

Trading Away Migrant Rights: How the TPP Would Fuel Displacement and Fail Migrant Workers



AFL-CIO

Acknowledgments

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Introduction

INTERNATIONAL TRADE AND MIGRATION are fundamental and interrelated components of globalization. While trade and migration have the potential to improve the lives of working families, trade and migration policies for too long have prioritized corporate interests over just development and worker rights. Since the implementation of the North American Free Trade Agreement (NAFTA) in 1994, working people, academics and advocates have developed a clearer understanding of the real impact of corporate-driven free trade agreements (FTAs), and the role they play in undermining workers' bargaining power and displacing communities in developing countries. Millions of workers have been driven from their homes and often their families, undertaking difficult journeys in search of opportunities abroad, where their status is precarious and they routinely face exploitation and discrimination.¹

Now politicians and corporations seek to repeat the failed policies of the past by implementing the Trans-Pacific Partnership (TPP), a massive trade deal between the United States and 11 other Pacific Rim nations—Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam—that together represent as much as 40% global GDP. **The TPP categorically fails to protect workers in the Pacific Rim.**² As currently drafted, the TPP would increase corporate profits and power while exposing working people to real and predictable harm, including lost jobs and lower wages. Migrant workers already are subject to extreme rights violations in some TPP countries, and this new trade deal would make it even harder for many families to find decent work at home.

The TPP is a recipe for destabilizing communities, perpetuating low wages and stifling labor rights—all of which are factors driving migration. The neoliberal trade architecture of deregulation, coupled with strong investor protections, allows companies to outsource labor-intensive components of their supply chains to locations with weak labor laws and low wages. To attract corporations, many

governments suppress wages and prevent the exercise of labor rights, as firms shop for options and shift production around the world in a race to the bottom. Migrant workers often are caught in this vicious cycle, displaced from agricultural or other domestic industries by cheap, often subsidized imports, and recruited into exploitative working conditions in other countries.

If implemented, the TPP would trade away the rights of migrant workers, their families and communities. The TPP broadly fails migrant workers in three ways:

1. It would displace working people and contribute to forced migration;
2. Its few labor provisions and consistency plans (bilateral side agreements between Brunei, Malaysia and Vietnam, and the United States) would not address ongoing violations of migrants' human and labor rights; and
3. It would further empower corporate and investor interests while putting working people at a disadvantage and potentially undermining efforts to win fair immigration policies and strong labor laws.



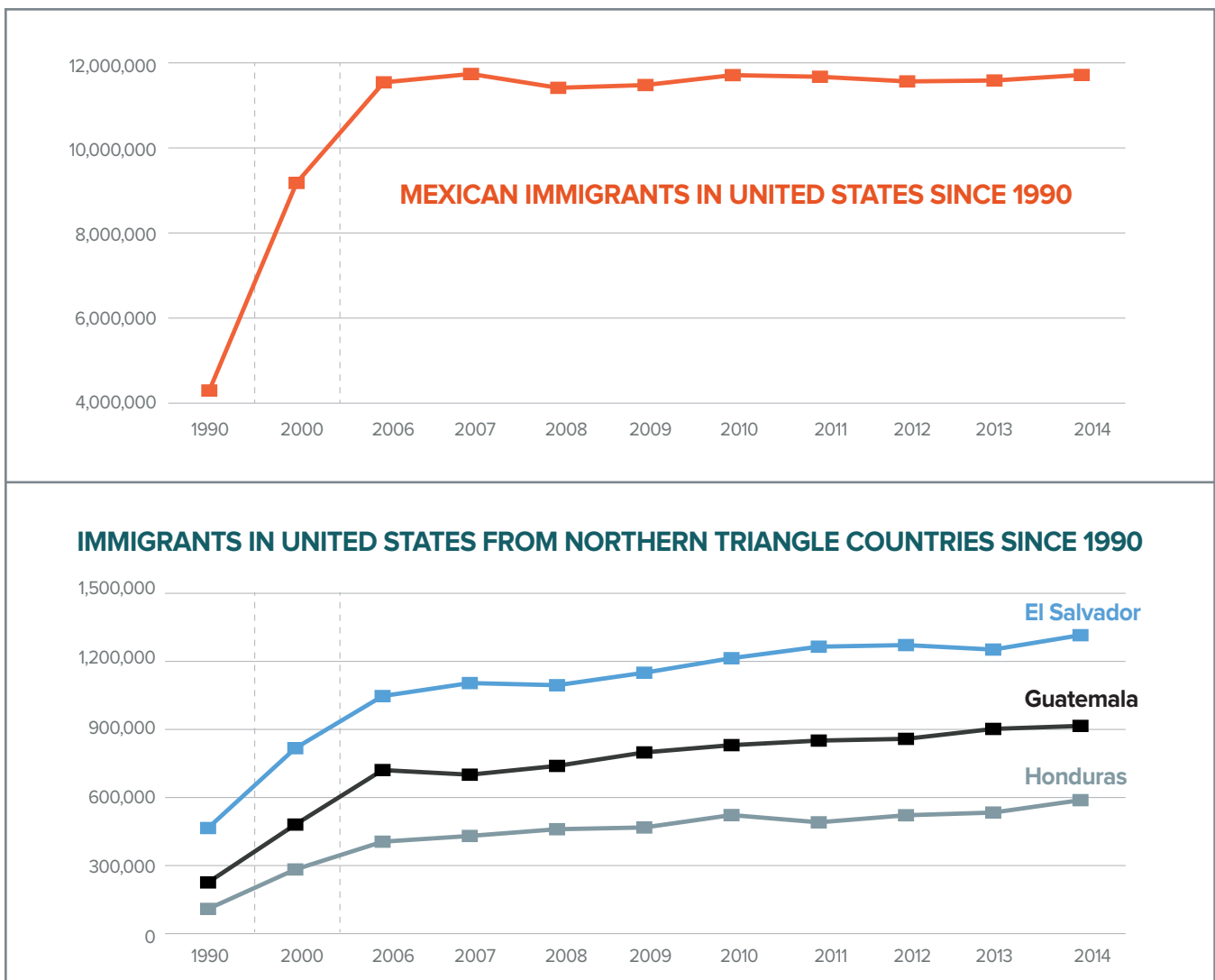
Returned migrants boarding a bus in San Pedro Sula, Honduras.

Displacement

FAMILIES IN THE AMERICAS have seen how FTAs uproot working people firsthand. NAFTA sparked unprecedented migration from Mexico into the United States and Canada. Subsidized agricultural imports from the United States led to Mexico losing 1 million jobs in corn alone between 1991 and 2000, and an additional million in the agricultural sector.³ This drove waves of families from rural areas, both into low-wage work in Mexico and across the border.

Undocumented immigration from Mexico doubled after the agreement took effect, leveling off after the 2007 economic downturn and declining in recent years due to stagnant job growth and harsh immigration enforcement.⁴

Similarly, the Central America Free Trade Agreement (CAFTA) exacerbated the desperation and instability in the Northern Triangle countries of Guatemala, Honduras and El Salvador,



and contributed to the increased flows of forced migration. Since 2014, tens of thousands of refugees have fled violence, repression and poverty in Central America and made the perilous, often deadly, journey to the United States. Unfortunately, the labor provisions of CAFTA failed to secure decent work or protection for the exercise of basic labor and human rights. In the Northern Triangle, employers routinely violate labor laws and labor leaders are killed with impunity.⁵

NAFTA and CAFTA also encouraged foreign investment over local development. Mexico and the Northern Triangle countries have embraced Export Processing Zones, commonly referred to as *maquiladoras*, which seek to attract foreign capital in such industries as garment production, auto parts and electronics by promising enhanced global “competitiveness” through low wages and reduced taxes. This *maquila* industrial policy has led Mexico and countries like Guatemala and Honduras to suppress wage growth to remain competitive with countries like Bangladesh and China.

These FTAs limit targeted subsidies and procurement preferences for domestic companies, which has further resulted in a public policy shift away from supporting small businesses and rural development. Instead, it has encouraged rural-to-urban migration to support urban industrial growth in the *maquiladoras*. Government fiscal capacity to support development and quality public services also is reduced, as tax incentives and tariff reductions can cut into a sizeable portion of government revenue. In the agricultural sector, many small-scale farmers and *campesinos* have been displaced by cheap imports of processed foods made from heavily subsidized U.S. products (e.g., corn and soy). At the same time, large-scale commercial agricultural land holdings to produce nonfood export crops like palm oil and sugar have expanded, reducing land available to small-scale and subsistence farmers.⁶

Supporters of both NAFTA and CAFTA argued that these FTAs would reduce undocumented migration, address the social and economic problems in the region and increase employment, stability and peace. These promises have simply not come to pass.

These predictions seem absurd in retrospect. During the congressional debate on CAFTA, both Democrats and Republicans put forward dire warnings of what could happen if the deal did not pass.⁷ Rep. Dan Burton (R-Ind.) even stated: “What we have to do...is to support CAFTA, support trade, which will create more jobs down there and create an economy that will keep people at home and stop massive immigration into the United States. *If we do not, in my opinion, there will be wars there, there will be massive immigration, and the security of the United States as well as the immigration problems will increase.*”⁸

In many cases, political violence, repression and migration have increased. Honduras, since the Supreme Court and military deposed President Manuel Zelaya in June 2009, has been in the midst of an era of political repression, corruption and violence, including the assassinations of numerous trade unionists, indigenous and environmental activists, and community leaders. Yet, even if the political will existed, the U.S. government would have no ability to restrict trade benefits to Honduras due to the terms of CAFTA. These FTAs removed constraints on capital, but did nothing to ensure that workers could access decent work, nor did they protect basic human rights, forcing many to leave their homes due to economic displacement, instability or violence.⁹

Now, even TPP supporters admit that FTAs cause “job churn,” as workers who are displaced from one firm or industry do not immediately find jobs in another. And though trade theory predicts that workers eventually will find jobs with the same or better pay, the reality is that larger than predicted displacements, free movement of capital, and inadequate workplace rights and social protections have combined to ensure that in practice, many workers are worse off.¹⁰ For example, workers may transition from good-paying manufacturing jobs to low-wage service-sector jobs, as many workers in the United States have. Likewise, wages are stagnant in Mexico. Since NAFTA, wages in Mexico have lost purchasing power, and the U.S.-Mexico wage gap has increased.¹¹ FTAs can cause so much churn and economic upheaval that they uproot families and contribute to out-migration flows.¹²

The TPP is poised to disrupt North and Central American supply chains by granting substantial trade benefits, including eventual duty-free access for all TPP countries to the U.S., Mexican and Canadian markets. This will set CAFTA and NAFTA countries up against even lower-wage countries in the TPP like Vietnam and Malaysia. The Salvadoran government is so concerned about this potential disruption that it has lobbied the U.S. Congress to ease the transition with long deadlines for tariff reductions.¹³

The inclusion of Vietnam in the TPP is a major concern to apparel workers due to the size of Vietnam's apparel industry and extensive government subsidies and ownership of large apparel manufacturing facilities. Vietnam is already the second-largest textile and apparel exporter to the United States, shipping more than \$11 billion in product to the United States in 2014.¹⁴ This level could surge under the TPP, which would put enormous pressure on Central American manufacturers and workers. Much Central American production could transfer to Vietnam, with its lower wages and authoritarian regime, further degrading Central America's jobs base and uprooting those dependent on textile jobs.

Likewise, Malaysia's electronics industry is rife with forced labor, according to the U.S. government's own reports; yet the TPP would force workers in Mexico's *maquila* sector to compete with Malaysian production standards.¹⁵ Loose rules of origin requirements mean that competition not only will come from Vietnam and Malaysia, but also China. Workers in the Americas displaced by these factors may have few options but to emigrate in search of

better opportunities in the United States and elsewhere. Meanwhile, changing economic opportunities associated with increased production and growth in countries like Brunei, Malaysia, Peru and Vietnam could amplify job churn and both "push" and "pull" workers into countries with poor labor rights records.

In addition to the economic forces unleashed by FTAs, displacement related to climate change, rising sea levels and related natural disasters increasingly will become a major phenomenon in the 21st century. As with the TPP labor provision, the environmental protections included in the agreement do little more than pay lip service to conservation; the Sierra Club has called the chapter "essentially meaningless."¹⁶ The TPP does not set binding rules to address illegal timber and wildlife trade, and would allow investors to challenge domestic environmental protections (more in the next section). While climate change looms as a growing threat to global stability, the TPP only undermines efforts to create a more sustainable future. It is estimated that by 2050, approximately 200 million migrants could be on the move due to climate change alone—roughly the equivalent of all migrants worldwide today.¹⁷

The economic, social and environmental forces that would be fostered by the TPP would have a devastating impact on the stability of communities, especially those in developing countries. It is likely that the TPP, if enacted, would perpetuate conditions of deprivation and instability that so often drive forced migration. As will be discussed, the TPP also does little to ensure migrant workers' rights will be protected as they move throughout the Pacific Rim.



Vietnamese women working in silk factory. Photo: www.istockphoto.com.

Lack of Protection of Migrant and Worker Rights

WHILE THE OBAMA ADMINISTRATION signaled that the TPP would be the “gold standard” for protecting labor rights in FTAs, trade negotiators categorically failed to achieve meaningful commitments to improve conditions from TPP partners with troubling labor rights records. This failure would perpetuate the vulnerabilities of migrant workers in particular, as there are troubling violations of migrant worker rights in Malaysia, the U.S.-Mexico-Canada migration corridor, Vietnam and Brunei. The U.S. Trade Representative (USTR) gave away crucial negotiating leverage by not requiring compliance with labor obligations, including adherence to core labor standards in law *and practice*, before granting access to TPP membership. As the agreement stands, countries would receive trade benefits on day one, regardless of existing rights concerns, while workers would have few remedies to address violations.

This failure could undermine conditions for all working people in the Pacific Rim. When trade deals do not protect migrant workers from exploitation, they allow bad-actor employers to drive down the wages and working conditions of all workers. The Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC), a body consisting of U.S. trade union officers with the statutory responsibility to provide advice on trade negotiations, urged USTR to include strong and specific language in the TPP to protect migrant workers. Unfortunately, USTR refused to take on this issue.

In 2011, the AFL-CIO joined with labor federations from the majority of TPP countries to draft and submit a comprehensive labor chapter that would address shortcomings of prior trade deals. Too many trade agreements include symbolic commitments to improve labor rights that lack reliable enforcement plans.



Workers in Singapore. Photo: www.flickr.com/photos/surveying/

Instead of withholding trade benefits until labor rights obligations have been met, under the TPP, like all other FTAs to date, workers do not have direct access to the enforcement mechanism. While investors can use the investor-state dispute settlement system (ISDS) to sue host states directly for alleged violations of their rights, workers must petition their governments to vindicate their rights. Such petitions can be denied or delayed indefinitely, no matter how meritorious their claims.

One consequence of this approach is that migrant workers will continue to face abuse in international labor recruitment. Across migration corridors, instead of facilitating the safe movement of workers, recruitment firms and employers routinely take advantage of the vulnerabilities of migrant workers for their own gain. Migrant workers, regardless of their skills, education or immigration status, face similar forms of abuse related to their recruitment experience, including threats, debt stemming from legal and illegal fees, blacklisting, false contracts, document confiscation, gender-based violence and even forced labor. Migrant workers often are restricted in exercising their rights by limitations placed on them—many are tied to a single employer and subject to deportation if they lose or leave their job. Reform of the labor recruitment process requires transnational governmental action and accountability. Despite urging from the LAC, the TPP fails to even include any specific protections for equal rights and remedies for migrant workers, or specific prohibitions against exploitive or fraudulent international labor recruitment.¹⁸

By declining to take this on, USTR takes a laissez-faire attitude toward systems of labor exploitation in the region that extend throughout global supply chains. Migrant workers in Malaysia are subjected to restrictions on movement, fraud, document confiscation and debt bondage by recruiters or employers. In agriculture, construction, textile and electronics, employers and government authorities discourage union activity among migrants, and use subcontracting arrangements to limit worker organizing in order to maintain a low-wage workforce and globally competitive exports.¹⁹ Some of the most recognizable electronics brands operate or source components from Malaysia, including Intel, Advanced Micro Devices, Dell and Flextronics. A 2014 report from

Verité found that approximately 28% of electronics workers toiled in conditions of forced labor, while an additional 73% reported abuses like debt from recruitment fees, constrained movement, isolation and document retention.²⁰

Similarly, Vietnam and Brunei tightly restrict trade union activity and migrant rights. Vietnam maintains a prohibition on independent human rights and civil society organizations, and its labor relations system denies freedom of association. Union activity currently is prohibited outside the official unions affiliated with the Communist party's Vietnam General Confederation of Labor.²¹ This situation would be remedied should Vietnam ever come into full compliance with the labor obligations in the TPP.²² Yet, the status quo means that both Vietnamese and migrant workers are impeded from potentially improving their conditions through collective action. In Brunei, the government prohibits strikes and large public meetings.²³ Many of the 85,000 migrant workers in Brunei face labor exploitation and trafficking related to recruitment fees, while immigration law allows for prison sentences and caning for workers who overstay their visas, fall into irregular status or work, or change employers without a permit.²⁴ This system traps migrant workers in abusive employment relationships and impedes access to justice.

Fundamental reforms to labor, immigration and industrial policies in Brunei, Malaysia, Mexico and Vietnam are needed before workers will be able to escape the vicious cycle of exploitation and vulnerability that often leads to trafficking. While the TPP consistency plans do call for meaningful changes in law, they do not comprehensively address failures to uphold the International Labor Organization (ILO)'s core labor rights. Nor do these plans include measurable indicators of success or an independent evaluation mechanism to determine whether improvements are met.

The U.S. government's record of defending labor rights through FTAs offers little encouragement. Guatemalan and U.S. workers have been engaged in an eight-year campaign to move a CAFTA labor case through the review process, with no meaningful improvement in labor conditions to date. The sole mechanism workers in all 12 TPP countries would have to rely on to enforce their labor rights is the same process that has proven to be woefully weak and inadequate in defending workers' rights under the FTAs in our hemisphere. The United States has never imposed trade sanctions or even a fine as a response

to labor violations by FTA partner countries. It only has attempted dispute settlement once, against Guatemala, and workers still are waiting for an initial report from the arbitral panel. This experience with prior agreements with similar enforcement mechanisms demonstrates that workers—particularly vulnerable migrant workers—simply cannot rely on promises that the TPP will protect their rights.

The U.S. government hardly has led by example among its trading partners. Its record of protecting migrant rights within its own borders, as it is obligated to do under NAFTA's North American Agreement on Labor Cooperation (NAALC), has been a failure. In 2011, the AFL-CIO, Centro de los Derechos del Migrante, the Southern Poverty Law Center, ProDESC and other civil society organizations filed a complaint against the United States on behalf of workers who were brought to the United States to work under the H-2B visa program. The complaint alleges that the United States failed to comply with its obligations under NAFTA by permitting companies to routinely pay H-2B workers less than the minimum hourly wage and deny them overtime and reimbursement for travel, visa and recruitment costs. In response,

emblematic of the weak FTA enforcement mechanisms, the U.S. Department of Labor undertook a season of rights trainings for Mexican H-2B workers. However, the impact of the trainings was limited due to the presence of growers in some cases and the continuing threat of deportation; structural employer abuse of the guest worker visa program persists.

Worker rights obligations never have been enforced fully under existing free trade agreements. To let the TPP enter into force without full compliance with all labor commitments from all 12 countries undermines the entire agreement and reduces the prospect for wage growth in Pacific Rim countries. The TPP sets no minimum standards for minimum wage, hours of work or health and safety protections, and stipulates only that these obligations will be satisfied "as determined by" each country. A TPP country legally can set a minimum wage of a penny an hour. As a result, migrant workers in Pacific Rim countries would continue to disproportionately face low wages, dangerous conditions, harsh enforcement policies, employer exploitation and immigration visa schemes that limit rights.



Fired electrical worker Leobardo Benitez, Central Light and Power (*Luz y Fuerza del Centro [LyFC]*), Mexico. Photo: David Bacon

Empowering Corporations to Undermine Rights-Based Immigration Policies

AS OUTLINED ABOVE, the TPP fails to incorporate needed improvements to labor commitments. Conversely, it contains strict, clear and strong protections for global corporations and foreign investors. This potentially could undermine the struggle for migrant rights by empowering investors and corporations to challenge democratically enacted laws and regulations—including environmental protections, minimum wage laws and rights-based immigration policies that threaten profit margins. The TPP also may further the commodification of workers with limited labor rights between countries.

The TPP, like other FTAs, would empower foreign investors to bring cases against TPP parties on their own, through a process known as ISDS. This gives investors a special legal right to challenge a law, regulation, judicial or administrative ruling or any other government policy that might threaten their right to “fair and equitable treatment” and expected profits in front of a panel of private

arbitrators. Each case costs the public an average of \$8 million in legal and arbitration fees, and if the government is unsuccessful, it can be required to pay massive penalties to foreign companies.²⁵ For example, in 2012, the government of Ecuador was ordered to pay nearly \$1.77 billion (plus interest) to Occidental Petroleum after the government terminated an oil contract that Occidental violated.²⁶ Sometimes, the mere threat of an ISDS case is enough to compel governments to withdraw or change their policies.²⁷

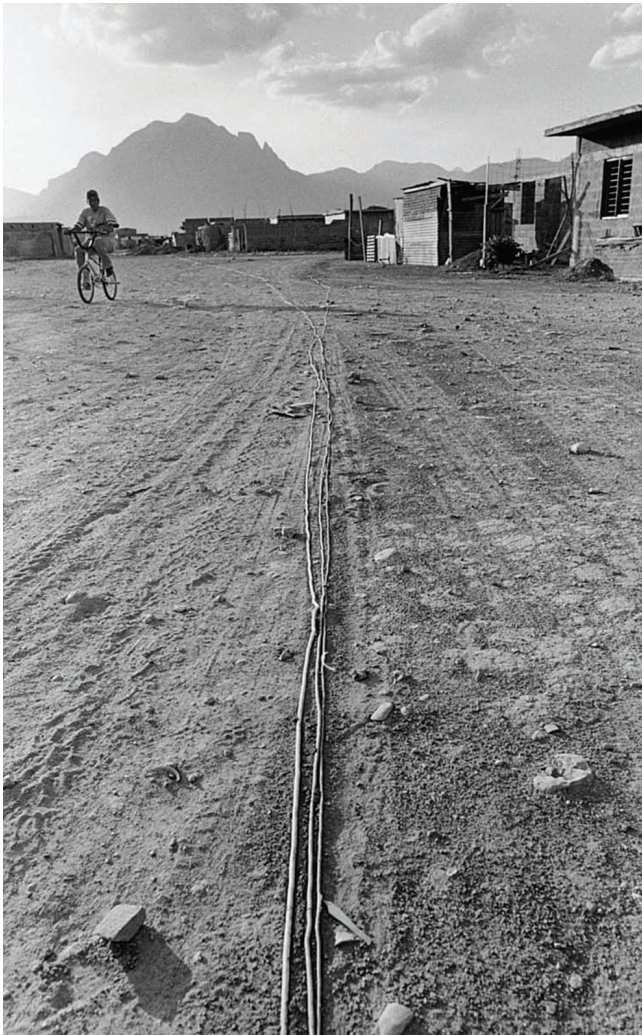
Corporations and investors utilize ISDS as another tool to manipulate the rules of the economy and fight a pro-worker agenda. This could include opposing rights-based immigration policy reforms. For example, activists are campaigning to stop deportations and family detention, and have called for an end to the use of for-profit private detention facilities in immigration enforcement. Immigrant communities and advocates seek to eliminate the toxic



Factory workers make sportswear for a U.S. brand at a *maquila* plant in the San Bartolo free trade zone in the city of Ilopango in eastern El Salvador. Photo: Edgar Romero/IPS

effect of corporate detention lobbying money on the immigration debate, which has led to a dramatic increase in immigration detention since the 1990s.²⁸ However, ISDS potentially could provide private detention companies a tool to threaten local, state and national lawmakers. If lawmakers decide to reverse a failed privatization experiment, they could face an ISDS challenge for millions or even billions of dollars.

An investor could bring a case challenging other pro-worker reforms as well, such as minimum or sectoral wage increases, or changes to temporary work visa programs. This is not a hypothetical threat. Veolia Propreté, a French multinational water treatment corporation, launched an investor-state claim in 2012 against Egypt for enacting a hard-fought minimum wage increase, one of the few lasting victories from the Arab Spring, claiming that the changes threaten its right to profits under a contract with the city of Alexandria.²⁹ Trade arbitration mechanisms even have been used to challenge U.S. immigration policy.



The homes of displaced Mexicans working in *maquilas* in Monterrey, Mexico. Photo: David Bacon

The government of India currently has a dispute filed against the United States in the World Trade Organization claiming that the U.S. policy of combating offshoring by raising visa fees on firms that employ H-1B and L visa guest workers as more than 50% of their workforce violates U.S. commitments made in the General Agreement on Trade in Services (GATS).³⁰

The Indian case is emblematic of the increasing commodification of the movement of workers through trade mechanisms, and outside of the scope of democratic governance. The United States already has opened the door to this trend in past trade agreements. In the Chile and Singapore Free Trade agreements, the U.S. government created a subclassification—the H-1B1—for specialty occupations for citizens of Chile and Singapore, whereby the U.S. Customs and Immigration Services (USCIS) is required to exempt 6,800 visas from the H-1B specialty occupation caps. The TN visa crafted as part of NAFTA similarly enables certain Canadian and Mexican professionals to accept prearranged temporary employment in the United States for an indefinite duration.³¹

Unions, worker centers and migrant rights advocates around the world have campaigned for years to reform the guest worker visa model. Too many of these programs, like ours in the United States, tie workers to a single employer, restrict family unity and citizenship pathways, and leave workers vulnerable to abuses like wage theft, discrimination, blacklisting and even forced labor.³² Now the TPP threatens to expand the number of workers recruited between TPP countries with limited rights.

Chapter 12 of the TPP, titled “Temporary Entry for Business Persons,” opens up channels for increases in the number of visas granted for the “temporary entry of business persons.” The purported purpose of this chapter is to ease travel by managers helping to set up new investments, but the obligations include such nonmanagement positions as machinery installers and servicers, repair and maintenance personnel, electricians, plumbers, computer and information systems technicians, lecturers, landscapers, economists and sanitation technicians. While the United States took no commitments under this chapter, it will greatly enhance the ability of multinationals to recruit temporary workers with few labor rights in other TPP countries, without regard for labor market concerns or wage levels. It seems the clear purpose of the chapter

is to empower employers to drive wages down, as it is hard to believe any TPP country lacks talented plumbers, landscapers and electricians seeking work. The Temporary Entry chapter also fails to ensure that persons traveling under the visas it authorizes will be able to exercise fundamental labor rights.

These TPP provisions allow corporations and investors to wield control of migration by operating outside the scope of national governance and without regard for labor market implications or migrant rights. As Alberta Federation of Labour President Gil McGowan told the Canadian House of Commons, “the [TPP] would

fundamentally transform the Canadian labor market for the worse by creating an underclass of exploitable workers with fewer rights.”³³

Trade negotiators should not be permitted to set immigration policy, and corporations should not have unfettered control over the movement of people or the regulations put in place by governments to protect the popular interest. The investor protections and privileges built into the TPP would bypass democratic decision making and establish a neoliberal and deregulatory system that would undermine efforts to expand rights and protections for working people.

Conclusion

A DIFFERENT SYSTEM IS POSSIBLE. The predominant corporate trade and economic paradigm must be abandoned in favor of an agenda that supports good jobs, labor and migrant rights, and sustainable development. No one should have to leave their family and community behind or be denied the right to raise their children for lack of decent work. There is a critical need to reorient U.S. trade and migration policies to protect and empower working people, and ensure migration is a choice rather than a necessity. The TPP fails to meet this standard.

Global migration and trade policy should be underpinned by rights-based governance and equal protections, not corporate priorities. Globally, international human and labor rights need to be codified into legal standards that provide migrants with protections equal to those afforded national workers, including the freedom of movement, freedom of association and collective bargaining, freedom from discrimination and forced labor, and access to justice and legal services. This approach would ensure that migrant workers and their families are able to successfully join our communities and workplaces, increase their earning potential, and build better lives for themselves and potentially their origin communities. It also would ensure a level playing field in the labor market so that employers lose the ability to divide workers on the basis of immigration status.

Working people everywhere share the common challenge of overcoming the global corporate economic agenda that the TPP embodies. There are right-wing politicians who seek to divide workers, using the politics of fear, xenophobia and hate to advance their own agenda. The Brexit vote and the rise of Donald Trump in 2016 have demonstrated how powerful these messages can be. Immigrants too often are scapegoated as the cause of the economic hardships facing workers, rather than human beings sharing in a similar struggle to build a better life.

Workers must stand together to forge a path toward higher living standards, strong democracies, wage growth and decent work. This means rejecting the politics and policies that divide us and only serve the interests of the powerful. This means standing up for immigrant rights, and the labor rights of all workers. And this means standing for pro-worker trade policies, not corporate-driven agreements like the TPP.



Los Mineros members carry coffins through the streets of Mexico City to commemorate the anniversary of the Pasta de Conchos disaster. Photo: Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúrgicos y Similares de la República Mexicana.

Endnotes

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