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FREE MOVEMENT AND EQUAL RIGHTS FOR LOW-WAGE WORKERS?

What the United States Can Learn From the New EU Migration to Britain

by Jennifer Gordon*

EXECUTIVE SUMMARY

The United States fills the lowest-wage ranks of its labor market with immigrants. Even in the wake of a global recession, once thought likely to result in a high level of return migration, a staggering 7.8 million undocumented workers remain in the labor force. Over 200,000 low-wage guest workers labor on farms and in short-term jobs, tied by law to the employer that sponsored them. Advocates and scholars have long maintained that the way low-wage labor migration to the United States is structured encourages abuse. Both immigrants and resident workers would be better off, the argument goes, if migrants had greater mobility and full and enforceable workplace rights.

Until recently, there have been few examples around the world of an immigration system that admits low-wage workers on such terms. While the European Union has permitted free movement of workers between its member states for half a century, and guarantees those workers equivalent rights to citizen workers on the job, many in the United States have assumed that there is little to learn about our own situation from looking at the EU, often perceived as an accord between rich white nations. But times have changed. The EU's enlargement in 2004 and 2007 brought ten relatively low-wage Eastern and Central European nations in the EU regime of free movement of workers.

While existing member states were permitted to limit labor market access for a seven year period, three, including the United Kingdom, chose to admit Eastern and Central Europeans from the first eight admitted countries (the "A8") to their labor markets immediately. Following accession, far more EU migrants came to the UK than had been predicted. Net inflows on the order of 5,000 – 17,000 per year were anticipated; over the first five and a half years, a total of 1.5 million came. The UK today is in the midst of an experiment that, despite the many differences between that context and the United States, offers a chance to look at the implications for workers and their treatment on the job when a high-wage country permits unskilled workers from low-wage countries open access to its labor market with guarantees (at least on paper) of full mobility and equal rights.

This report, based on existing research studies and interviews with government officials, trade unionists, and advocates in the UK, describes the EU system of labor mobility. Using the UK as a primary example, I examine to what extent the EU free movement regime has delivered on its promises for new EU nationals doing low-wage work in the UK. Most importantly, this report offers insights for reform efforts in the United States that seek to improve the conditions of work for all low wage workers, immigrants and residents alike.

Findings

- Eastern and Central European A8 migrants who work in the UK under the EU's free movement guarantee have significant advantages over other low-wage labor migrants in the UK, who have limited employment options and generally must remain with one employer for the duration of their stay.
- Highly-skilled, English-speaking A8 migrants have been particularly successful in reaping the benefits of full access to the UK labor market.
- For a significant subset of non-English-speaking A8 workers, however, genuine mobility and decent treatment on the job have remained out of reach. They face illegal deductions, unsafe working conditions, and long hours for low pay. "Deskilling" is rampant, with A8 migrants working in positions well below their education level and encountering difficulty advancing into positions commensurate with their skills and training.
- Private recruitment and employment agencies have played a particularly negative role, restricting A8 mobility and increasing A8 migrants' reluctance to claim their rights.

Lessons for the United States

- For low-wage migrants, greater mobility and equal rights on paper are essential preconditions to decent work rather than its guarantors.
- To render workers rights' real under a full mobility scheme, laws that govern migrants and their employers must be accompanied by effective regulation of migrant recruitment and placement agencies.
- Future registration requirements will need to be carefully structured if they are to avoid discouraging the enforcement of workplace laws. The UK's Workers Registration Scheme failed to register an estimated third of A8 migrants, and created a semi-legal status for those out of compliance that discouraged some migrants from claiming their rights.
- Unions that seek to organize short-term migrants will have to figure out how to respond to mobile migrants' needs *as the migrants see them*, and how to adapt membership structures designed for long-term employees to the realities of migrants who see their stay in a job, industry, or indeed the country as temporary.
- *All* workers suffer high rates of workplace violations in the low-wage labor markets that migrants are entering. Much of the work that needs to be done to improve working conditions is exactly the same for migrant and native workers: strengthen protective laws, improve enforcement, and increase opportunities for worker representation.

Figure 1 and 2. EU Enlargement

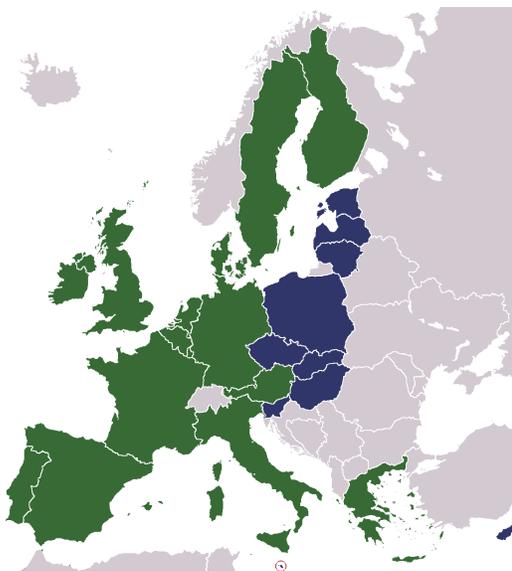


Figure 1. Countries Admitted in 2004.



Figure 2. Countries Admitted in 2007.

I. INTRODUCTION

The United States fills the lowest-wage ranks of its labor market with immigrants. Even in the wake of a global recession, once thought likely to result in a high level of return migration, a staggering 7.8 million undocumented workers remain in the labor force.¹ Over 200,000 low-wage guest workers labor on farms and in short-term jobs.²

Advocates and scholars have long maintained that the way low-wage labor migration to the United States is structured encourages abuse. Guest workers are tied by law to the employer that sponsored them; if they are fired for reporting violations of their rights, their visa is cancelled and they must return home. Undocumented workers likewise fear that they will be deported if they complain about mistreatment. This state of affairs harms all workers in these low-wage industries. Both immigrants and resident workers³ would be better off, the argument goes, if migrants had full mobility and fully enforceable workplace rights.

Until recently, there have been few if any examples around the world of an immigration system that admits low-wage workers under conditions of true mobility and equal rights. While the EU has permitted free movement of workers between its member states for half a century, and guarantees those workers equivalent rights to citizen workers on the job, many in the United States have assumed that there is little to learn about our own situation from looking at the EU, often perceived as an accord between rich white nations. Europe may be as embattled over immigration as the United States is, but at a distance its internal migration system seems utopian by comparison to the current situation in America. What does full labor mobility between, say, France and Germany have to offer as insight to the struggle to figure out how to better structure migration between the United States, by far the world's wealthiest nation, and Mexico, where workers earn a dollar for every six they could make up north?

But times have changed. The EU's enlargement in 2004 and 2007 brought ten Eastern and Central European nations in the EU regime of free movement of workers. Since the EU was founded as the European Economic Community in 1957, it has permitted citizens of member states to work in any other member state for an unlimited period of time, with the same workplace rights as nationals.⁴ The population of the EU now surpasses 500 million,⁵ compared to 310 million in the United States.⁶ The countries admitted to the EU in these rounds—from Poland and Latvia in the first group to Bulgaria and Romania in the second—were at vastly different stages of economic development than the existing EU nations. Wage disparities are now as high as sixteen to one between the wealthiest and poorest EU member states, more than twice

that of the average ratio between the US and Mexico.⁷ While existing member states were permitted to limit labor market access to nationals of new member states for a seven year period, three, including the United Kingdom, chose to admit Eastern and Central Europeans from the first eight admitted countries to their labor markets immediately. The UK today is in the midst of an experiment that, despite the many differences between that context and the United States, offers us a chance to look at the implications for workers and their treatment on the job when a high-wage country permits unskilled workers from low-wage countries open access to its labor market with guarantees (at least on paper) of full mobility and equal rights.

These, then, are the goals of this report: to describe the EU system of labor mobility, using the UK as a primary example; to ask to what extent the EU free movement regime has delivered on its promises for new EU nationals doing low-wage work in the UK, and, where it has faltered, to understand why; and to explore what insights this experience might offer for reform efforts in the United States that seek to improve the conditions of work for all low wage workers, immigrants and residents alike. To achieve this, I have drawn on studies of the first six years of the UK experience with A8 migrants from a variety of quarters, including economists and other scholars, policy analysts, and government and union sources. Since most studies to date emphasize the demographics and economic impact of A8 migration in the UK, and relatively few explore the question of how well or poorly A8 workers are being treated in the workplace, I supplement those resources with interviews I carried out on that question in 2010 with advocates, trade union representatives, and government officials in the UK.

The report's conclusions are complex. On the one hand, mobility and rights have proven to be important prerequisites for many migrant workers to be able to improve the circumstances under which they work. For the most part, Eastern and Central Europeans who work in the UK under the EU's free movement guarantee are considerably better off than other labor migrants in the UK, whether non-EU workers on temporary visas, workers "posted" in the country by a foreign firm, or the undocumented. This has been particularly true for highly-skilled, English-speaking A8 migrants. On the other, the UK's experience to date also illustrates that there can be a wide gap between the promise of mobility and rights and genuine access to those things, and that labor migrants—even so-called "free movers"—are vulnerable to interference every step of the way. This is particularly true of migrants with limited English-speaking ability in low-wage jobs.

Much of the interference has come from labor recruiters, who have repeatedly served to limit migrant mobility within the UK and create obstacles to rights

enforcement. An Eastern and Central European migrant registration requirement created by the UK government also appears to have worked in unexpected ways to restrict movement. And new or short-term migrants often lack the language skills, the legal knowledge, the support, or the incentive to challenge mistreatment on the job, even if they are legally entitled to do so. Furthermore, most Eastern and Central European migrants are entering segments of the UK labor market where *all* workers are paid little for long hours, and work under precarious conditions. For migrants to do better, government agencies, advocates, and trade unions in the UK recognize that they must focus on bringing up the floor for low-wage workers in general. But they have also begun to develop strategies and structures that respond to the unique position of short-term migrant workers. Section IV of the report highlights several new governmental and union initiatives in the UK that respond to these imperatives, and suggests further approaches for consideration.

II. An Overview: The Free Movement of Workers within the EU

The free movement of workers between member states has been one of the central commitments of European integration since the founding of the European Economic Community (EEC) in 1957.⁸ Today, citizens of European Union member states can go to any other member state to work for unlimited periods of time, with the same workplace rights as nationals.⁹ They do not need to be sponsored by an employer, and no visas or work permits are required. The ability to migrate for work within the EU is not restricted by skill level; it applies equally to those who seek positions as architects or bricklayers, doctors or housecleaners.

Although the other three elements of EU free movement—pertaining to goods, capital, and services—enjoyed widespread support among the initial EEC nations, the free movement of workers sometimes raised controversy.¹⁰ As Kees Groenendijk notes, “each time the accession of new Member States was under negotiations, there was the fear among old Member States that the free movement of workers from the new Member States to the old ones would result in uncontrollable migration.”¹¹ However, prior to the most recent wave of accessions, only one or two countries were seeking admission to the EU at a time. Not surprisingly, as the EU began what would be an unprecedented expansion from fifteen countries to twenty-seven, incorporating many new members with significantly lower income levels, concerns about labor mobility began to play a more prominent role in the debate.

In 2004, the EU admitted the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia,

and Slovenia (collectively referred to as the A8), as well as the islands of Cyprus and Malta. Bulgaria and Romania (the A2) were admitted in 2007. As the date for the first round of accessions approached, the fifteen Western and Southern European countries that made up the EU before enlargement (the EU15) expressed fears about threats to social cohesion as well as increased economic competition from A8 nationals, who would have access to their labor markets under the right of free movement. In the end, EU15 countries were permitted to restrict access to their labor markets by citizens of the A8 and the A2¹² for a stepped transition period of seven years after admission, echoing arrangements made during past accessions such as those of Spain and Portugal.¹³ Every EU country except the UK, Ireland, and Sweden¹⁴ initially chose to restrict their labor markets to nationals of the A8 countries in May 2004.¹⁵

Six years later, however, in the final transitional phase, only Austria and Germany continue to curtail A8 nationals’ labor market access through a work permit system.¹⁶ Policies toward the A2 countries admitted in 2007 have been more restrictive.¹⁷ Nonetheless, by mid-2011 for A8s and 2014 for A2s, the right of free movement will apply fully to citizens of all EU member states.

This report will focus on the experience of the UK with A8 labor migration since 2004. It takes the UK as its central example for several reasons. Because the UK began admitting A8 nationals to its labor market immediately after accession, there are by now six years of data on which to draw in assessing the impact of A8 migrants on the UK labor market, and in gauging the extent to which A8 workers have actually realized the full mobility and equal rights they have been promised.

In addition, the UK is arguably most like the United States of all the EU countries. The United States’ relatively weak workplace regulation, low and falling unionization levels, the limited role it assigns to trade unions in the labor market, and its comparatively restrictive approach to social welfare find more parallels in the UK than in countries like Sweden and Germany.¹⁸ Although differences between the two contexts remain considerable (and are addressed in more detail below), the commonalities make it easier to draw comparisons.

III. The UK and A8 Labor Migration

A. Overview of A8 Migration to the UK to Date

The British media and conservative politicians greeted the news that the UK government had decided to grant A8 migrants open labor market access with an outcry.¹⁹ Fear crystallized around the symbol of the “Polish plumber” usurping the jobs of British workers at half the

cost, as well as around public benefit costs and other issues. While the New Labour government proceeded with its plans, at the last minute it sought to reassure the public by creating a system to monitor the presence and employment of A8 nationals.²⁰ The Workers Registration Scheme (WRS), in effect until mid-2011, imposed a fee and created registration requirements during each A8 migrant's first year of employment.²¹ So long as an A8 migrant complied with the WRS rules, however, she was legally free to move as she pleased between employers, jobs, or industries; between regions; and indeed between her home country and the UK.

The first years following accession brought several surprises. The numbers of A8 migrants to the UK were far higher than anticipated. Pre-accession forecasts predicted net inflows on the order of 5,000–17,000 annually; instead, over 1.5 million A8 migrants arrived in the UK in five and a half years.²² Flows peaked in 2006 and have lessened sharply over time, presumably reflecting the ebb of pent-up demand as well as the impact of the recession.²³ A8 return rates are high compared to other migrant groups. While some A8 migrants settle in the UK, a number work in Great Britain for brief periods, interspersed with returns home (referred to as “circular migration”); the remainder go back to their countries of origin permanently after a stay of some duration.²⁴ As of the end of 2009, the net A8 population in the UK was about 700,000, less than half of the total arrivals.²⁵

These migrants are different from other newcomers to the UK in other ways as well. On average they are younger than non-A8 migrants. Although they are relatively highly educated, the majority work in low-skill, low-wage occupations: a nurse may labor as a nursing home attendant; a college grad may process food in a plant.²⁶ Some have experienced limited upward mobility over time, for example from agricultural work into food retail and catering, but particularly for those with limited mastery of English, professional jobs have proven elusive.²⁷

Anti-immigrant sentiment has continued in the UK, on cultural grounds and in response to reports of employers favoring foreign workers over citizens.²⁸ The recession has only intensified these fears. And yet, counter to initial concerns and despite the unexpectedly high numbers, this large influx of newcomers does not appear to have increased the unemployment rate of UK nationals as a whole, nor has it had a measurable negative impact on the overall wage rates of native workers.²⁹ In the words of two economists assessing the impact of migration on the UK labor market, with a particular focus on the surge following A8 accession, “[t]here is simply no evidence to suggest that migration has any substantial negative impact on either wages or employment. Indeed it is entirely possible that there is a small positive impact on either or both of these, or no impact at all.”³⁰

At the same time, any statement about the impact of A8 migration on the UK labor market—indeed any effort to quantify A8 migration at all—must be tempered with a recognition of the weaknesses of the available data.³¹ Economists acknowledge two further dangers. It seems likely that the national perspective of most economic studies hides some effects on particular groups of workers at the bottom of the labor market.³² Previous waves of immigrants appear most likely to be adversely affected by the influx.³³ Most citizen workers are sheltered by the fact that new migrants are not “perfect substitutes” for them, because citizens have language abilities and locally-specific knowledge that migrants cannot offer.³⁴ However, citizen workers who seek jobs that require no language proficiency and minimal skill levels may be disadvantaged,³⁵ particularly because for such jobs there is significant evidence that employers prefer immigrants because of their perceived “work ethic” and higher productivity.³⁶

In addition, local areas that see a rapid increase in their migrant populations may have experienced short-term labor market jolts that were not picked up by national-level surveys.³⁷ While workers appear likely to adjust to these impacts relatively quickly,³⁸ in places where influxes of migrants provide employers with an option to pay low wages, demand long hours, and avoid capital investments because of the ready availability of labor, there is the danger that migration will reinforce a “low road” model of business operation in already economically depressed areas.³⁹ Nonetheless, most students of the subject seem to agree that for the UK as a whole, “the experience of receiving accession migrants has so far been a positive one, at least in economic terms.”⁴⁰

B. Assessing the Labor Experience of A8 Migrants in the UK

1. Why Mobility Matters

In theory, an approach to labor migration that offers unrestricted mobility would seem to offer significant advantages to both migrants and resident workers.⁴¹ When migrants can *change employers* at will, they are better able to claim their rights, because they can look elsewhere if they are being abused in their current position, and they need not fear deportation if they complain. This should make it harder for exploitative employers to find employees or hide from government officials, reinforcing the floor on wages and working conditions for all workers. When migrants can *shift between industries and regions*, they should be able to move to wherever unemployment is lowest and resident workers are least interested in doing the work, filling an economic need while minimizing competition. Finally, when migrants can *travel to and from the destination country* at

will, they have the ability to move to take advantage of new opportunities as they arise, or to respond to economic shifts. This should decrease labor market pressure in the case of a broad economic downturn in the destination country. It should also avoid the holding pen effect of strict border enforcement policies in countries with large undocumented populations, where migrants who might prefer to go home in the short term remain because they fear if they leave they will not be able to return.⁴²

2. The Actual Experience of A8 Migrants as Workers

a. Experiences with Mobility

The reality of A8 migrant mobility in its early years has proven more complex than the theory would suggest.

For some A8 migrants, particularly those with a command of English and a professional degree, free movement has opened a wealth of previously inaccessible opportunities. However, many other A8 migrants, especially those who do not speak English, have not experienced themselves as free to move as fluidly as the system permits. I explore the reasons for this below, emphasizing in particular the high percentage of such migrants who are employed through recruitment agencies and thus face a constrained set of options and limited information. This has a particular impact on the first level of mobility, between employers. In this regard I also note the substantial number of migrants who did not comply with Workers Registration Scheme (WRS) requirements, who had concerns about their legality that may have impeded their ability to change jobs or claim rights.

With regard to the second level of movement, between regions, some analysts have suggested that A8 migrants have indeed gone in significant numbers to areas where UK citizens were unwilling to do the work for the pay on offer.⁴³ Some have drawn this conclusion from the fact that A8 migrants have been much less likely to go to London or other urban areas than earlier waves of migrants, instead seeking out employment opportunities in more remote locations. An Accession Monitoring Report published by the UK Home Office, for example, concluded: “Accession workers are continuing to go where the work is, helping to fill gaps in our labor market.”⁴⁴ However, others have called this into question. In an early assessment (based on the first 14 months of WRS registration), Coombes, Champion, and Raybould first argue that “A8 labour migrants did not show a significant tendency to go to labour shortage areas.”⁴⁵ Ultimately, after accounting for the effect of other potential factors, they conclude that while “there is a distinct tendency for A8 migrants to go to areas with higher employment rates,” “[m]igration patterns

were found to relate to local labour supply bottlenecks in quite complex ways...”⁴⁶ In other words, migrants from different countries and in different sectors are responding differently to labor market demand; generalizations are unlikely to be accurate.

The third level of mobility, between countries, has been most studied, although data limitations make it difficult to paint an accurate fine-grained picture. Whatever their initial intent, some number of A8 migrants have become longer term immigrants and will eventually settle in the UK. Other A8 migrants to the UK appeared to be highly circular. Among the circular migrants, different patterns prevail. Some migrate once for a finite (if often undefined) period of time before returning, some make several trips a year for seasonal work, and some even commute weekly.⁴⁷

The clearest evidence that full mobility facilitates migrants’ responsiveness to the labor market has come during the global economic downturn that began in 2008. The numbers of A8 migrants entering the UK labor market appears to have fallen by 50% between 2007 and 2009;⁴⁸ the number of A8 migrants departing the UK during the same period seems to have increased, although less dramatically.⁴⁹ Non-EU low-wage labor migrants, meanwhile, showed much more sustained interest in continuing to enter the UK during the recession, and also left in lower numbers.⁵⁰ Other factors were undoubtedly at play. The numbers of A8 migrants coming to the UK had begun to slow before the recession hit, indicating that high early numbers may have reflected a bottleneck rather than a level that would have been sustained had good economic times continued.⁵¹ Return migration will also become more complicated over time, as migrants become increasingly embedded in social networks in the UK and/or begin to bring over their families.⁵² Nonetheless, it seems logical to conclude that A8 migrants’ knowledge that they could come and go at will increased their flexibility to react to changes in labor market conditions.

b. Experiences with Workplace Rights

A8 nationals are admitted with full workplace rights, equal to UK workers in every respect except the added obligation (during the first seven years post-accession) to register with the WRS during the first year of employment.⁵³ Whether low-wage A8 migrants have actually been able to claim these rights post-2004 has not been the subject of much study. What work has been done to date, however, suggests that a significant number have faced difficulty in enforcing workplace laws, a finding corroborated by the advocates and trade unionists I interviewed.

It must be acknowledged up front that even low-wage A8 workers are better off now than their counterparts

in the UK prior to accession, when many migrants from A8 nations labored in guest work programs or in undocumented status.⁵⁴ They are also better off than most other current low-wage labor migrants in the UK. Although the WRS regime in the UK was more restrictive than rules for A8s in other EU15 countries,⁵⁵ A8 migrants in the UK still

enjoyed a privileged legal position in comparison with most third country nationals (ie, migrants from outside the EU) laboring in the country on work visas, as posted workers, or in undocumented status.⁵⁶ The box below offers a brief review of these other forms of labor migration.

Other Forms of Labor Migration in the UK

Points Based System The Points Based System, established in 2008, grants visas to a small number of non-EU highly-qualified professionals without sponsorship, and to employer-sponsored skilled and temporary workers. Applicants must earn enough points to qualify through their education level, income and assets, and English ability.⁵⁷ Although there are provisions in the system for low skilled workers, in practice the government has not made visas available in this category due to the influx of A8 workers to low-skilled jobs.⁵⁸

Posted Workers The EU requires that companies in any EU country be permitted to conduct business, bid on contracts, and provide goods and services in any other member state on equal terms with that state's firms. Firms that win contracts often hire workers in their home country and "post" them in the host country temporarily to complete the job. The European Parliament's Posted Workers Directive mandates that firms comply with the employment standards of the host country with regard to the terms and conditions of work.⁵⁹ Those standards may be established by national law (as with a legislated minimum wage), or "by collective agreements...which have been declared universally applicable."⁶⁰

The Directive has generated considerable conflict since enlargement brought firms in A8 countries into the pool of potential bidders. The focal point of the tension has been the appropriate wage standard for posted workers. In a series of recent cases, the European Court of Justice has limited the scope of standards that will be considered to have national application.⁶¹ In EU countries with a tradition of setting wages through negotiations between trade unions and firms, but no national minimum standards or laws mandating the universal extension of collective agreements to other firms, the result of these decisions is that foreign firms can pay posted workers according to the (usually much lower) rates permitted in the country where the firm is headquartered.

Temporary Work Schemes The UK has other temporary work visas available to particular groups or to fill jobs in particular industries. These include the Seasonal Agricultural Workers Scheme, the Youth Mobility Program, and other programs in the Tier 5 Temporary Worker category.⁶²

Unauthorized Workers The UK's undocumented population is estimated at over 500,000.⁶³ As a function of the UK's island geography, most undocumented workers in the UK are not illegal entrants but visa overstayers and asylum applicants (not ordinarily permitted to work).⁶⁴ Under UK law, the undocumented are not allowed to enforce employment contracts or claim statutory rights as workers.⁶⁵

It also seems likely that A8s will be increasingly able to access their rights as time goes on. The reports and articles that paint the most critical picture of workplace rights violations experienced by A8s were researched within the first year or year and a half post-accession, as migrants and their employers transitioned from one regime to the other.

At the same time, six years post-accession, advocates and trade unionists still report anecdotally that a number of low-wage A8 migrants suffer a range of abuses at work.⁶⁶ Employers take illegal deductions from their pay, including for housing and transportation. Their jobs are precarious, often requiring long hours for very low compensation, with firing a constant threat for those

who complain. They are given the least desirable shifts. They work under conditions that threaten their safety and health.⁶⁷ In addition to violations of workplace laws, they face persistent deskilling, laboring in manual jobs in the UK despite relatively high levels of education.⁶⁸ They have difficulty advancing: although over time A8s may move, say, from agriculture into retail and catering, they have a far harder time gaining recognition of their qualifications for the skilled or professional work that they may have trained for in their home countries; those with language difficulties are particularly affected.⁶⁹

The poor working conditions that many low-wage A8 migrants experience, as well as their difficulty gaining redress for exploitation, are in many regards shared by resident workers in the low-wage industries where they labor.⁷⁰ The vulnerability of *all* workers in the construction, hospitality, elder care, and food processing sectors, and the precariousness of their employment, is in large part a feature of how the work itself is structured. For example, as described more fully below, sectors dominated by agencies often have lower pay than direct-hire sectors, and this affects all workers placed by an agency, not just migrants. All low-wage workers in the UK also face challenges in enforcing their rights. One obstacle is the scarcity of free or low-cost legal representation.⁷¹ Workers in rural areas (including in the food processing sector where many A8 migrants are concentrated) have particularly limited access to both non-profit and government agencies.⁷² Another is the fact that affirmative government enforcement of workplace laws is limited.⁷³ The UK passed its first minimum wage law just over a decade ago, and the agency charged with its implementation has been criticized for the ineffectiveness of its approach.⁷⁴ Government agencies are balkanized, under-resourced, and largely reliant on worker complaints rather than proactive inspections to enforce the laws under their charge.⁷⁵ Workers lack information about workplace rights, and about reporting and enforcement procedures, which vary from agency to agency.⁷⁶

Nonetheless, low-wage A8 migrants appear to face additional barriers to enforcing their rights (and may also face a higher baseline of abuse) compared to citizen workers. Some of the most important barriers are self-evident—for example, language issues, migrants' lack of awareness of UK laws and the procedures for enforcing them,⁷⁷ and employers' hostility and xenophobia. Others require further explanation.

3. Why Does the Reality not Live Up to the Prediction?

In what follows, I argue that two factors are particularly important to understanding the reasons that some A8 migrants still suffer high levels of workplace violations and do not behave like the “free movers” they are

legally entitled to be: the often detrimental role played by recruitment agencies, and the fact that migrants have their own motivations that shape their choices about where to work and whether to protest the conditions under which they find themselves. I also note some limitations arising from the WRS system.

a. The Role of Agencies

Although some “high road” employment agencies have emerged and flourished in the wake of accession, the presence of many less scrupulous agencies has shaped the A8 migrant experience—and, increasingly, the labor markets in which they work—in ways that seem detrimental to migrant and resident workers alike.⁷⁸ Agencies appear both to limit A8 migrants' actual mobility within the UK, and to curtail their ability to claim their rights.

Agencies play a critical role in hiring in the UK in general. The UK has the highest rate of agency employment among the countries that make up the Organization for Economic Cooperation and Development (OECD); some 5% of the workforce is now hired through an agency,⁷⁹ more than double the level of the mid-1990s.⁸⁰ Levels of agency employment are far higher for A8 migrants than in the population as a whole.⁸¹ One study found that approximately 50% of WRS registrants through 2008 worked for or had been placed by an agency.⁸² Indeed, it has been reported that employers in some sectors, such as large food processing firms, have begun to hire exclusively through agencies that recruit migrants.⁸³ Such structural changes in hiring may lock in a role for agencies where otherwise they might fade in importance over time as migrants develop contacts on their own and find work through social networks.⁸⁴

While agencies can ease the recruitment process for employers,⁸⁵ the role they play for migrants is often less positive.⁸⁶ As migrant advocate Don Flynn notes, “agencies are paid to put people in jobs, not to give career advice.”⁸⁷ Agency recruitment practices encourage—indeed in many cases require—applicants to work below their level of training and education.⁸⁸ Since many agencies carry out initial recruitment in migrant home countries, migrants have limited knowledge on which to assess the truth of agency promises. Common agency abuses include over-charging, dubious lending practices, and inaccurate promises about placements.⁸⁹

Agencies also appear to be playing a role in limiting A8 mobility and discouraging migrants from reporting rights violations. Although A8 workers are not legally required to remain in a job where they have been placed by an agency (as might be the case with a migrant from outside the EU whose visa was contingent on employment by a particular company), various aspects of the agency relationship nonetheless constrain A8 workers' free movement. Agencies channel migrants to the places

where they have jobs to offer.⁹⁰ Many of these locations are rural and isolated,⁹¹ reinforcing the migrant's reliance on the agency for her next job. When agencies or their partner organizations recruit migrants in their home country and manage the paperwork associated with the movement across borders, they have increased power over workers.⁹² At the extreme, this is enforced by confiscation of the migrant's passport and other travel documents. More common is the situation where agencies provide migrants with transportation, housing, and/or credit; these mechanisms, too, augment workers' dependence on the agency relationship.⁹³

Agencies can also interfere with the enforcement of workplace laws. In an early post-accession study of A8 and other migrants' experience with labor violations in the UK, Anderson and Rogaly conclude that "a bewildering array" of agency and subcontracting arrangements impede migrants from claiming their workplace rights.⁹⁴ In industries or regions where agencies control the majority of jobs (or migrants are unaware of other conduits to work), staying in the agency's good graces is essential to continued employment. As the Equality and Human Rights Commission reported after its recent inquiry into the UK meat and poultry industry, agency workers were afraid that if they pursued their rights, "they would lose their current job, or that future work would be withheld as 'punishment' for raising a complaint."⁹⁵ Migrants who depend on agencies in these ways are thus reluctant to come forward to report mistreatment on the job.

b. Migrant Perspectives

There is no such thing as a unitary "A8 migrants' perspective." A8 migrants are as different from each other as any human beings.⁹⁶ However, the large number of A8 migrants who see their stay in the UK as likely to be short term, or who move back and forth between the UK and their home countries, share a set of experiences that may shape their view of work in the UK in similar ways.

Migrants who see their time in the UK as likely to be brief assess low-wage work on terms distinct from those used by long-term resident workers. Even in what from a UK perspective is a "low pay" job, migrants stand to earn much more in the UK than at home, given the wage differential between the UK and A8 countries. The value of the British pounds they save or remit is further magnified by the fact that they buy more social and economic status in migrants' home countries than resident workers can obtain in the UK with the same money. Migrants who do not plan to remain in the UK are less likely to feel their identity and social standing are tied to the low-wage jobs in which they labor in the UK than resident workers who have more at stake. This effect can be enhanced where (as is often the case with A8 migration) the migrants are overqualified for

the work they are doing in the UK, and anticipate returning home to resume a career or an educational track consistent with their prior training. In addition, many migrants—and especially the young—have non-work related reasons for their sojourn in the UK, such as improving their English-speaking ability or having a new cultural experience.⁹⁷ For these migrants, abuses at work may be easier to shrug off.

These factors—migrants' anticipation that they time they work in the UK will be brief, the higher value they get from their earnings, and their lower identification with the job, relative to resident workers—combine to reduce their incentive to complain about violations of the law. Instead, many "earn and go": they work hard and complain little for the brief period they are in residence, lumping complaints other than those that directly threaten their earnings.⁹⁸

Where A8 migrants do want to enforce their rights, they may find assistance hard to come by. As noted previously, this is true for all low-wage workers because of the scarcity of free or low-cost legal help for workplace violations in the UK.⁹⁹ The gap is wider for migrants because they tend to work in sectors with low union density, and to lack connection to the unions or legal aid organizations that might assist them with complaints against their employers.¹⁰⁰ These problems are compounded by the language barrier and—for those who have failed to register with the Workers Registration Scheme—a fear of immigration consequences for coming forward.¹⁰¹

A8 migrants' relative privilege as EU citizens does give them self-help alternatives that other migrants lack. Some move on to other jobs when they do not like how they are being treated, or resist through informal channels.¹⁰² Even if they do nothing with regard to incidents of workplace violations, it is not unrealistic for those who stay to expect a brighter future.¹⁰³ The WRS requirements no longer apply after a migrant's first year, and in any case expire in mid-2011.¹⁰⁴ As white workers guaranteed free movement, once A8s (and certainly their children) learn English and begin to blend in, they may well avoid much of the discrimination that has plagued Caribbean, South Asian, and other migrants of color and their descendants in the UK.¹⁰⁵ And while the lack of recognition of qualifications contributes to a migrant stream that is overskilled for the positions it takes,¹⁰⁶ this may be addressed over time through the further development of rules about mutual recognition of qualifications within the EU.¹⁰⁷

c. WRS Requirements

An additional factor that may have limited A8 migrants' mobility and ability to access their rights during the transitional phase for A8 workers was the Worker Registration Scheme itself.¹⁰⁸ From 2004 until mid-2011, during the first 12 months after an A8 migrant's arrival,

the WRS obligated her to pay a fee of just under \$150, register with proof of having found work within 30 days of arrival, and re-register with every change of job (a step that required the cooperation of the employer).¹⁰⁹

While the WRS is no longer in effect as of May 2011 when the “transitional” period for A8s ends, from the perspective of US policy it is worth discussing because its impact sheds light on some of the complications inherent in the registration systems which generally accompany any new migrant labor program proposals in this country. Samantha Currie and Bridget Anderson have both argued that the WRS made it harder for migrants to get decent jobs and enforce their rights.¹¹⁰ The 30 day requirement created pressure to take work quickly, which in turn may have pushed migrants toward agencies as a way to arrange work before leaving home, or—upon arrival—into low-skilled sectors where hiring was swift and informal, as opposed to the longer formalized hiring processes that characterize skilled or professional jobs.¹¹¹ For those who registered and sought to remain in compliance, the need to remain consistently employed for twelve months could create a disincentive to leave a bad situation without another job lined up, or to complain and risk being fired.¹¹²

A significant segment of the A8 population either chose not to register with the WRS or at some point fell out of compliance.¹¹³ The most widely cited estimate is that a third of A8s who were covered by the WRS requirements were not registered.¹¹⁴ Such workers were “unlawfully resident,” although enforcement against A8 nationals was not a priority in the UK.¹¹⁵ This class of semi-legal workers may have been unclear about their rights, or believed that they had none.¹¹⁶ Such workers may also have felt more reluctant to move freely than fully compliant A8 migrants, for fear that they would be discovered to have broken the law.

A final group avoided the registration requirement by labeling themselves “self-employed,”¹¹⁷ although they may in fact have worked for hire, leading to high levels of what is referred to in the UK as “bogus self-employment.”¹¹⁸ These workers—who now include a large proportion of A2 migrants from Bulgaria and Romania, who are permitted to enter the UK outside of the designated seasonal programs if they declare themselves self-employed¹¹⁹—have no legal employer, and therefore little recourse if they are abused on the job.

IV. Addressing the Challenges: New Initiatives in the UK

A. Government Regulation of Recruitment Agencies

Both origin and destination country governments have experimented with a range of approaches to addressing the abuses perpetrated by agencies in the migrant recruitment and job placement process.¹²⁰ Some

of the most innovative efforts have come from origin country governments, which recognize that recruitment is one of the few aspects of labor migration over which they have jurisdiction, since it (unlike the work itself) often takes place within its borders. But even the origin nations that have made enforcing recruitment laws a priority have struggled to have an impact without correspondingly strong initiatives by destination countries.¹²¹ One of the most promising of these has emerged in the UK itself, with the recent passage of the Gangmasters’ Licencing Act (“the Act”) and the establishment of the Gangmasters’ Licencing Authority (GLA).¹²²

The Act was passed in 2004 in response to the tragic death of Chinese workers who drowned while harvesting shellfish in Lancashire, England. The Act went into full effect in 2006. Currently limited to the food processing industry, the law establishes a regime under which all labor supply agencies (“gangmasters”) operating in that sector in the UK must obtain a license from the GLA. In order to get and keep a license, an agency must meet a set of minimum conditions, including compliance with laws regarding minimum wages and working hours, health and safety, discrimination, the payment of taxes, immigration regulations (a source of controversy with migrant advocates, who argue that the exercise of immigration enforcement authority is detrimental to the GLA’s ability to gain the confidence of migrant workers),¹²³ safe accommodations, and the right to join a union.¹²⁴ In addition to licensing, the GLA inspects license holders and end users, and pursues fines and criminal prosecution against those who are unlicensed or have violated the terms of their license. Agencies can lose their licenses if they are found to have committed a certain number of violations, both “critical” (in which case suspension is immediate and criminal penalties can be applied) and lesser (in which case points are recorded against the agency or employer; the accumulation of 30 points results in revocation of the license).¹²⁵ Employers that obtain workers through unlicensed agencies can be fined and subject to imprisonment as well.

The GLA has been widely lauded for its vigorous and comprehensive enforcement.¹²⁶ It is particularly noteworthy for its use of publicity to pressure employers and agencies to comply with the law,¹²⁷ and for its coordinated effort, combining the power to enforce a range of laws in one entity as opposed to the balkanized approach that ordinarily characterizes workplace enforcement in the UK. The agency has now licensed over 1200 labor providers,¹²⁸ and appears to have had some success in reducing abuses in the industry.¹²⁹ A notable achievement in 2010 was the GLA’s negotiation of a Protocol with the majority of the largest supermarkets and food suppliers in the UK.¹³⁰ The Protocol commits retailers to work collaboratively with the GLA to ensure enforcement of GLA standards throughout the food supply chain, and encourages retailers to “take

decisive action” if their contractors are found to be abusing workers.¹³¹

The major criticism the GLA has drawn is that its scope is too limited. Given the predominance of agencies in other sectors such as care and cleaning, an unintended effect of the GLA’s rigorous enforcement in agriculture and food processing has been to push noncompliant gangmasters into other industries beyond its reach.¹³² Advocates agree that the GLA is one of the best efforts underway in the UK to protect the labor rights of migrants, and have called for an increase of resources to the GLA and its expansion to cover all industries where agencies are active.¹³³

B. Union Initiatives

Unions in the UK have recognized the need to reach out to A8 and other migrant workers.¹³⁴ The overall approach of the Trades Union Council, the federation representing the bulk of UK unions, has been to highlight the ways that migrants are part of a much larger “vulnerable workforce,” and suffer the same exploitation as other low-wage workers in the UK.¹³⁵ At the same time, it has sought to educate the public and union staff and membership about issues of migration, and to encourage migrants to join UK unions, through a range of pilot projects that have included providing services to migrants with on-the-job problems and signing co-operation agreements with both major Polish unions.¹³⁶

Individual unions have experimented with a range of approaches. The GMB, a general workers union, created a migrant workers’ branch in the immigrant-heavy Southampton region. The branch, which uses free English and skills classes to attract migrants, has about 500 members, and eventually—it is hoped—will merge with the full union.¹³⁷ UNISON, the largest public employees’ union, hired an organizer from the Polish OPZZ union, and initiated a “Migrant Workers Participation Project” through which it sought to overcome obstacles to migrant participation by increasing coordination with migrant community organizations and networks, creating migrant-specific “Pathways into UNISON” courses, and identifying and supporting potential activists among migrant union members.¹³⁸ UNITE, the biggest union in the UK, focuses on the service sector, where the majority of workers are migrants (although they make up only 1-2% of its membership). Although it considers most of its campaigns to be migrant-oriented by definition, it also experimented for a two-year period with a Migrant Worker Support Unit, which educated staff on migration issues and on the urgency of bringing migrants into membership, sought to collaborate with community organizations, and provided translation assistance for organizers.¹³⁹ In addition to these national-level initiatives, unions also launched regional pilot projects targeting migrants.

While a number of union efforts initially involved providing services to migrant *non*-members as a way of introducing them to the union (something that required bending union rules mandating that a worker already have been a member for a period of time before the union will assist her), ultimately what unions wanted was for migrants to join their ranks. This they do not seem to have done in significant numbers.¹⁴⁰ Currently, there appears to be something of a sentiment in the UK trade union movement that A8 migrants “are treating unions like NGOs:”¹⁴¹ they just want services, and are not interested in organizing.¹⁴² This has fanned the flames of resentment from some members about the resources spent on migrant initiatives.¹⁴³

Yet as more than one union organizer pointed out, from temporary migrants’ perspective, a key issue is that UK union membership structures don’t correspond to their reality.¹⁴⁴ The trade union membership structure is designed for UK workers, who generally stay put. Most UK unions cannot accommodate a member who leaves the country for 6 months and pays no dues during that time, but then reappears; or who works only seasonally in the industry the union covers.¹⁴⁵ But migrants go where the work is, moving in and out of jobs, regions, sectors – and the country itself. As a union leader put it from the migrant’s perspective, “Why would you join a gym for a year when you think you’ll only be in the country for 5 months?”¹⁴⁶ Some migrants may also mistrust unions based on home country experiences.¹⁴⁷ UNISON, for example, has found Polish workers reluctant to join UK unions based on their experience in Poland with trade unions as corrupt political actors.¹⁴⁸

Changes may be required in trade unions’ approach to services, education, and union membership before migrants will join en masse. The more services are designed to respond to migrants’ actual needs, and reconceived as a route to organizing rather than solely a benefit available after joining a union; the more education and leadership development are seen as two-way streets, drawing on migrant perspectives to shape union strategy rather than solely seeking to educate migrants about UK trade unionism; and the more flexible and portable union membership becomes so that it reflects the structure of migrants’ lives and work, the more likely migrants will be to consider unions as relevant to their experience in the UK. Migrant community organizations in the UK and unions in origin countries can be key partners in these efforts.¹⁴⁹

V. What Can the United States Learn from the UK Experience?

A. Acknowledging the Differences

The UK’s experience is interesting and important in its own right. But does it really have much to teach those

who advocate for immigrant and worker rights in the United States? After all, A8 labor migration in the UK is starkly different in its history, geopolitical context, demographics, and legal structure than Mexican immigration to the United States.¹⁵⁰

To state some of the most striking contrasts, A8 migrants are technically not “migrants” at all, but European citizens exercising their right to free mobility. Reflecting this, although the WRS imposed registration requirements, it did not approach the level of immigration control that accompanies US/Mexico migration or entry to the EU for third-country nationals in search of work. Furthermore, people from A8 countries who move within the EU do so in the context of a longstanding and multifaceted regional agreement whose purpose is the political and economic integration of Europe. NAFTA is by no means a parallel accord. In addition, while “managing” free movement and intra-EU migration was not initially a central purpose of the EU project,¹⁵¹ the process of accession to the EU offers substantial support for economic development within soon-to-be admitted countries in a way that directly reduces migration pressures.¹⁵² The United States has no equivalent process or commitment with regard to Mexico.

Equally important is the fact that large scale US/Mexico migration has a long history, with resulting dense social networks, hometown associations, pathways between specific communities, and job referral chains. A8 migration to the UK is a much more recent phenomenon, and all the institutions of migration are less well developed.¹⁵³ As a result, a new US/Mexico program might play out quite differently than the A8 program has, particularly with regard to the greater options migrants have to find jobs outside of agencies. Finally, and not insignificantly with regard to its effect on domestic resistance to migration and on future job opportunities, Eastern and Central European migrants to the UK are white and predominately well-educated, as opposed to the US/Mexico flow of migrants of color with lower average education and skill levels than their US counterparts.

It must also be said that the presence of A8 nationals in the UK labor market has resolved neither the demand nor the supply side of the low-wage work question in Great Britain. Some of the lowest-wage sectors of the British economy—most notably agriculture—continue to experience shortages of workers,¹⁵⁴ which the government has sought to address by giving preference to A2 migrants for Seasonal Agricultural Worker visas.¹⁵⁵ There is evidence that A8s have become less attractive to employers as they have gained more rights and greater mobility.¹⁵⁶ Meanwhile, third country nationals continue to seek entrance to the UK labor market, whether as skilled migrants through the point-based system, asylum-seekers, or undocumented immigrants. Their needs are not addressed by intra-EU

mobility, and indeed their opportunities have arguably been constrained because of the inflow of A8 and A2 migrants to the UK.¹⁵⁷

So long as the differences are on the table at the outset, however, and so long as it is clear that the UK experience has not revealed the EU model to be a panacea whose lessons can solve the US’s own immigration dilemmas, I believe that what has happened in the UK over the past six years offers US immigrant and low-wage worker advocates insights worth considering.

B. Considering the Lessons

The takeaway from the UK A8 experience is a complex one. Many of the lessons are encouraging. In the UK overall, a substantial increase in the number of labor migrants appears to have had little by way of negative economic effects. For A8 migrants with high education levels and a good command of English, the opening of the UK labor market has offered great advantages. Even A8 migrants working in low-wage jobs are, overall, in a better position than most other low-wage labor migrants in the UK. Although for some A8s, mobility has been limited, overall the freedom to move appears to have played a role in reducing the negative impact of a large inflow of workers on those already laboring in the same labor market. In addition, even the most concerned students of the A8 experience acknowledge that the treatment of A8s, and the opportunities they have for upward mobility, are likely to improve over time,¹⁵⁸ as social networks evolve and migrants become increasingly familiar with the UK system. This process will likely be facilitated by the demographic characteristics of A8 migration, particularly its high education level and the fact that most A8 migrants are white, easing access to better work opportunities and incorporation into UK society for those who remain in the UK.¹⁵⁹

Yet the UK experience with A8 migration also stands as an important reminder of several concerns. Many of the problems that A8 workers continue to face are common to all who labor at the bottom of the UK labor market, migrants and residents alike. A genuine effort to address the vulnerability of these workers, their low pay, and the workplace violations they suffer, must target *all* workers in the sector, rather than just migrants. At the same time, the influx of legal A8 migrants to the UK has highlighted the additional obstacles that newcomers face in accessing their rights. The language barrier, lack of familiarity with UK laws, and xenophobia are frequently cited impediments.¹⁶⁰ Other important factors, I have argued, include the role of recruitment agencies, migrant perspectives on low-wage work, and, potentially, the requirements of the WRS.

For these reasons, even legal migrants—

particularly those who see their stay in the destination country as temporary—are likely to need significant support in order to benefit from the protections they are granted on paper. This support must be delivered in ways that reflect migrants’ interests and needs as much as those of destination country government agencies, unions, and NGOs. To provide it effectively may require the retooling of existing institutions or the creation of new ones, all the more so when the goal goes beyond the enforcement of baseline rights, to the building of solidarity between new arrivals and resident workers in order to improve overall working conditions.

Although both migrants and natives experience low paid, dangerous, and precarious work, their perspectives and their interests also differ in significant ways. In order to reach a point when migrants can stand together with resident workers on the issues that both groups share, they may need support to fill in language and cultural gaps, special attention to leadership development, the development of organizing campaigns that reflect the issues they care most about, and services and union structures that are adapted to the realities of a mobile workforce.¹⁶¹ Absent such initiatives, an “invitation” to join the existing destination country labor movement is unlikely to be met with widespread positive response.

Another key lesson of A8 labor migration is that governments must go beyond regulating the behavior of migrants and employers when conceiving of labor migration regimes. Labor recruiters are key players in such systems, and the UK experience illustrates that

even when migrants are technically free to move as they wish, employment agencies often reduce migrants’ actual mobility while locking them into poor working conditions. Ironically, the fact that most low-wage labor migration in the United States is undocumented has limited the role of such agencies, which prefer to work under a veneer of legality. Labor recruiters currently only have a significant presence in the U.S. in the quite limited context of H-2A farm worker visas and other temporary work programs. In these arenas, abuses perpetrated by recruiters in the US are quite similar to those documented in the UK.¹⁶² If the U.S. increases the legal opportunities for low-wage temporary labor migration, advocates should be prepared for the possibility of a dramatic increase in the role played by agencies.¹⁶³ Advocates will need to propose regulation of the recruitment industry concurrent with any expansion of temporary work visas. In this regard, the Gangmasters Licensing Authority in the UK, describe above, offers a potential model.

From the perspective of this political moment in time, there may seem to be little hope in the short term of the sort of immigration reforms that would make these insights relevant in the United States. But the pendulum swings rapidly these days, and never more so when it comes to the movement of people, goods, and information across borders. Advocates and policymakers in the United States may encounter an opening sooner than anticipated. In that context, the lessons of the UK’s recent experience with A8 migration following EU enlargement provides ample food for thought.

ENDNOTES

*Professor of Law, Fordham University School of Law. The author thanks Jacqueline Adorno, Jessica Jenkins, Carolyn Kim, Nicholas Rosado, Brittany Scott, and Andrew Wachtenheim for their excellent research assistance, and expresses her deep appreciation to Alejandra Ancheita, Bridget Anderson, Jane Holgate, Sonia McKay, Rachel Micah-Jones, Álvaro Oliveira, William Somerville, and Madeleine Sumption for very helpful comments on earlier drafts of this report. I am deeply grateful to the Ford Foundation for its primary research support for this project, to the Fordham Law School Dean's Office for additional support, and to the UC-Berkeley School of Law's Warren Institute for Law and Social Policy.

1. Jeffrey S. Passel & D'Vera Cohn, *Unauthorized Immigrant Population: National and State Trends, 2010*, PEW HISPANIC CENTER, 1 (Feb. 1, 2011), available at <http://pewhispanic.org/files/reports/133.pdf>. The Pew Research Center in 2011 reported that 8 million undocumented workers remained in the U.S. labor force in 2010, down from 8.4 million in 2007; the overall undocumented population in 2010 was roughly 11.2 million, down from an estimated 12 million in 2007. The reduction appears to be due to sharp decreases in new arrivals rather than a dramatic change in outflow. *Id.* at 2. These 8 million undocumented workers make up over 5% of the current US labor force. *Id.* at 1. Overall, foreign-born workers make up 15.5% of the U.S. workforce. Press Release, U.S. Bureau of Labor Statistics, Labor Force Characteristics of Foreign-Born Workers Summary (Mar. 19, 2010) available at <http://www.bls.gov/news.release/forbrn.nr0.htm>. 40 percent of these workers are from Mexico and Central America. *The Role of Immigrants in the U.S. Labor Market, 2010*, Council on Foreign Relations, CONGRESSIONAL BUDGET OFFICE 1 (July 2010), available at http://www.cbo.gov/ftpdocs/116xx/doc11691/07-23-Immigrants_in_Labor_Force.pdf.

For purposes of comparison, the UK has an estimated 500,000 undocumented residents (including non-workers as well as those active in the labor market). Ian Gordon, Kathleen Scanlon, Tony Travers and Christine Whitehead, *Impact on the London and UK economy of an earned regularisation of irregular migrants to the UK*, GREATER LONDON AUTHORITY 6 (2009), available at <http://www.lse.ac.uk/collections/LSELondon/pdf/irregular%20migrants%20full%20report.pdf>. A significant number of those migrants are not working. *Id.* at 70. Even assuming that all were active in the labor market, however, the undocumented population would only make up 1.6% of the UK labor force, while foreign-born workers as a whole make up 13% of the UK workforce, which stands at 31.25 million. A8 workers alone account for 21.8% of foreign workers in the UK. Christian Dustmann, Tommaso Frattini, & Caroline Halls, *Assessing the Fiscal Costs and Benefits of A8 Migration to the UK*, CENTER FOR RESEARCH AND ANALYSIS OF MIGRATION 5 (July 2009).

2. While applications for non-farm seasonal visas are down in the wake of the recession, the numbers of agricultural workers entering on temporary visas have risen substantially since 2007. U.S. Dep't of Homeland Sec., *Nonimmigrant admissions to the United States: 2009* 4 (Apr. 2010), available at http://www.dhs.gov/xlibrary/assets/statistics/publications/ni_fr_2009.pdf. Overall, the number of H visas for temporary foreign workers issued by the US government more than quadrupled between 1994 (98,000) and 2007 (424,000) and is dramatically higher than at the beginning of the decade. Philip Martin, *A Need for Migrant Labour? UK-US Comparisons*, in WHO NEEDS MIGRANT WORKERS? 295, 299 (Martin Ruhs & Bridget Anderson eds., 2010).

3. Both terms are worth defining explicitly. By "immigrant" or "migrant" (terms I use interchangeably in this paper) I mean non-citizens; my focus in this paper is on migrant workers who are relatively recent arrivals. I use "resident" to mean a worker already present in the labor market when the migrant arrives, including both the native-born and those foreign-born workers who have been in the destination country for some time and consider themselves to have set down roots there. In the context of discussions about job competition, I prefer "resident" to the more common term "native" because it encompasses longer-term immigrants who are, in fact, those most likely to suffer from the effects of an inflow of newcomers. See Marco Manacorda, Alan Manning & Jonathan Wadsworth, *The Impact of Immigration on the Structure of Male Wages: Theory and Evidence from Britain*, (Institute for the Study of Labor, Discussion Paper No. 2352 17-18, 27-28, Oct. 2006), available at <http://ftp.iza.org/dp2352.pdf> [hereinafter *Structure*

of Male Wages] ("Our conclusions suggest that the main impact of increased immigration in the UK is on the outcomes for immigrants who are already here.").

4. Treaty establishing the European Economic Community, Article 48, currently Article 45 of the Treaty on the Functioning of the European Union.

5. Press Release, Eurostat, EU 27 Population 501 Million at 1 January 2010 (July 27, 2010), available at http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-27072010-AP/EN/3-27072010-AP-EN.PDF.

6. 2010 Resident Population, U.S. CENSUS BUREAU, available at <http://www.census.gov>.

7. According to Eurostat (the statistical office of the EU), in 2006, just prior to accession in 2007, hourly labor costs in Romania were at a 1:10 ratio and in Bulgaria at a 1:16 ratio compared to those in the UK. Author's calculations based on Eurostat table, "Hourly Labour Costs," available at <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tps00173&plugin=1>. See also *Intra-EU Labour Migration – Flows and Policy Responses*, in EU LABOUR MIGRATION SINCE ENLARGEMENT 9-10 (Béla Galgóczi, Janine Leschke and Andrew Watt, eds., 2009).

The wage differential between the United States and Mexico is often estimated at 17%, or approximately 1:6. Jus Semper Global Alliance, *Mexico's Wage Gap Charts* 8 (Dec. 2008), available at <http://www.jussemp.org/Resources/Labour%20Resources/WGC/Resources/WagegapsMex2006.pdf>. It is important to note, however, that wage inequality within Mexico is considerably higher than in Eastern Europe, so that the discrepancy between the wages earned by the lowest-earning Mexicans who are most prone to migrate, and the wages they could earn in the United States, is likely to be greater than the average ratio indicates.

8. See note 4, *supra*. The "four freedoms" of the EU are the free movement of goods, capital, services, and people.

9. For a description of the elements of free movement of workers in the EU, see *Free Movement of Workers*, EUROFOUND, available at <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/freemovementofworkers.htm> (last visited Jan. 3, 2011). With regard to movement between member states generally, citizens of EU member states are permitted to enter any other member state without a visa and remain for up to six months. They can stay longer so long as they are employed or self-employed, a student, a family member of an EU national in one of the qualifying categories, or – if none of those things – are able to demonstrate that they do not need social benefits or health insurance. These rights are now regulated by Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, and by Regulation 1612/68 of 15 October 1968 on freedom of movement for workers within the Community, as later amended.

10. Kees Groenendijk, *Forty Years of Free Movement of Workers: Has It Been a Success and Why?*, in RETHINKING THE FREE MOVEMENT OF WORKERS: THE EUROPEAN CHALLENGES AHEAD 11-12 (Paul Minderhoud & Nikos Trimikliniots, eds., 2009).

11. *Id.* at 13.

12. Cyprus and Malta were admitted essentially without restrictions on the movement of their nationals.

13. Annexes V-XIV to the Accession Act of 2003, 2003 O.J. (L 236) 803-924. The seven years are divided into three periods. For the first two years after accession, states could decide individually whether and how to permit citizens of the newly-admitted states to access their labor markets. *Id.* Those measures could be extended for an additional three years on request. *Id.* A final two-year extension would be granted by the Commission "only if [the country] experiences serious disturbances in its labour market." *Id.*

14. Naomi Pollard et al., *Floodgates or turnstiles? Post-EU Enlargement migration flows to (and from) the UK*, INSTITUTE FOR PUBLIC POLICY RESEARCH 14 (Apr. 2008)

[hereinafter *Floodgates or turnstiles?*], available at <http://www.ippr.org.uk/publicationsandreports/publication.asp?id=603>.

15. Martin Ruhs and Philip Martin, *Numbers vs. Rights: Trade-Offs and Guest Worker Programs*, 42 INT'L MIGRATION REV. 249, 257 (2008). Sweden received far fewer A8 migrants than either of the other countries, from the migrant perspective most likely because of a combination of the language barrier and the relatively closed nature of the labor market, and from the employer perspective because collective bargaining agreements in migrant-heavy sectors required that migrants be paid the same wage as residents, thus diminishing any cost advantage to be had from hiring newcomers. *Id.*

16. European Commission, Employment and Social Affairs, "Enlargement – Transitional Provisions," <http://ec.europa.eu/social/main.jsp?catId=466&langId=en> (last visited Dec. 26, 2010); "Summary table of Member states policies" (as of May 2009) (PDF available for download on same page under "Related Documents"). The specifics of work permit systems vary from country to country, but may include a requirement that the worker have a job offer, work in a particular sector, or take a job in an area where there is an inadequate supply of native workers. *Id.*

17. The UK decided to restrict A2 labor market access when the A2 countries were admitted to the EU in 2007. A2 migrants are permitted to work in the UK if they qualify through the points-based immigration system; if they are self-employed; if they are admitted through temporary visa programs in agriculture or food processing; or if they are a family member of a work-authorized A2 national. Madeleine Sumption & Will Somerville, *The UK's new Europeans: Progress and challenges five years after accession*, EQUALITY AND HUMAN RIGHTS COMMISSION 10 n. 6 (Jan. 2010) [hereinafter *The UK's new Europeans*], available at http://www.equalityhumanrights.com/uploaded_files/new_europeans.pdf. The restrictions continue in effect in this fourth year post A2 accession. Eight other of the EU15 countries continue to restrict access in the second phase following admission. "Summary table of Member states policies" (as of May 2009) (PDF available for download on same page under "Related Documents").

18. Roger Blanpain, Greg J. Bamber, and Philippe Pochet, eds., REGULATING EMPLOYMENT RELATIONS, WORK AND LABOUR LAWS: INTERNATIONAL COMPARISONS BETWEEN KEY COUNTRIES, xxvi and *passim* (2010); TUC Commission on Vulnerable Employment, *Hard Work, Hidden Lives: The Short Report of the Commission on Vulnerable Employment* at 29 (May 2008) [hereinafter *Hard Work, Hidden Lives*]; *Turning the Tide: How to best protect workers employed by gangmasters, five years after Morecambe Bay*, Oxfam Briefing Paper 5 (July 31, 2009) [hereinafter *Turning the Tide*], available at http://www.oxfam.org.uk/resources/policy/trade/downloads/bp_ukpp_gla.pdf. In addition, although throughout continental Europe it is common for governments to extend the terms of collective bargaining agreements to other workers in the same industry, that practice is not followed in the UK or in the United States. Wiemer Salverda and Ken Mayhew, *Capitalist economies and wage inequality*, 25 OXFORD REV. ECON. POL'Y 126, 146 (2009).

19. Will Somerville, IMMIGRATION UNDER NEW LABOUR, 135-136 (2007).

20. *Floodgates or turnstiles?*, *supra* note 14, at 13; Somerville, *supra* note 19, at 135-136.

21. Bernard Ryan, *The Accession (Immigration and Worker Authorisation) Regulations 2006*, 37 INDUS. L. J. 75, 76 (2008) [hereinafter *The Accession Regulations*].

22. *The UK's new Europeans*, *supra* note 17, at 9.

23. *Id.* at 14-15.

24. *Id.* at 18-20.

25. *Id.* at 9.

26. *Id.* at 16-17.

27. Joanne Cook, Peter Dwyer & Louise Waite, *The Experiences of Accession 8 Migrants in England: Motivations, Work, and Agency*, INTERNATIONAL MIGRATION, 12-13 (2010). There are critical differences in the work lives of professionally-trained English-speaking A8 migrants, who are often able to find decent jobs consistent with their skills (or to find another workplace if they are unhappy where they are), and the more limited mobility and worse working conditions experienced by those who speak little English, particularly when they rely on agencies for placement. *Id.* at 11-15.

28. Audrey Gillian & Andrew Sparrow, *Strikes Spread across Britain as Oil Refinery Protest Escalates*, THE GUARDIAN (Jan. 30, 2009) available at <http://www.guardian.co.uk/business/2009/jan/30/oil-refinery-dispute>. Although these strikes were often reported as protesting migrants, in fact the foreign workers in question were contract laborers who had been "posted" in the UK by Italian and Portuguese companies. Andrea Broughton, *Energy Sector Hit by Strikes over Use of Foreign Workers*, EUROPEAN INDUSTRIAL RELATIONS OBSERVATORY ON-LINE, available at <http://www.eurofound.europa.eu/eiro/2009/02/articles/uk0902019i.htm> (last updated Mar. 24, 2009).

29. Christian Dustmann, Tommaso Frattini & Ian Preston, *The Effect of Immigration along the Distribution of Wages*, Center for Research and Analysis of Migration 32 (Mar. 2008). See Sara Lemos & Jonathan Portes, *The impact of migration from the new European Union Member states on native workers* (UK Dep't for Work and Pensions, Working Paper No. 52, June 2008), available at <http://research.dwp.gov.uk/asd/asd5/wp52.pdf> (reviewing data from 2004-2007); Nicola Gilpin et al., *The impact of free movement of workers from Central and Eastern Europe on the UK labour market*, (UK Dep't for Work and Pensions, Working Paper No. 29, Feb. 2006), available at <http://campaigns.dwp.gov.uk/asd/asd5/WP29.pdf> (reviewing data from 2004-2005); *Floodgates or turnstiles?*, *supra* note 14. For a recent overview and summary of the literature, see *The UK's new Europeans*, *supra* note 17, at 37-39.

30. Howard Reed & Maria Latorre, *The Economic Impacts of Migration on the UK Labour Market*, INSTITUTE FOR PUBLIC POLICY RESEARCH 6 (Feb. 2009).

31. While the WRS might appear to be a natural measurement, estimates are that as many as 33% of A8s have not registered. For a summary of the challenges in collecting accurate data on A8 migration to the UK, see *Floodgates or turnstiles?*, *supra* note 14, at 8-10; Hiranthi Jayaweera & Bridget Anderson, *Migrant Workers and Vulnerable Employment: A Review of Existing Data*, COMPAS 6 - 9 (2008); Alessio Cangiano, *UK Data Sources on International Migration and the Migrant Population: A Review and Appraisal*, COMPAS 2-12 (Nov. 2010).

32. Indeed, Reed and Latorre continue, "It is, however, important to note that there may be more significant effects in some local areas, or for some groups of workers, particularly in the short term." Reed & Latorre, *supra* note 30, at 6. For recent overviews and a balanced assessment, see *The UK's new Europeans*, *supra* note 17, at 7; Will Somerville & Madeleine Sumption, *Immigration and the labour market: Theory, evidence and policy* 18 (Mar. 2009) [hereinafter *Immigration and the labour market*].

One group of scholars has suggested that wage rates in London over the past 17 years reflects the negative impact of high levels of immigration, although the evidence they highlight shows correlation between the two phenomena without necessarily implying causation. Wills et al., *Religion at work: the role of faith-based organizations in the London living wage campaign*, CAMBRIDGE J. OF REGIONS, ECON. AND SOC'Y 1, 3 (2009).

33. Dustmann, Frattini & Preston, *The Effect of Immigration along the Distribution of Wages*, Center for Research and Analysis of Migration 32 (Mar. 2008) ("We find that immigration leads to a decrease in wages at those parts of the distribution where the relative density of immigrants is higher than the relative density of natives."). See *Immigration and the labour market*, *supra* note 32, at 3, 15; *Structure of Male Wages*, *supra* note 3, at 17, 27-28.

34. *Immigration and the labour market*, *supra* note 32, at 3; *Structure of Male Wages*, *supra* note 3, at 17-18, 27-28.

35. *Immigration and the labour market*, *supra* note 32, at 16; cf. David G. Blanchflower & Chris Shadforth, *Fear, Unemployment and Migration*, 119 *The Econ. J.* 136, 176-79 (Feb. 2009) [hereinafter Blanchflower & Shadforth] (“There is tentative evidence...to suggest that A8 workers have lowered wage inflation among the least skilled,” but concluding (at 177), “It seems that the increase in unemployment in the UK has had relatively little to do with the influx of temporary workers from Eastern Europe.” At 179, displacement is not a real concern).

36. *Immigration and the labour market*, *supra* note 32, at 17; Sally Dench et al., *Employers’ use of migrant labour*, *Main Report*, Home Office vi (Apr. 2006), available at <http://www.northamptonshireobservatory.org.uk/docs/docrdsolr0406060818113351.pdf>; Robert MacKenzie & Chris Forde, *The rhetoric of the ‘good worker’ versus the realities of employers’ use and the experiences of migrant workers*, 23 *Work, Employment & Society* 142 (2009) [hereinafter MacKenzie & Forde], available at <http://wes.sagepub.com/cgi/content/abstract/23/1/142>; Bridget Anderson & Martin Ruhs, *Migrant Workers: Who Needs Them?*, in *Who Needs Migrant Workers? Labour Shortages, Immigration, and Public Policy* 17–23 [hereinafter *Migrant Workers: Who Needs Them?*]. For discussion of the same phenomenon in the United States, see Roger Waldinger & Michael I. Lichter, *How the Other Half Works: Immigration and the Social Organization Of Labor* at 157-59, 176-79 (2003); Leticia M. Saucedo, *The Employer Preference for the Subservient Worker and the Making of the Brown Collar Workplace*, 67 *OHIO ST. L.J.* 961 (2006). Indeed, as this process continues, A8 migrants may ultimately be at a disadvantage, precisely because they do have rights and mobility. Some employers will prefer a more vulnerable, “willing,” or captive workforce. For a case study of an employer making such a calculation, see MacKenzie & Forde, *supra* note 36, at 147-151.

37. *Immigration and the labour market*, *supra* note 32, at 18.

38. *Id.*

39. *The UK’s new Europeans*, *supra* note 17, at 7.

40. *Floodgates or turnstiles?*, *supra* note 14, at 54 (reviewing and summarizing the studies to date).

41. Blanchflower & Shadforth, *supra* note 35, at 175 (“The [UK] workforce appears more flexible and mobile than it was before the entry of workers from the A10. ... This has the effect of improving labour market efficiency and hence leads to a more efficient allocation of national resources.”).

42. The United States has been experiencing the holding pen phenomenon for a number of years. Douglas Massey, *The Wall that Keeps Illegal Workers In*, *N.Y. TIMES*, July 4, 2006, at A23. Although the recession at the end of the 2000s resulted in sharply reduced inflows of Mexican migrants, there was little if any increase in the numbers of departures by those already present. Jeffrey S. Passel, D’Vera Cohn, *Mexican Immigrants: How Many Come? How Many Leave?*, PEW HISPANIC CENTER (July 22, 2009), available at <http://pewhispanic.org/files/reports/112.pdf>.

43. *Floodgates or turnstiles?*, *supra* note 14, at 28-29 (“As a group they have a high degree of mobility, moving to where work is available”); Blanchflower & Shadforth, *supra* note 35, at 176.

44. Dep’t for Work and Pensions, HM Revenue and Customs, & Communities and Local Government, UK Border Agency, *Accession Monitoring Report, May 2004 – June 2008* 1 (2008) (“A8 workers are continuing to go where the work is, helping to fill the gaps in our labour market, particularly in administration, business and management, hospitality and catering, agriculture, manufacturing and food, fish and meat processing.”), available at <http://www.rpo.gov.pl/pliki/12230402940.pdf>.

45. Mike Coombes, Tony Champion, & Simon Raybould, *Did the Early A8 Migrants to England Go to Areas of Labour Shortage?*, 22 *LOCAL ECONOMY* 335 (Nov. 2007).

46. *Id.* at 346.

47. *The UK’s new Europeans*, *supra* note 17, at 18-20. Particularly interesting in the last regard are stories of Polish doctors flying in to work the lucrative but (to UK doctors) undesirable weekend shift in UK hospitals, and then returning home to their own practices during the week. Rachel Wright, *Life of the flying Polish doctors*, *BBC Newsnight*, Jan. 15, 2008, available at <http://news.bbc.co.uk/2/hi/programmes/newsnight/7187094.stm>.

48. Madeleine Sumption, *Foreign Workers and Immigrant Integration: Emerging from Recession in the United Kingdom*, in Demetrios G. Papademetriou et al., *Migration and Immigrants Two Years after the Financial Collapse: Where Do We Stand?*, *BBC WORLD SERVICE/MPI* 47, 50, 59 (Oct. 2010) [hereinafter *Emerging from Recession in the United Kingdom*] (referring to the “dramatic collapse of immigration flows from Eastern Europe”).

This view is not universally held. Polish scholars and government officials have noted that they have seen little evidence of a dramatic increase in returnees. Krystina Iglicka, *Poles are not trying to escape UK*, *THE GUARDIAN*, Jan. 23, 2010, available at <http://www.guardian.co.uk/commentisfree/2010/jan/23/poland-uk-recession>; Krystina Iglicka & Magdalena Ziolk-Skrzypczak, *EU Membership Highlights Poland’s Migration Challenges* 8 (Sept. 2010) (noting drop in UK Polish population in 2008 and 2009, but stating (at 8) that “Although the global recession has influenced Polish emigration flows, it is difficult to estimate its exact impact on Poles’ decisions to come home.”), available at <http://www.migrationinformation.org/Profiles/display.cfm?ID=800>. Some local areas also report little drop in numbers of A8 residents post-recession. See, e.g., Catherine Glossop & Faiza Shaheen, *Accession to Recession: A8 Immigration in Bristol & Hull*, *CENTRE FOR CITIES* 1 (Mar. 2009) (“There has been no exodus of migrants from either city in response to the recession, so far.”), available at <http://www.centreforcities.org/assets/files/Accession%20to%20Recession%20.pdf>.

49. *Emerging from Recession in the United Kingdom*, *supra* note 48, at 47, 51 (asserting that A8 departures from the UK increased 2007-2009). But see *The UK’s new Europeans*, *supra* note 17, at 18-20 (other estimations that A8 migrants had a 50% rate of return in both 2007 and 2009); *Floodgates or turnstiles?*, *supra* note 14, at 28-29.

50. *Emerging from Recession in the United Kingdom*, *supra* note 48, at 47, 50-51.

51. Will Somerville & Madeleine Sumption, *Immigration in the United Kingdom: The recession and beyond*, *EQUALITY AND HUMAN RIGHTS COMMISSION* 26 (Mar. 2009).

52. Torben Krings et al., *Migration and Recession: Polish Migrants in Post-Celtic Tiger Ireland*, 14 *Sociological Research Online* (May 30, 2009); Regarding families, see *Emerging from Recession in the United Kingdom*, *supra* note 48, at 64. Other factors that contribute to reluctance to return home in the face of a downturn include migrants’ level of debt, commitments made to employment agencies, and the need for remittances back home. Ali Rogers, Bridget Anderson & Nick Clark, *Recession, Vulnerable Workers and Immigration: Background report*, *COMPAS* 36 (2009) [hereinafter *Recession, Vulnerable Workers and Immigration*].

53. For an overview of the workplace rights of A8 workers and all UK employees, see TUC, *Working in the UK: Your Rights* 7-11, available at <http://www.tuc.org.uk/tuc/workingintheuk.pdf> (a leaflet prepared for A8 migrants). Being assigned “equal rights” with resident workers may nonetheless disadvantage temporary labor migrants. For example, most employees in the UK do not receive the right to the right to parental leave or to bring a claim for unfair dismissal until they have been working at the same job continuously for 12 months. *Id.* at 11. As Bridget Anderson notes, where workplace rights must be earned through time on the job, the promotion of mobility in the A8 labor market “can be a way of denying access to rights through the mechanism of time.” Email to author 11/6/2010 7:43 am.

54. Bridget Anderson, Martin Ruhs, Ben Rogaly, & Sarah Spencer, *Fair Enough? Central and East European migrants in low-wage employment in the UK*, *COMPAS* 57 (May 2006) [hereinafter *Fair Enough?*] available at http://www.compas.ox.ac.uk/fileadmin/files/pdfs/Non_WP_pdfs/Reports_and_Other_Publications/Changing_Status_Changing_Lives/Fair%20enough%20paper%20-%201%20May%202006.pdf; for information regarding wages, see *id.* at 64; for information regarding working conditions, see *id.* at 58.

55. Samantha Currie, "Free" Movers? The post-accession experience of accession-8 migrant workers in the United Kingdom, 31 E. L. REV. 207, 212 (Apr. 2006) [hereinafter "Free" Movers?].
56. Samantha Currie, *Deskilled and Devalued: The Labour Market Experience of Polish Migrants in the UK Following EU Enlargement*, 23 INT'L J. COMP. LABOUR L. AND INDUS. REL. 83, 87 (Spring 2007) [hereinafter *Deskilled and Devalued*].
57. UK Border Agency, *What Is the Points Based System?*, available at <http://www.ukvisas.gov.uk/en/howtoapply/infs/inf21pbsgeneralimmigrant#22863553>; UK Border Agency, *Working in the UK*, available at <http://www.bia.homeoffice.gov.uk/workingintheuk>; Dominic Casciani, *Migration: How Points Will Work*, BBC NEWS (Feb. 29, 2008), available at http://news.bbc.co.uk/2/hi/uk_news/politics/4244707.stm.
58. Bridget Anderson, *Migration, immigration controls and the fashioning of precarious workers*, Work, employment and society 1, 24 (2010) [hereinafter *Migration, immigration controls and the fashioning of precarious workers*].
59. EU Posted Workers Directive (European Parliament and Council Directive 96/71/EC, 1997 O.J. (L 18) 1); EU Posted Workers Directive art. 3(1).
60. EU Posted Workers Directive art. 3(1).
61. Case C-341/05, *Laval un Partneri Ltd. v. Svenska Byggnadsarbetareförbundet*, 2007 E.C.R. number 53 E.C.R. I-11767; Case C-438/05, *Int'l Transp. Workers. Fed.n v. Viking Line ABP*, 2007 E.C.R. I-10779; Case C-346/06 *Dirk Ruffert v. Land Niedersachsen* 2008 E.C.R. I-885; Case C-319/06 *EC Comm.n v. Grand Duchy of Luxembourg* 2008 E.C.R. I-4323.
62. UK Border Agency, *Temporary Workers*, available at <http://www.ukba.homeoffice.gov.uk/workingintheuk/tier5>.
63. Ian Gordon, Kathleen Scanlon, Tony Travers and Christine Whitehead, *Impact on the London and UK economy of an earned regularisation of irregular migrants to the UK*, GREATER LONDON AUTHORITY 6 (May 2009), available at <http://www.lse.ac.uk/collections/LSELondon/pdf/irregular%20migrants%20full%20report.pdf>.
64. *Id.* at 36-37; UK Border Agency, *While You Wait for Our Decision*, available at <http://www.ukba.homeoffice.gov.uk/asylum/process/awaitingdecision>.
65. Bernard Ryan, *The Evolving Legal Regime on Unauthorized Work by Migrants in Britain*, 27 COMP. LABOR LAW & POLICY J. 27, 44 (2005-2006). One exception is claims for discrimination, which are seen as rooted in tort rather than contract law. *Id.*
66. Interviews with Donna Reeve, Organizing Dep. Campaign Support and Secretary, UNITE, London (Feb. 16, 2010) [hereinafter Reeve interview]; Greg Thomson, National Development Manager, UNISON (Feb. 15, 2010); Adam Rogalewski, National Development Officer, UNISON (Feb. 15, 2010); Susan Cueva, National Development Officer, UNISON (Feb. 15, 2010) [hereinafter UNISON interviews]; Telephone interview with Sean Bamford, Policy Officer, European Union and International Relations Dep't, TUC (Feb. 11, 2010) [hereinafter Bamford interview]; Interview with Don Flynn, Director, Migrants Rights Network (Feb. 15, 2010) [hereinafter Flynn interview]. See Bridget Anderson, *Battles in Time: the Relation between Global and Labour Mobilities*, COMPAS 17-18 (2007); Samantha Currie, *Regular Migrants in the Irregular Workplace: Central and Eastern European Women in the UK after EU Enlargement*, in *Gender and Migration in 21st Century Europe* 107-108, 123 (Helen Stalford, Samantha Currie, & Samantha Velluti, eds. 2009) [hereinafter *Regular Migrants in the Irregular Workplace*]; Alan C. Neal, *Migrant workers and the United Kingdom Labor Market: Some Trends and Implications of Twenty-First Century International Labor Migration Flows*, 31 Comp. Lab. L. & Pol'y J. 91, 114-18 (2009); *The UK's new Europeans*, *supra* note 17, at 28-29 (on exploitation); Bridget Anderson, Nick Clark & Violetta Parutis, *New EU Members? Migrant Workers' Challenges and Opportunities to UK Trade Unions: a Polish and Lithuanian case study*, TUC 2-3 (2007) [hereinafter *Migrant Workers' Challenges*]; Jane Hardy & Nick Clark, *European Union Enlargement, Workers and Migration: Implications for Trade Unions in the United Kingdom and Poland*, in *Trade Union Responses to Globalization* 125, 130-31 (Verena Schmidt ed., 2007); Eugenia Markova & Richard Black, *The Experiences of 'new' Eastern European immigrants in the UK labour market*, 16 Pol'y Press 19, 28 (2008) [hereinafter *The Experiences of 'new' Eastern European Migrants*].
67. Malcolm Sargeant & Eric Tucker, *Layers of Vulnerability in Occupational Health and Safety for Migrant Workers: Case Studies from Canada and the United Kingdom*, 7 POL'Y & PRAC. IN OCCUPATIONAL HEALTH & SAFETY, No. 2, 13-16 (2010).
68. *Deskilled and Devalued*, *supra* note 56, at 83; Stephen Drinkwater, John Eade, & Michal Garapich, *Poles Apart? EU Enlargement and the Labour Market Outcomes of Immigrants in the UK*, Discussion Paper No. 2410, Institute for the Study of Labor (Oct. 2006) [hereinafter *Poles Apart*]; *Floodgates or turnstiles?*, *supra* note 14, at 37.
69. UNISON interviews, *supra* note 66; Cook, Dwyer & Waite, *supra* note 27, at 11-15.
70. Ian Fitzgerald & Jane Hardy, "Thinking Outside the Box"? Trade Union Organizing Strategies and Polish Migrant Workers in the United Kingdom, 48 British J. Ind. Rel. 131, 135 (Mar. 2010) [hereinafter *Thinking Outside the Box*]; *Hard Work, Hidden Lives*, *supra* note 18; Flynn interview, *supra* note 66; Reeve interview, *supra* note 66; *Migrant Workers: Who Needs Them?*, *supra* note 36, at Ch. 1.
71. Anna Pollert, *Injustice at Work: How Britain's Low-Paid Non-Unionised Employees Experience Workplace Problems*, 13(3) J. Workplace Rts. 223, 225 (2008) [hereinafter *Injustice at Work*]; Jane Holgate, Janroj Keles, Lena Kumarappan, & Anna Pollert, *Help and Representation for Problems at Work: What has happened to support networks and advice centres?*, Working Lives Research Institute (May 2010) [hereinafter *Help and Representation for Problems at Work*]. *Hard Work, Hidden Lives*, *supra* note 18, at 40. Unions are a key source of representation but ASs are particularly likely to work in sectors with low rates of union representation. *Migrant Workers' Challenges*, *supra* note 66, at 3; *The Experiences of 'new' Eastern European Migrants*, *supra* note 66, at 29.
72. *The UK's new Europeans*, *supra* note 17, at 19.
73. *Injustice at Work*, *supra* note 71, at 227.
74. Trades Union Congress, *TUC calls for Government overhaul of minimum wage enforcement, and crackdown on employment agencies*, Aug. 8, 2007, available at http://www.tuc.org.uk/em_research/tuc-13595-f0.cfm. See *National Minimum Wage: Low Pay Commission Reports 2006*, available at http://www.lowpay.gov.uk/lowpay/report/pdf/2006_Min_Wage.pdf (last visited Jan. 4, 2011); *National Minimum Wage: Low Pay Commission Reports 2007*, available at http://www.lowpay.gov.uk/lowpay/report/pdf/6828-DTi-Low_Pay_Complete.pdf (last visited Jan. 4, 2011); *National Minimum Wage: Low Pay Commission Reports 2008*, available at http://www.lowpay.gov.uk/lowpay/report/pdf/2008_min_wage.pdf (last visited Jan. 4, 2011). Some improvement has been noted lately, "[w]e acknowledge that some progress has been made in strengthening the enforcement regime over the last 10 years, although this progress needs to be maintained and bolstered in the coming years." *National Minimum Wage: Low Pay Commission Reports 2010*, at 165, available at http://www.lowpay.gov.uk/lowpay/report/pdf/LPC_Report_2010.PDF.
75. *Hard Work, Hidden Lives*, *supra* note 18, at 39; *Turning the Tide*, *supra* note 18 at 5-6.
76. *Hard Work, Hidden Lives*, *supra* note 18, at 39; UK Dep't for Business Enterprise and Regulatory Reform, *Vulnerable Worker Enforcement Forum—Final Report and Government Conclusions* 14-15 (Aug. 2008), available at <http://www.bis.gov.uk/files/file47317.pdf>; *Turning the Tide*, *supra* note 18, at 6. A8 migrants may share these concerns if they are not registered with the WRS.
77. Many UK workers are also unaware of their rights. See *Injustice at Work*, *supra* note 71, at 225; *Help and Representation for Problems at Work*, *supra* note 71.
78. For an insightful study of the impact of agency employment in a particular

industry, see Equality and Human Rights Commission, *Inquiry into recruitment and employment in the meat and poultry processing sector* (Mar. 2010), available at http://www.equalityhumanrights.com/uploaded_files/Inquiries/meat_inquiry_report.pdf [hereinafter *recruitment and employment in the meat and poultry processing sector*].

79. Sonia McKay & Eugenia Markova, *The operation and management of agency workers in conditions of vulnerability*, 41 *INDUSTRIAL RELATIONS JOURNAL* 446, 447 (2010).

80. *Recession, Vulnerable Workers and Immigration*, *supra* note 52, at 33.

81. Alison Stenning & Stuart Dawley, *Poles to Newcastle: Grounding New Migrant Flows in Peripheral Regions*, 16(3) *European Urban and Regional Studies* 273, 288 (2009) [hereinafter *Poles to Newcastle*]; “Free” Movers?, *supra* note 55, at 217; Samantha Currie, *Migration, Work and Citizenship* 48-54 (Satvinder Singh Juss ed., 2008); *Migration, immigration controls and the fashioning of precarious workers*, *supra* note 58, at 5.

82. D. Blanchflower & H. Lawton, *The Impact of the Recent Expansion of the EU on the UK Labour Market*, Discussion Paper 3695, 5, Institute for the Study of Labor (Sept. 2008) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1267836. See also *Migration, immigration controls and the fashioning of precarious workers*, *supra* note 58, at 5; McKay & Markova, *supra* note 79, at 448; *recruitment and employment in the meat and poultry processing sector*, *supra* note 78, at 7.

83. *The UK’s new Europeans*, *supra* note 17, at 18 (citing Fitzgerald, *Working in the UK: Polish Migrant Worker Routes into Employment in the North East and North West Construction and Food Processing Sectors*, 2007); Ben Rogaly, *Intensification of Workplace Regimes in British Horticulture: The Role of Migrant Workers*, 14 *Population, Space, and Place* 497, 502-04 (2008) [hereinafter *Intensification of Workplace Regimes in British Horticulture*].

84. McKay & Markova, *supra* note 79, at 458; *The UK’s new Europeans*, *supra* note 17, at 19. See Madeleine Sumption, *Social Networks and Polish Immigration to the UK*, Institute for Public Policy Research (May 2009); Louise Ryan, Rosemary Sales & Mary Tilki, *Recent Polish Migrants in London: Accessing and Participating in Social Networks across Borders*, in *Polish Migration to the UK in the ‘New’ European Union* 149 (Kathy Burrell ed., 2009).

85. McKay & Markova, *supra* note 79, at 451-55.

86. Dr. Sonia McKay & Dr. Eugenia Markova, *Understanding the Operation and Management of Employment Agencies in the UK Labour Market*, Working Lives Research Institute 7 (July 2008); *recruitment and employment in the meat and poultry processing sector*, *supra* note 78, at 10-15, 21, 30.

87. Flynn interview, *supra* note 66.

88. *Poles to Newcastle*, *supra* note 81, at 286-87.

89. *recruitment and employment in the meat and poultry processing sector*, *supra* note 78, at 14-16.

90. Coombes, Champion, & Raybould, *supra* note 45, at 337, n. 1; *The UK’s new Europeans*, *supra* note 17, at 18; Dench et al., *Employers’ use of migrant labour: Main report*, Home Office 44-45 (Apr. 2006), available at <http://rds.homeoffice.gov.uk/rds/pdfs06/rdsolr0406.pdf>.

91. *The UK’s new Europeans*, *supra* note 17, at 18 (citing Chappel et al., *Migration and Rural Economies: Assessing and Addressing Risks* (2009)).

92. “Free” Movers?, *supra* note 55, at 217; *Intensification of Workplace Regimes in British Horticulture*, *supra* note 83, at 500.

93. *Intensification of Workplace Regimes in British Horticulture*, *supra* note 83, at 502.

94. Bridget Anderson & Ben Rogaly, *Forced Labour and Migration to the UK*, *COMPAS* 7 (Feb. 2005), available at http://www.ituc-csi.org/IMG/pdf/Forced_

[labour_in_UK_12-2009.pdf](http://www.ituc-csi.org/IMG/pdf/Forced_labour_in_UK_12-2009.pdf).

95. *recruitment and employment in the meat and poultry processing sector*, *supra* note 78, at 20; see also “Free” Movers?, *supra* note 55, at 217.

96. See, e.g., Cook, Dwyer & Waite, *supra* note 27, at 1; *The UK’s new Europeans*, *supra* note 17.

97. *The UK’s new Europeans*, *supra* note 17, at 29.

98. *Migration, immigration controls and the fashioning of precarious workers*, *supra* note 58, at 1, 14; Jennifer Gordon & Robin Lenhardt, *Conflict and Solidarity between African American and Latino Immigrant Workers*, UC-Berkeley Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity (Nov. 2007); *Deskilled and Devalued*, *supra* note 56, at 114-15.

99. *Injustice at Work*, *supra* note 71, at 225; *Help and Representation for Problems at Work*, *supra* note 71; *Hard Work, Hidden Lives*, *supra* note 18, at 40. Unions are a key source of representation but A8s are particularly likely to work in sectors with low rates of union representation. *Migrant Workers’ Challenges*, *supra* note 66, at 3; *The Experiences of ‘new’ Eastern European Migrants*, *supra* note 66, at 29.

100. *Migrant Workers’ Challenges*, *supra* note 66, at 3; *The Experiences of ‘new’ Eastern European Migrants*, *supra* note 66, at 29.

101. Some of the most effective agencies, notably the Gangmaster Licensing Authority [hereinafter GLA], cooperate with the UK Border Agency to enforce employer sanctions. *Turning the Tide*, *supra* note 18, at 16-17. For a discussion of the situation of “semi-legality” created by the Workers Registration Scheme, and the resulting concerns about immigration consequences, see Section 3.c, below.

102. Flynn interview, *supra* note 66.

103. *Deskilled and Devalued*, *supra* note 56, at 89.

104. *Id.* at 94.

105. The only substantial group of non-white migrants among the A8 are the Roma. Cook, Dwyer & Waite, *supra* note 27, at 17-18. On the other hand, while ethnic groups like the Poles may perceive themselves as “white,” in the UK they fall farther down the “hierarchy of whiteness” and may be denied the privileges associated with white skin. Linda McDowell, *Old and New European Economic Migrants: Whiteness and Managed Migration Policies*, 35 *J. Ethnic and Migration Stud.* 19, 28-29 (2009).

106. *Deskilled and Devalued*, *supra* note 56, at 94-99.

107. On the rules regarding EU-wide recognition of credentials, and their failings in practice, see Currie, *Deskilled and Devalued*, *supra* note 56, at 94-96.

108. “Free” Movers?, *supra* note 55, at 212-15; *Deskilled and Devalued*, *supra* note 56, at 92-94. Scholars have further argued that WRS rules violate EU law about equal treatment. *The Accession Regulations*, *supra* note 21, at 87; “Free” Movers?, *supra* note 55, at 214.

109. UK Border Agency, *Workers Registration Scheme*, <http://www.ukba.homeoffice.gov.uk/workingintheuk/eea/wrs/workers> (last visited 2010); *The Accession Regulations*, *supra* note 21, at 79-81.

110. “Free” Movers?, *supra* note 55, at 212-15; *Deskilled and Devalued*, *supra* note 56, at 92-94; *Fair Enough?*, *supra* note 54, at 102-03.

111. *Regular Migrants in the Irregular Workplace*, *supra* note 66, at 107, 113; *Deskilled and Devalued*, *supra* note 56, at 92-93.

112. Re-registration requires the co-operation of the new employer. “Free” Movers?, *supra* note 55, at 215.

113. *Fair Enough?*, *supra* note 54, at 98-102 (listing reasons why many do not register).

114. *Floodgates or turnstiles?*, *supra* note 14, at 18.

115. "Free" Movers?, *supra* note 55, at 213-14. Deportation of EU nationals is barred by EU free movement rules. WRS requirements are currently being challenged before the European Commission on the grounds that they discriminate against EU nationals; in any case they are scheduled to lapse on April 30, 2011. Housing Advisors, *Advising accession state nationals*, http://www.housing-rights.info/03_7_A8_nationals.html (last visited Dec. 27, 2010).

116. Martin Ruhs & Bridget Anderson, *Semi-Compliance and Illegality in Migrant Labor Markets*, 16 *Population, Place and Space* 3, at 204-05 (2009); see also Migration, Work and Citizenship, *supra* n. 81, at 40-41, 47; *The Accession Regulations*, *supra* note 21, at 87.

117. Alison Stenning et. al., *Assessing the Local and Regional Impacts of International Migration*, CENTRE FOR URBAN AND REGIONAL DEVELOPMENT STUDIES 60 (June 2006), available at <http://www.ncl.ac.uk/curds/publications/pdf/A8Final.pdf>.

118. *Migration, immigration controls and the fashioning of precarious workers*, *supra* note 58, at 9-10.

119. *The UK's new Europeans*, *supra* note 17, at 10.

120. For a description of some of these innovations, see Jennifer Gordon, *Towards Transnational Labor Citizenship: Restructuring Labor Migration to Reinforce Workers Rights*, UC-Berkeley Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity 25-26 (Jan. 2009) available at http://www.law.berkeley.edu/files/Gordon_Transnatl_Labor_Final.pdf. Manitoba's "Worker Recruitment and Protection Act" provides a model of a destination country licensing scheme similar in some ways to the GLA. Judy Fudge & Fiona MacPhail, *The Temporary Foreign Worker Program in Canada: Low-Skilled Workers as an Extreme Form of Flexible Labor*, 31 *Comp. Lab. L. & Pol'y J.* 5, 34-36 (Fall 2009).

121. Gordon, *supra* note 120.

122. The GLA proposal received considerable support from employer and recruitment agency associations, which wanted the government to take the responsibility of dealing with bad apples and the resulting negative publicity. Interview with Nick Clark, Employment Relations Senior Research Fellow, WORKING LIVES RESEARCH INSTITUTE (Feb. 17, 2010) [hereinafter Nick Clark Interview]. A new employer entity, the Association of Labour Providers, was formed to represent the interests of the recruitment industry on the GLA board. Other seats on the GLA board are reserved for retail, agricultural, and food and drink industry representatives; representatives of unions and a legal services entity, and representatives of government bodies charged with minimum wage, tax, immigration, health and safety, and other worksite enforcement. Nick Clark interview.

123. When asked about this concern, GLA Chair Paul Whitehouse responded that in his view the numbers of undocumented immigrants harmed by the fact that the GLA collaborates with UK Border Agency in enforcement actions was relatively few; meanwhile many legal migrants are helped by GLA actions. Interview with Paul Whitehouse, Chairman, GLA (Feb. 16, 2010).

124. *Turning the Tide*, *supra* note 18, at 11.

125. Dr. Alex Balch et al., Annual Review 2008, Gangmasters Licencing Authority 7, 19 (Feb. 2009) [hereinafter Annual Review 2008], available at http://www.gla.gov.uk/embedded_object.asp?id=1013506; *Hard Work, Hidden Lives*, *supra* note 18, at 43; Better Regulation Executive and National Audit Office, *A Hampton Implementation Review Report*, Gangmasters Licencing Authority 4 (Sept. 2009); Michael Wynn, *Regulating Rogues? Employment Agency Enforcement and Sections 15-18 of the Employment Act 2008*, 38 *Indus. L. J.* 64, 70-71 (Mar. 2009); Dr. Mick Wilkinson, *New Labour, the Gangmasters Licensing Authority and the woefully inadequate protection of migrant workers in the UK*, 10 (2010) unpublished paper

available at <http://www.social-policy.org.uk/lincoln/Wilkinson.pdf>.

126. See, e.g., Annual Review 2008, *supra* note 125, at 22; *recruitment and employment in the meat and poultry processing sector*, *supra* note 78, at 31. The GLA staff has more than doubled since the GLA began its work, to a level of 85 in 2010. Interview with Paul Whitehouse, Chairman, GLA (Feb. 16, 2010).

127. *Turning the Tide*, *supra* note 18, at 11.

128. *Id.* at 9 (1,230 gangmasters licensed by the GLA as of June 2009).

129. *Id.* at 11.

130. *Annual Report and Accounts, 1 April 2009 to 31 March 2010*, Gangmasters Licensing Authority 5 (2010), available at <http://www.official-documents.gov.uk/document/hc1011/hc02/0217/0217.pdf>; described in greater depth in *recruitment and employment in the meat and poultry processing sector*, *supra* note 78, at 31. The Protocol itself is available at http://www.gla.gov.uk/embedded_object.asp?id=1013661.

131. *Supermarkets and Suppliers' Protocol with the Gangmasters Licensing Authority*, GANGMASTERS LICENSING AUTHORITY 2-5 (2010), http://www.gla.gov.uk/embedded_object.asp?id=1013661.

132. See *Turning the Tide*, *supra* note 18, at 14-18; Annual Review 2008, *supra* note 125, at 22; Nick Clark Interview, *supra* note 122. There are also anecdotal reports of businesses found to have violated the GLA rules that close down and open under a new name to avoid detection. There have been private member bills in Parliament to extend the GLA's reach beyond food processing, but none have so far passed.

133. *recruitment and employment in the meat and poultry processing sector*, *supra* note 78, at 31, 39; *Hard Work, Hidden Lives*, *supra* note 18, at 43; *Turning the Tide*, *supra* note 18, at 9; Dr. Mick Wilkinson, *New Labour, the Gangmasters Licensing Authority and the woefully inadequate protection of migrant workers in the UK*, 11-12, 15 (2010) unpublished paper available at <http://www.social-policy.org.uk/lincoln/Wilkinson.pdf>.

134. Reeve interview, *supra* note 66; UNISON interviews, *supra* note 66; Bamford interview, *supra* note 66; Flynn interview, *supra* note 66; *Thinking Outside the Box*, *supra* note 70, at 131; Maite Tapia, Summary Analysis of British Unions and Migrant Workers (2009) (draft on file with author) [hereinafter *Summary Analysis of British Unions*].

135. *Thinking Outside the Box*, *supra* note 70, at 137-38. The TUC report *Hidden Lives* is one example of a document that reflects this strategy, with its carefully chosen mix of migrant and native workers illustrating each form of vulnerability it highlights. *Hard Work, Hidden Lives*, *supra* note 18.

136. Bamford interview, *supra* note 66; *Summary Analysis of British Unions*, *supra* note 134, at 9-11.

137. Jason Heyes, *Recruiting and organising migrant workers through education and training: a comparison of Community and the GMB*, 40 *Indus. Rel. J.* 182, 192 (2009); *Summary Analysis of British Unions*, *supra* note 134, at 7-8; *Thinking Outside the Box*, *supra* note 70, at 140.

138. UNISON interviews, *supra* note 66; Dr. Sian Moore & Max Watson, UNISON Migrant Workers Participation Project: Evaluation Report, Working Lives Research Institute (Dec. 2009).

139. Reeve interview, *supra* note 66; *Summary Analysis of British Unions*, *supra* note 134, at 5-6; *Thinking Outside the Box*, *supra* note 70, at 147.

140. Reeve interview, *supra* note 66; UNISON interviews, *supra* note 66; Bamford interview, *supra* note 66; Flynn interview, *supra* note 66; *Thinking Outside the Box*, *supra* note 70, at 139.

141. Bamford interview, *supra* note 66.

142. Bamford interview, *supra* note 66; *Thinking Outside the Box*, *supra* note 70, at 146. From many UK unions' perspective, non-member migrants' heavy need for up-front services is a poor fit with union rules. Most UK unions have rules that bar them from offering assistance or representation to non-members on workplace claims. It is routine for union regulations to require that a new member have been in good standing for six months before receiving assistance. Reeve interview, *supra* note 66.

143. *Thinking Outside the Box*, *supra* note 70, at 146.

144. Bamford interview, *supra* note 66; Reeve interview, *supra* note 66; Dr. Jane Holgate, *The role of UK unions in the civic integration of immigrant workers* 19 (Feb. 2009) (on file with author) (reporting as key finding of three year study on unions and black and minority ethnic workers "the need for unions to adapt their structures and change their methods of organizing in order to meet the differing needs of different groups of workers.").

145. Reeve interview, *supra* note 66.

146. Bamford interview, *supra* note 66.

147. UNISON interviews, *supra* note 66; Reeve interview, *supra* note 66; but see *Migrant Workers' Challenges*, *supra* note 66, at 21-22 (Survey results did not suggest Poles and Lithuanians were hostile to unions; 13% surveyed were TU members in home countries vs. 3% in UK, but low union membership did not necessarily represent antipathy to trade unions, and a clear majority were interested in joining. Of the workers who were not interested in joining, half gave practical reasons such as cost, lack of information and brevity of stay, and less than 10% gave ideological reasons or bad experiences of unions as a reason for not joining.).

148. UNISON interviews, *supra* note 66. Based on 2005 survey of approx 400 'new' (but not all A8) and 400 'long term' ECE/ Russian residents of the UK, only 4% of new immigrants vs. 25% UK nationals and 23% long-term residents were TU members. *The Experiences of 'new' Eastern European Migrants*, *supra* note 66, at 29. "Some respondents explained this low rate of trade union participation with the fact that they had been organised for too long during the communist era in their home countries, and so had lost interest in joining any type of organisations." *Id.* at 29. See also Dr. Jane Holgate, *The role of UK unions in the civic integration of immigrant workers* 19-20 (Feb. 2009) (on file with author).

149. Gordon, *supra* note 120, at 27-43.

150. *The UK's new Europeans*, *supra* note 17, at 13.

151. Groenendijk, *supra* note 10, at 12.

152. For a description of the assistance currently provided, see Europa, *Instrument for Pre-Accession Assistance*, available at http://europa.eu/legislation_summaries/agriculture/enlargement/e50020_en.htm (last visited Dec. 27, 2010).

153. There was a large Mexican population in the US for a century or more before the recent surge, whereas relatively few A8s worked in the UK prior to accession, and far fewer prior to the point when discussions of enlargement began. Gilpin et al., *The impact of free movement of workers from Central and Eastern Europe on the UK labour market*, (UK Dep't for Work and Pensions, Working Paper No. 52, Feb. 2006) (estimating 60,000 Poles pre-2004), available at <http://campaigns.dwp.gov.uk/asd/asd5/WP29.pdf>; Linda McDowell, *Old and New European Economic Migrants: Whiteness and Managed Migration Policies*, 35 J. ETHNIC AND MIGRATION STUD. 19, 26 (2009). Bridget Anderson suggests that as a result, A8s have more limited networks in the UK than Mexicans in the US, making them more reliant on agencies than Mexicans in the US might be under a similar system; and A8s work in sectors dominated by agencies rather than more diverse sectors as Mexicans in the US do. Email from Dr. Bridget Anderson, Senior Research Officer and Programme Head, Centre on Migration, Policy and Society (Nov. 06, 2010, 07:53 EST) (on file with author).

154. Cook, Dwyer & Waite, *supra* note 27, at 11-15. Although a full discussion is outside the scope of this report, it is important to note that the concept of a "labor shortage" is a controversial one. For a helpful framework for parsing the mixture of employer preference, government policy, and structural institutions that shape the perception and/or reality of labor shortages, see *Migrant Workers: Who Needs Them?*, *supra* note 36, at 15, 34.

155. For a brief time immediately following accession, significant numbers of A8 migrants took agricultural jobs in the UK. *Intensification of Workplace Regimes in British Horticulture*, *supra* note 83, at 501; *Poles Apart*, *supra* note 68, at 8. New A8 arrivals continue to fill those jobs (often placed by an employment agency) as an entry-point into the British economy. "Inquiry into recruitment and employment" at 8. But the trend clearly shows A8 migrants moving away from agriculture over time, into less dirty and demanding work within the food industry, such as food processing, retail, and catering. For a description of one employer's successive hiring of newer migrant groups over time, see MacKenzie & Forde, *supra* note 36, at 147-51. On the increasing aspirations and mobility of A8 migrants over time, see *Id.* at 154-55; Cook, Dwyer & Waite, *supra* note 27, at 11; *Regular Migrants in the Irregular Workplace*, *supra* note 66, at 124. It is foreseeable that once restrictions on labor market access for A2 migrants ease, they, too, will leave the fields for more desirable work. Unless conditions in the worst jobs are improved to the point that they appeal to native and longer-standing immigrant workers, they will continue to attract only new migrants who have (or perceive they have) few other alternatives.

156. *Migrant Workers: Who Needs Them?*, *supra* note 36, at 28-31; MacKenzie & Forde, *supra* note 36, at 147-151; *Migration, immigration controls and the fashioning of precarious workers*, *supra* note 58, at 7.

157. *Regular Migrants in the Irregular Workplace*, *supra* note 66, at 107, 123-24.

158. *Id.* at 124. For a considerably more optimistic portrayal, see Polish Migration to the UK in the 'New' European Union: After 2004 6, 10 (Kathy Burrell et al., 2009).

159. *Thinking Outside the Box*, *supra* note 70, at 137. But see note on "whiteness," *supra* note 105.

160. On xenophobia, see Reeve interview, *supra* note 66; UNISON interviews, *supra* note 66; Rogers, Anderson & Clark, *Recession, Vulnerable Workers and Immigration*, *supra* note 52, at 64-69.

161. For a large-scale proposal along these lines, see Jennifer Gordon, *Transnational Labor Citizenship*, 80 S. CAL. L. REV. 503 (2007); Jennifer Gordon, Op-Ed, *Workers Without Borders*, N.Y. TIMES, Mar. 10, 2009, at A27.

162. For overviews of the abuses in recruitment for US farm labor jobs, see Steven Greenhouse, *Low Pay and Broken Promises Greet Guest Workers*, N.Y. TIMES, Feb. 28, 2007, at A1; Mary Bauer, *Close To Slavery: Guestworker Programs In The United States*, SOUTHERN POVERTY LAW CENTER (2007), available at <http://www.splcenter.org/pdf/static/SPLCguestworker.pdf>. Mexico's federal labor law does technically regulate labor contractors recruiting workers for foreign employment. The law is limited in scope but contains some essential guarantees, including mandating that the employer cover all transportation, food, visa and border-crossing costs, and requiring the contractor to post a bond to ensure that these and other obligations such as the provision of a written contract are met. Ley Federal del Trabajo [Federal Labor Law], Título II, Capítulo I, Artículo 28, 1997 (Mex.). Like many labor-protective laws in Mexico, however, it is essentially unenforced. See, e.g., *No Guarantees: Sex Discrimination in Mexico's Maquiladora Sector*, HUMAN RIGHTS WATCH 8 (Aug. 17, 1996), available at <http://www.hrw.org/reports/1996/Mexi0896.htm>.

163. The major factor mitigating against such an increase is the fact that Mexican migration to the United States is longstanding (unlike A8 migration to the UK), and therefore Mexican migrants have more alternative channels through which to find jobs. See Email from Dr. Bridget Anderson, Senior Research Officer and Programme Head, Centre on Migration, Policy and Society (Nov. 6, 2010, 07:53 EST) (on file with author).