housing, travel arrangements to and from Spain, at a minimum coverage for the first of these trips' costs, and coverage of transportation costs from the entry point into Spain and their housing site (Orden ESS/1/2012, Art. 3.2). Employers must also promise to act diligently so that workers may return home once the employment period ends (Orden ESS/1/2012, Art. 3.2). Importantly, the Ministerial Order also explicitly guarantees temporal and seasonal workers the right to change employers provided that they can justify the need for a change and upon request by a new employer (Orden ESS/1/2012, Art. 13). Workers must return to their origin country once the work period ends and report to the Spanish consulate within one month to verify their compliance (Orden ESS/1/2012, Art. 19). Finally, a Tripartite Labor and Immigration Commission shall regularly review the administration of these agreements based on reports from the Immigration Department and status updates from employer and union representatives (Orden ESS/1/2012, Art. 20).

5. Criminal Laws

Fraud in foreign labor contracting is criminalized in the United States under 18 U.S.C. § 1351, which states that:

“Whoever knowingly and with intent to defraud recruits, solicits, or hires a person outside the United States or causes another person to recruit, solicit, or hire a person outside the United States, or attempts to do so, for purposes of employment in the United States by means of materially false or fraudulent pretenses, representations or promises regarding that employment shall be” punished.

This section was enacted in 2008 as part of a periodic reauthorization of the Trafficking Victims Protection Act of 2000, the country's comprehensive federal anti-trafficking law. The Act is broad and far-reaching, intended to target all forms of labor and sex-trafficking, and provide relief to victims across the globe. Congress enacted information-gathering mandates, a national task force, immigration relief, monetary assistance measures for foreign countries, and criminal penalties. The new crimes included forced labor, trafficking, and unlawful conduct with respect to documents. The overarching goals of the legislation are referred to as the three P's: prevention of trafficking, protection of victims, and prosecution of criminal actors. Then-Secretary of

State Hillary Clinton announced a fourth “P”, for partnership with foreign governments and organizations, in 2009.

Charges were brought under section 1351 soon after its enactment, and the Justice Department has publicized a few successful cases involving foreign workers (TIP 2010, DOJ). Though this news is heartening, one would hope for a greater number of prosecutions in the future given the likely high numbers of victims in the H-2 program. Though there is no official estimate of the number of H-2 worker victims of fraudulent recruitment, the U.S.-based International Labor Recruitment Working Group (ILRWG) has compiled nearly forty reports by government agencies and NGOs studying abuse and exploitation across guest worker visa categories. Many of these are devoted to the H-2 visas, and contain scads of worker testimonials. In 2015, the Government Accountability Office (GAO) published a report for Congress that echoes many of the advocates’ concerns and recommends greater protections for workers.

By contrast, Spain has neither a devoted fraudulent recruitment criminal section analogous to section 1351, nor a comprehensive anti-trafficking law (though it expanded its efforts significantly in recent years). Spain enacted its criminal anti-trafficking statute, Article 177bis, in 2010. Article 177bis criminalizes human trafficking. It punishes anyone who uses violence, intimidation, or fraud; or who abuses a position of authority or a victim’s lack of meaningful choice; or who grants or receives payments or benefits to gain consent from a victim’s custodian, in order to capture, receive, shelter, exchange, or transport victims for the purposes of forced labor or slavery-like conditions. Prior to the statute’s enactment, Spain had relied on a smuggling statute to prosecute trafficking crimes (Montañés, 2014).

Little is known about labor trafficking in Spain, according to the “Asociación Comisión Católica Española de Migraciones” (ACCEM), an NGO that has produced one of the few national reports on labor trafficking, and other scholars (Framis, *et al.*, 2009). Though Spain has added several measures to bolster its anti-trafficking regime since the enactment of the criminal statute—such as the appointment of a national rapporteur and the adoption of a framework protocol for victim identification—various groups have called for a greater focus on labor exploitation, which has taken a backseat in the public eye to trafficking for the purposes of sexual exploitation.

Despite the lack of information, it is believed that there are labor trafficking victims in Spain. The U.S. State Department’s most recent annual Trafficking in Persons Report states that cases of forced labor in Spain often involve undocumented

immigrants in the agricultural and service sectors. It also states that Spanish courts handed down five labor trafficking convictions in 2013. Additionally, a 2013 Attorney General report states that nine live cases of labor trafficking, implicating 49 victims, were under investigation; each case involved fraud or false promises. Less is known about the trafficking or fraudulent recruitment of legal guest workers. The 2006 ACCEM report states that workers hired under Spain's other legal recruitment channels, such as the labor-quota system and the nominative hiring process, have reported false promises and exploitation—but few details are provided. Given the lack of formal studies, it is difficult to know for certain whether and to what extent fraud, deception, and trafficking are possible under the “*gestion colectiva*” system and the bilateral agreements.

6. Analysis

The United States and Spain represent two different models of conducting recruitment. The United States employs a “regulated” model wherein the free market governs, intermediaries provide a wide variety of services, and the state intervenes to correct failures. By contrast, Spain has a state-controlled model where the government conducts recruitment abroad. The examples of these two countries are insufficient to test which model is more effective overall at suppressing fraud. Ultimately, the full potential of each model under either government's stewardship remains to be seen as both countries are still in the nascent stages of fully identifying the problem. However, a comparison of the two yields several important insights.

Both countries could benefit from further developing their policies. Neither country has a global and unified strategy for suppressing the fraudulent recruitment of temporary nonimmigrant workers specifically, for example. The ILO urges countries to adopt a “national action plan” to integrate the various components of an anti-trafficking strategy. If they continue to import foreign labor, both countries would undoubtedly benefit from adopting one to target this specific issue and organize their existing efforts. The examples of Spain and the United States demonstrate in concrete terms what the ILO literature states more generally—that is, that recruitment regulation is truly a messy patchwork of diverse bodies of law. In both countries, the immigration and trafficking norms that might protect workers from fraud evolved in a disjointed fashion. Though

these multiple bodies of law are vital pieces, a global vision is necessary to solve the puzzle.

A national action plan to specifically target the fraudulent recruitment of guest workers would serve both countries well, enabling them to draw from their experiences and identify steps to move forward. Such a plan could adopt the “four Ps” (prevention, protection, prosecution, and partnerships) model used for general U.S. anti-trafficking strategies. A plan could help both countries study the typical recruitment practices in the origin countries, learn about the experiences of migrants, learn more about the range of bad actors—i.e. both the criminal conspiracies and opportunistic employers that inflict the abuses, and evaluate the roles of institutional actors in recruitment activities. It could also ensure that multiple bodies of law are operating in harmony.

It must be noted that both countries’ recruitment models emerged under vastly different circumstances. The United States is a country of immigrants that has had immigration policies in place since the 19th century (Ewing, 2012); Spain was historically a country of emigrants that only recently underwent a radical transformation (Arango, 2013 & Pérez, 2003). In the span of roughly a decade, Spain became the second-most popular destination country for immigrants after the United States (Arango, 2013). Since the turn of the millennium, Spain’s foreign-born population quintupled from nearly 1.5 million in 2000 to 6.2 million in 2014 (INE).

This rapid and massive influx meant grappling to swiftly craft policies that would accommodate the demographic transformation. Spain attempted to meet this challenge through various ways, including a new immigration law and four major reforms within nine years. The country experimented with several alternatives for importing or absorbing foreign laborers, of which the “gestión colectiva” and bilateral agreement model is only one. Spain’s nascent anti-trafficking policies arrived a decade after this transition began, and are still very much under development (Article 177bis was amended as recently as March 30, 2015).

While U.S. policies are continually evolving as well, the United States has the benefit of 15 years’ experience with an ambitious, comprehensive trafficking law on the books. It has had multiple decades to experiment with a variety of different foreign labor recruitment models. Thus, though they are both in relative beginning stages of combating the trafficking of this specific population, the United States is further along given its longer history with immigrants and guest workers.

Another important difference is the future of foreign recruitment in either country. In Spain, concerns over importing foreign labor have waned somewhat due to the economic downturn and subsequent drop in immigration. By contrast, the U.S. Congress will likely be forced to consider this issue soon as part of a broader immigration reform proposal. If they set out to redesign the guest worker system, as they did in 2013, lawmakers could draw inspiration from several positive aspects of the Spanish model, including bilateral collaboration, state-controlled recruitment, and pre-departure protections for workers.

When one compares the recommendations of U.S. worker advocates to the measures Spain has implemented, it is evident that Spain has enacted many of them. The U.S. advocates' blueprints for recruitment reform broadly include banning all fees for recruitment, transportation, lodging, and administrative costs (or at least reimbursing workers for visa and transportation weeks during the first week of work). Employer and recruiter loans should also be banned. Contracts should be mandatory and detailed. Workers should possess their passports at all times. Workers should be educated about their rights before departure and upon arrival. Orientations and training sessions should be held in a language the worker understands. These should provide contact information for legal services and advocacy organizations. Federal agencies and origin countries should work to stamp out false advertisements about U.S. work visas. Any intermediaries used during the hiring process ought to be registered and disclosed and banned from filing petitions. Workers should not be bound to one employer (ILRWG, 2013 & CDM, 2013).

Spain's model contains some of these recommended measures, particularly, offer and contract oversight, worker education, and international collaboration. The task of candidate selection falls directly to the employers and public authorities from both countries. Participation is free of charge for all candidates. The authorities must ensure candidates understand a detailed employment offer that explicitly states the governing laws. They must ensure candidates learn the geographic region and industry of the offered employment. They must also assist candidates throughout the process, with the help of advocates under some agreements. The workers are not tied to one employer.

Selected workers sign a detailed contract and a brief explanation of their rights before the employer may solicit a visa. The origin country receives a copy of the worker contract. The worker contract must match the offer. The workers receive relevant

information regarding their destination, stay, work, housing and salary before they travel. They are entitled to receive travel-related documentation should they request it.

Both destination and origin country must also create a joint coordinating committee to monitor the implementation of the agreements, propose any necessary revisions, disseminate information about the agreement in both countries, and resolve any difficulties that might arise. The committees may meet on petition of either party; some agreements contain a minimum requirement of at least once a year. Furthermore, in Spain, the Tripartite Labor and Immigration Commission regularly monitors the process.

Viewed thematically, the reforms in the advocate and scholarly literature are designed to restore agency to workers and empower governmental authorities to enforce rights. Many of the Spanish measures would achieve both. Detailed job offers and contracts that explicitly mention relevant laws and entitlements are critical to ensuring that candidates have a genuine freedom of choice in determining whether or not to accept an offer of employment. The availability of public authorities and advocates to assist them means candidates can ask meaningfully about what they do not understand in regards to their rights and employer promises. Free participation in a publicly-administered process theoretically eliminates the need for intermediaries and relieves any doubts about fees at the selection stage. The possibility of switching employers empowers workers. Offering both governments a direct role in the selection process and access to worker contracts presumably gives officials from both countries a chance to immediately spot and correct problems as they arise. Regular meetings of a joint coordinating committee provide an opportunity for either country to raise complaints.

Moreover, through its agreements, Spain has managed to engage its top sending country, Morocco. Like Mexicans in the United States, Moroccans are the largest group of immigrants in Spain and comprise a significant portion of the workers recruited under the “*gestión colectiva*” system. The States could draw inspiration from Spain and reach a new bilateral deal to jointly conduct recruitment, or at least, bolster its existing agreements with Mexico to incorporate some of the positive aspects of the Spanish model, such as contract oversight, worker education, and institutionalized dialogue with origin countries about recruitment.

Calls for bilateral migration agreements between the United States and Mexico have grown louder in recent years, despite a tainted history. The U.S. experience with its international collaboration on low-skilled and agricultural guest workers is a long

and often shameful one. The H-2 visas, enacted by the Immigration Naturalization Act of 1952 and divided into two categories in 1986, are the outgrowth of earlier guest worker models enacted after the two world wars (Bruno, 2012). The most famous—or rather, infamous—of these were the series of “Bracero” agreements enacted with Mexico from 1942 to 1964 wherein up to 5 million Mexicans arrived in the United States to work in agriculture under such deplorable conditions that one government official likened the program to “legalized slavery” (CRS, 1980 & SPLC, 2013).

Despite these historic failures, the changed landscape and a new wave of Mexican immigrants following the enactment of the Immigration Reform and Control Act of 1986 (Zong & Batalova, 2014) has led to a renewed interest in bilateral cooperation between the United States and Mexico. The demographics speak for themselves. Mexicans have comprised the largest group of immigrants in the United States since the 1980s (Zong & Batalova, 2014). Mexicans presently represent both the largest group of unauthorized immigrants and the largest national group represented in the H-2 visa population (Zong & Batalova, 2014, U.S. State Dep’t). In 2013, the State Department issued 69,787 H-2A visas and 41,883 H-2B visas to Mexican workers. Despite the recent historic shift in immigration flows—China and India overtook Mexico as the United States’ top sending countries in 2013—Mexicans “remain by far the largest group” of immigrants (Chishti & Hipsman, 2015). The sheer volume argues powerfully for greater bilateral attention.

Political interest has grown as well. In the late 1980s, leaders increasingly began collaborating on border-related issues and in the ‘90s enacted the North American Free Trade Agreement (NAFTA) and its attendant labor agreement, the North American Agreement of Labor Cooperation (NAALC) (Rosenblum, 2007). These developments raised the prospects for similar agreements to be reached on immigration. In 2001, then-Presidents Vicente Fox and George W. Bush announced the framework for a bilateral immigration package, though the attacks of September 11th derailed their plans (Rosenblum, 2007).

Observers have highlighted the potential such bilateral cooperation could have in the recruitment sphere, in particular. One political science professor argues that Mexican officials could “play a role in the recruitment and screening of temporary workers, eliminating a market for potentially exploitative private labor contractors.” (Rosenblum, 2007). Mexican consuls could exercise a role in contract oversight and educating migrants about labor and civil rights (Rosenblum, 2007). A Mexican legal

expert echoes the need to address exploitative hiring in any bilateral deal (Mohar, 2004).

Other observers also highlight the successes of the initial stages of the Bracero program in protecting workers during the recruitment phase (though no one holds out the overall program as a model). First, it should be noted that the Bracero agreements included three stages: the wartime legislation from 1942-1947; the postwar period from 1948-1951; and the final period under Public Law 78 through the phase-down ending in 1964 (CRS, 1980). The administration varied throughout the program's lifespan. During the first stage, the Farm Security Administration conducted recruitment and contracting (Bickerton, 2001). The agency contracted with the braceros and then subcontracted with employers; Mexico had supervisory power over the bracero contracts (Bickerton, 2001). The government-to-government model was temporarily abandoned during the next stage due to pressure from employers and then revived in 1951 under legislation that enacted a detailed recruitment scheme (Bickerton, 2001). U.S. Labor Department officials would select candidates at a recruitment center in the Mexican interior and transport the workers to reception centers in the United States where they would then contract with employers (Bickerton, 2001). Protections, such as payment of the passage to the reception center, were also enacted but poorly enforced (Bickerton, 2001).

Though the Bracero legacy is rightly one of infamy, the early years were marked by successful examples of bilateral enforcement (Rosenblum, 2006). Rosenblum, the political science professor, writes that: "Mexican oversight of guest-worker contracts between 1942 and 1947—during which time consular workers had the power to suspend contracts and blacklist abusive employers—contributed to a high level of contract compliance, which is why employer allies in Congress made elimination of Mexico's oversight role a top priority" in later years. He adds that now Mexico's present consular network and a group called "Institute for Mexicans Abroad" are well-positioned to protect workers' rights. The Institute, a branch of the Mexican government's Foreign Affairs Ministry devoted to the Mexican diaspora, is featured in the ILO's "good practices database". Rosenblum envisions Mexican labor officials conducting candidate screening and recruitment in Mexico to obviate the need for private labor recruiters.

Presently, the U.S. federal government is doing more to address bilateral recruitment problems. The GAO reports that that the Department of Labor has a "partnership program" with embassies and consulates in eleven countries to protect and communicate with vulnerable workers (GAO, 2015). The Mexican embassy organized

two job fairs for employers to directly recruit workers and launched an anti-fraud campaign through brochures, radio and billboard advertisements (GAO, 2015). The TVPA pamphlet that consulate officials must present to interviewees has led to an increased number of calls to the national trafficking hotline from H-2 workers (GAO, 2015). As a result of complaints filed under the NAALC, the U.S. and Mexican governments recently agreed to launch education efforts to inform H-2 workers about their rights and explore ways to suppress abusive recruitment.

The government is a more appropriate actor for delivery of these services than are private-market intermediaries. As the GAO reports, recruiters do not merely offer services related to finding and evaluating candidates on behalf of an employer. They often guide workers through the visa application and interview process. This is a wholly different kind of service. A visa represents a set of legal rights and encumbrances. It is not a private-market product; it is state “product”. Facilitating the provision of legal rights and encumbrances is not typically left to the private market. Even if intermediaries are permitted to act as scouts, they should not undertake these inherently governmental services. It simply leaves too much room for abuse. For example, federal government officials reported to the GAO that recruiters tell workers that their visa applications will be denied if they reveal during visa interviews that they paid recruitment fees, and coach them to lie instead (GAO, 2015).

One final argument for bilateral collaboration is the criminal nature of the problem. There are many challenges to prosecution of this crime, stemming in part from jurisdictional restriction. For example, one ICE official told the GAO that it does not possess the jurisdiction to investigate alleged fee violations if they are committed in Mexico (GAO, 2015). Authorities also told the GAO that they are able to bring charges for only three percent of the cases they investigate because witnesses are afraid of deportation (GAO, 2015).

7. Conclusions

In conclusion, a comparison reveals that Spain’s state-controlled recruitment model is not mere quixotic tilting at windmills. Importing foreign labor presents authentic challenges for governments. The growing body of reports indicates as much, and policy-makers are increasingly considering potential solutions. It seems only fair that if a state elects to import foreign laborers, it should create effective safeguards to

protect laborers' rights once they have entered the labor market. In short, worker protections ought to be robust and well-enforced. In order to meet this goal, states have various alternatives—ranging from a state monopoly over recruitment to a *laissez faire* approach. Spain and the United States fall between these two extremes, with the United States having experimented with both direct state control as well as a regulated free-market model.

Though undoubtedly it confronted problems, the case of Spain demonstrates that state-controlled recruitment can be done on a large scale in contemporary immigration states. More than 80,000 workers came through the Spanish system, according to the statistics available since 2008. The Spanish example could serve as inspiration for reform of the U.S. recruitment mechanism in the guest worker program. The United States could adopt a bilateral state-controlled model like the Spanish one, thereby returning to something resembling the earliest Bracero recruitment scheme that worked well at the program's initial stages.

As outlined, there are powerful arguments for doing so, given the questionability of placing what are essentially *state* goods on the free market. To reiterate, selection and hiring may be a private service that can be entrusted to private market actors, but the rights to enter U.S. territory and its labor market are not private-market products. They are “state products,” if anything, and the services attendant to those rights may best be left to publicly-accountable government (or government-appointed) actors. These services include educating workers about their rights under U.S. immigration and labor laws; services that are obviously necessary and unavoidable under *any* conceivable scheme, but which are presently often left to private recruiters.

Alternatively, the States need not ban private recruiters from all phases of the recruitment cycle; merely from the ones beyond their ken, such as worker rights' education, assistance with the visa application process, and explanation of contracts. The States could simply incorporate individual good practices of the Spanish model. Government actors, such as consular officials, could collaborate with migrant rights' groups, for example, to properly prepare workers for their entry into the U.S. labor force. This proposal resembles the bilateral Spanish committees that invite advocates to assist with worker guidance. Shifting this burden from private market to public actors would demand careful consideration of the implications. Nonetheless, it is an alternative worth exploring.

Ultimately, whichever alternative is most appealing to policymakers, they ought to incorporate collaboration with sending countries. The modern agreement between Spain and Morocco harkens back to positive aspects of the U.S.-Mexico Bracero agreements. Transnational collaboration seems indispensable on countless fronts.

The final alternative for U.S. lawmakers would be to do nothing and thereby permit these well-documented abuses to flourish. This seems unthinkable from a humanitarian perspective. Modern destination states committed to democratic principles and human rights presumably have a moral responsibility to the workers whom they introduce into their markets. Spain is a promising example of a modern-day immigration state that has enacted measures with significant potential for curbing this problem. When it comes to this guest worker population, the United States may be ahead in numbers, but is behind in best practices, and could stand to follow the Spanish lead on this issue.

Bibliographic references:

- Arango, J. (2013) 'Exceptional in Europe? Spain's Experience with Immigration and Integration' *Migration Information Source (Online)* [in <http://www.migrationpolicy.org/research/exceptional-europe-spains-experience-immigration-and-integration> last visited: 11th May 2015]
- Asociación Comisión Católica Española de Migraciones report (2006) 'La Trata de Personas con Fines de Explotación Laboral: Un Estudio de Aproximación a la Realidad en España', <http://www.accem.es/es/la-trata-de-personas-con-fines-de-explotacionlaboral1-a726> [last visited: 13th May 2015]
- Bickerton, M. (2001) 'Prospects for a Bilateral Immigration Agreement with Mexico: Lessons from the Bracero Program' *Texas Law Review* 79; 895-919
- Bieszczat, F. (2008) 'Labor Provisions in Trade Agreements: From the NAALC to Now' *Chicago-Kent Law Review* 83 (3); 1387-1408
- Bruno, A. (2012) 'Immigration of Temporary Lower-Skilled Workers: Current Policy and Related Issues' Report for the U.S. Congressional Research Service: <http://www.fas.org/sgp/crs/homesec/R42434.pdf> [last visited: 13th May 2015]
- Centro de los Derechos del Migrante, Inc. (2013) 'Recruitment Revealed', http://www.cdmigrante.org/wp-content/uploads/2013/01/Recruitment-Revealed_Fundamental-Flaws-in-the-H-2-Temporary-Worker-Program-and-Recommendations-for-Change.pdf [last visited: 13th May 2015]
- Chishti, M., *et al.* (2015) 'Recent Court Decisions Put a Sharp Spotlight on U.S. H-2B

Temporary Worker Visa Program' *Migration Information Source (Online)* [in <http://migrationpolicy.org/article/recent-court-decisions-put-sharp-spotlight-us-h-2b-temporaryworker-visa-program> last visited: 11th May 2015]

Chishti, M., and Hipsman, F. (2015) 'In Historic Shift, New Migration Flows from Mexico Fall Below Those from China and India' *Migration Information Source (Online)* [in <http://www.migrationpolicy.org/article/historic-shift-new-migration-flows-mexico-fall-below-those-china-and-india> last visited: 10th June 2015]

Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims

European Commission, Migration and Home Affairs report (2013) 'EMN Ad-hoc Study: Identification of Victims of Trafficking in Human Beings in International Protection and Forced Return Procedures', http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/25a.spain_national_report_trafficking_en_version_feb2014.pdf [last visited: 13th May 2015]

Ewing, W. (2012) 'Opportunity and Exclusion: A Brief History of U.S. Immigration Policy' Report for the Immigration Policy Center of the American Immigration Council: <http://www.immigrationpolicy.org/special-reports/opportunity-and-exclusion-briefhistory-us-immigration-policy> [last visited: 13th May 2015]

Federal Register, Temporary Non-Agricultural Employment of H-2B Aliens in the United States, A Rule by the Homeland Security Department, the Employment and Training Administration, and the Wage and Hour Division, April 29, 2015, 80 F.R. 24041

Giménez-Salinas Framis, A., *et al.* (2009) 'La Dimensión Laboral de la Trata de Personas en España,' *Revista Electrónica de Ciencia Penal y Criminología* 4: 1-25

Global Workers Justice Alliance, H2A Visa, http://globalworkers.org/visas/h-2a#footnoteref66_8ntup2o [last visited: 11th May 2015]

Global Workers Justice Alliance, H2B Visa, http://globalworkers.org/visas/h-2b#footnote35_e8tmx5q [last visited: 11th May 2015]

U.S. Government Accountability Office (2015) 'H-2A and H-2B Visa Programs: Increased Protections Needed for Foreign Workers' Report to Congressional Committees: <http://www.gao.gov/assets/670/668875.pdf> [last visited: 13th May 2015]

Group of Experts on Action against Trafficking in Human Beings report (2013) 'Report Concerning the Implementation of the Council of Europe Convention on Action Against Trafficking in Human Beings by Spain',

http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2013_16_FGR_ESP_public_en.pdf [last visited: 13th May 2015]

Hearing before the U.S. House of Representatives Committee on Oversight and Government Reform (2009) ‘The H-2B Guestworker Program and Improving the Department of Labor’s Enforcement of the Rights of Guestworkers’, <http://www.gpo.gov/fdsys/pkg/CHRG-111hrg51324/html/CHRG-111hrg51324.htm> [last visited: 13th May 2015]

Instituto Nacional de Estadística, Main Series of Population since 1998, National Total: Population (Spaniards/Foreigners) by Country of Birth, Sex, and Year, www.ine.es/jaxi/menu.do?type=pcaxis&path=/t20/e245/p08/&file=pcaxis [last visited: 11th May 2015]

International Labour Organization, Good Practices Database - Labour Migration Policies and Programmes, Institute for Mexicans Abroad (IME), http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=34 [last visited: 11th May 2015]

International Labour Organization, Regulating Recruitment: Labour and Criminal Justice Responses in Preventing Trafficking in Persons and Migrant Exploitation, http://www.ilo.org/asia/whatwedo/events/WCMS_317001/lang-en/index.htm [last visited: 11th May 2015]

International Labour Organization, Forced Labour: Towards Stronger Measures to Combat Abusive Labour Recruitment and to Prevent Human Trafficking, http://www.ilo.org/global/topics/forced-labour/projects/WCMS_320238/lang-en/index.htm [last visited: 11th May 2015]

International Labor Recruitment Working Group report (2013) ‘The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse’, <https://fairlaborrecruitment.files.wordpress.com/2013/01/final-e-version-ilrwg-report.pdf> [last visited: 13th May 2015]

International Labor Recruitment Working Group, Resources: Fair Labor Recruitment, <https://fairlaborrecruitment.wordpress.com/resources/> [last visited: 11th May 2015]

Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social

Ley Orgánica 5/2010, de 22 de junio, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal

Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal

Ministerio de Empleo y Seguridad Social, Anuario de Estadísticas del Ministerio de Empleo y Seguridad Social, <http://www.empleo.gob.es/es/estadisticas/anuarios/index.htm> [last visited: 11th May 2015]

- Ministerio de Empleo y Seguridad Social, Convenios de Flujos Migratorios Laborales, http://extranjeros.empleo.gob.es/es/normativa/internacional/flujos_migratorios/index.html [last visited: 11th May 2015]
- Ministerio Fiscal de España, Fiscalía de Extranjería report (2013) ‘Diligencias de Seguimiento del Delito de Trata de Seres Humanos’, https://www.fiscal.es/fiscal/PA_WebApp_SGNTJ_NFIS/descarga/2014_09_09_Diligencias%20de%20Seguimiento%20del%20delito%20de%20trata%20de%20seres%20humanos.pdf?idFile=3652df84-37d1-49aa-b354-be7503558ebd [last visited: 13th May 2015]
- Ministerio de Sanidad, Servicios Sociales e Igualdad, Designación Formal de Relator Nacional Contra la Trata de Seres Humanos (2014), http://www.msssi.gob.es/ssi/violenciaGenero/laDelegacionInforma/pdfs/Relator_Trata1.pdf [last visited: 11th May 2015]
- Mohar, G. (2004) ‘Mexico-United States Migration: A Long Way To Go,’ *Migration Information Source (Online)* [in <http://www.migrationpolicy.org/article/mexico-unitedstates-migration-long-way-go> last visited: 11th May 2015]
- Orden ESS/1/2012, de 5 de enero, por la que se regula la gestión colectiva de contrataciones en origen para 2012
- Orden ESS/2505/2014, de 29 de diciembre, por la que se prorroga la vigencia de la Orden ESS/1/2012, de 5 de enero, por la que se regula la gestión colectiva de contrataciones en origen para 2012.
- Pérez, N. (2003), ‘Spain: Forging an Immigration Policy’ *Migration Information Source (Online)* [in <http://www.migrationpolicy.org/article/spain-forging-immigration-policy> last visited: 11th May 2015]
- Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009
- Red Española Contra la Trata de Personas report (2015) ‘Report by the Spanish Network Against Trafficking in Persons for the European Coordinator against Trafficking’, <http://www.slideshare.net/ProyectoEsperanza/summary-report-of-the-spanish-network-againsthuman-trafficking-to-european-coordinator-against-trafficking-myria-vassiliadou> [last visited: 13th May 2015]
- Rodríguez Montañés, T. (2014) ‘Trata de Seres Humanos y Explotación Laboral: Reflexiones Sobre la Realidad Práctica,’ *La Ley Penal (Digital)* 109: 1-21
- Rosenblum, M. (2007) ‘The United States and Mexico: Prospects for a Bilateral Migration Policy’ Report for the Social Science Research Council: <http://borderbattles.ssrc.org/Rosenblum/printable.html> [last visited: 13th May 2015]
- Rosenblum, M. (2006) ‘U.S.–Mexican Migration Cooperation: Obstacles and

Opportunities' *Federal Reserve Bank of Dallas Proceedings*, 2006: 91-119 [in <https://www.dallasfed.org/assets/documents/research/pubs/migration/rosenblum.pdf> last visited: 12th May 2015]

Rojo Torrecilla, E. (2015) 'España no es país (de momento, ¿hasta cuándo?) para (nuevos) trabajadores extranjeros extracomunitarios. La Orden ESS/2505/2014, de 29 de diciembre', <http://www.eduardorojotorrecilla.es/2015/01/espana-no-es-pais-de-momento-hasta.html> [last visited: 11th June 2015]

Southern Poverty Law Center report (2013) 'Close to Slavery: Guestworker Programs in the United States', <http://www.splcenter.org/sites/default/files/legacy/pdf/static/SPLCguestworker.pdf> [last visited: 13th May 2015]

Trafficking Victims Protection Act of 2000, Public Law 106-386 (Oct. 28, 2000)

Trafficking Victims Protection Reauthorization Act of 2013, Public Law 113-4 (March 7, 2013)

U.S. Congressional Research Service report (1980) 'Temporary Worker Programs: Background and Issues', <http://ufdc.ufl.edu/UF00087217/00001> [last visited: 13th May 2015]

U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, H-2A Temporary Agricultural Workers, <http://www.uscis.gov/working-united-states/temporary-workers/h-2a-agricultural-workers/h-2a-temporary-agricultural-workers> [last visited: 11th May 2015]

U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, H-2B Temporary Non-Agricultural Workers, <http://www.uscis.gov/working-united-states/temporary-workers/h-2b-non-agricultural-workers/h-2b-temporary-non-agriculturalworkers> [last visited: 11th May 2015]

U.S. Department of Justice, Criminal Section Selected Case Summaries, <http://www.justice.gov/crt/about/crm/selcases.php#humantrafficking> [last visited: 11th May 2015]

U.S. Department of Justice, Office of Public Affairs, Missouri Man Pleads Guilty to Racketeering Conspiracy and Fraud in Foreign Labor Contracting Charges, <http://www.justice.gov/opa/pr/missouri-man-pleads-guilty-racketeering-conspiracy-and-fraudforeign-labor-contracting> [last visited: 11th May 2015]

U.S. Department of Labor, Wage and Hour Division, H-2B Side-by-Side Comparison of the 2009 and 2015 Rules, <http://www.dol.gov/whd/immigration/H2BFinalRule/H2BSideBySide.htm> [last visited: 11th May 2015]

U.S. Department of Labor, Bureau of International Labor Affairs, U.S. Response to Mexico's Request for Migrant Worker Outreach, <http://www.dol.gov/ilab/trade/preference-programs/US-Mexico.htm> [last visited: 12th May 2015]

- U.S. Department of State report (2010) ‘Trafficking in Persons, Country Narratives: Countries N Through Z’, <http://www.state.gov/j/tip/rls/tiprpt/2010/142761.htm> [last visited: 13th May 2015]
- U.S. Department of State report (2014) ‘Trafficking in Persons Report, Country Narratives: Spain’, <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226818.htm> [last visited: 13th May 2015]
- U.S. Department of State report (2014) ‘Trafficking in Persons Report, Country Narratives: T-Z and Special Case’, www.state.gov/j/tip/rls/tiprpt/2014/index.htm [last visited: 13th May 2015]
- U.S. Department of State, Bureau of Consular Affairs, Report of the Visa Office 2013: Table XVI(B) Nonimmigrant Visas Issued by Classification (Including Crewlist Visas and Border Crossing Cards) Fiscal Years 2009-2013, <http://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2013AnnualReport/FY13AnnualReport-TableXVIB.pdf> [last visited: 11th May 2015]
- U.S. State Department, Bureau of Consular Affairs, Nonimmigrant Visa Statistics, <http://travel.state.gov/content/visas/english/law-and-policy/statistics/non-immigrant-visas.html> [last visited: 27th March 2015]
- U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, Partnerships, <http://www.state.gov/j/tip/4p/partner/> [last visited: 11th May 2015]
- Van Der Linden, M. (2005) ‘Trafficking for Forced Labour Training Manual’ Report for the International Labour Organization: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/instructionalmaterial/wcms_081894.pdf [last visited: 11th May 2015]
- Zong, J., and Batalova, J. (2014) ‘Mexican Immigrants in the United States’ *Migration Information Source (Online)* [in <http://www.migrationpolicy.org/article/mexicanimmigrants-united-states>] [last visited: 11th May 2015]